SUMMA THEOLOGIAE MORALIS

according to the mind of St. Thomas and the norm of the new law

II

On the Moral Virtues

by Fr. Benedict Henry Merkelbach, O.P.

Second edition, revised and emended

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Title Pages and Approvals

Summa of Moral Theology — According to the Mind of St. Thomas — And According to the Norm of the New Law — Which for the Use of Schools — Was Edited by — Benedict Henry Merkelbach, O.P.

Professor of Moral Theology in the Angelicum College of the City.

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Approbations

We, the undersigned, by command of Superiors, have attentively read this second edition of the second part of the work whose title is: *Summa of Moral Theology according to the mind of St. Thomas and according to the norm of the new law*, written by the Very Reverend Father Master Friar Benedict Henry Merkelbach, O.P., Professor of Moral Theology in the Angelicum College of the City. We judge the aforesaid work to be most highly commended to all, and we hold it worthy that it be published.

November 30, 1935.

P. fr. B. M. Bonte, O.P., S.T.L.

P. fr. H. M. Bisschop, O.P., S.T.L.

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Rome, December 3, 1935.

fr. M. S. Gillet, O.P.

Master General.

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V. Dupin, V.G.

Prologue

In the first volume of this work, which is inscribed: "On Principles," there are found declared the wholly general principles of the whole of moral theology, and besides those special principles which regard the theological virtues. But since these virtues are concerned with the ultimate end itself, and in operable things the end is the first principle, hence those things which regard the theological virtues are also held among the more general principles of those things which rule practical science.

Now we come to treat of those things which are concerned with the means to the ultimate end. Some means are intrinsically necessary from the very nature of the thing, and to these the moral virtues dispose us, which are the four cardinal virtues with their annexed virtues; others are due from the positive and extrinsic ordination of God, namely, the sacraments instituted by Christ.

Leaving sacramental doctrine for the third volume, in this second volume is contained the ample matter concerning the cardinal and annexed virtues, with their acts, and the precepts and gifts pertaining to them, the opposite sins being at the same time considered; and indeed according to the doctrine and ordering of St. Thomas.

But since there are several positive determinations concerning these things, such as of ecclesiastical law concerning religion or temperance, or of civil law especially in the matter of justice, present-day law also will have to be considered, both canonical and civil: especially French law, which, having been worked out earlier and having been adopted in our country for a great part, was an exemplar for very many modern legislations, whose dispositions nevertheless, at least in the principal matters, should not seem to be passed over, so that their analogies and differences and particular orderings may be brought to light.

Whatever good, friendly reader, you will find in the work, attribute to God, the fountain of all goods, and to the great doctors and masters whose doctrine is reported, especially St. Thomas; whatever there is of defect or imperfection, attribute to the author and his weakness.

May God will that not weakness prevail, but His Truth and Wisdom, unto His praise and glory and the salvation of souls.

I was writing on the octave day of the feast of the Holy Apostles Peter and Paul, July 6, 1931.

The Author.

Special Moral Theology: On Moral Virtues

Introduction

1. Matter to be treated. - Moral theology considers the human acts by which man is moved toward God, the supernatural end; it is inscribed by St. Thomas: "concerning the motion of the rational creature toward God." It is, namely, that part of theological science which treats of human acts to be ordered to God as supernatural end according to revealed principles. Hence it treats of our ultimate end, of human acts in order to the end, whether good acts by which we tend toward it, or evil acts, or sins, by which we do not tend toward it, and at the same time of the rules of acts, namely conscience and law, and of their principles, namely habits, that is, virtues and vices. Moreover, it treats of all these first in general, then in species; and therefore it embraces a twofold part, which is usually called general moral theology and special moral theology respectively.

There are, moreover, seven principal virtues to which all others are reduced: three theological and four cardinal. Therefore special moral theology treats of each of these virtues, and of their acts, and of the gifts of the Holy Spirit corresponding to them, and of the sins which are opposed to them, and of the precepts which pertain to all these things.

Whence, after it has been said A. concerning the theological virtues: faith, hope, and charity, by which we are ordered to God Himself, the ultimate end, and which therefore are, as it were, principles in supernatural moral life;

now B. it comes to be said concerning the moral virtues, which are concerned with the means to the end, and are reduced to the four cardinal virtues:

a) concerning prudence, with the annexed virtues, which is in practical reason so that it may be well disposed for rightly judging and commanding concerning all human acts as means to the ultimate end;

b) concerning justice, with the annexed virtues, which is in the will, so that man may be rightly disposed for operating in order to another, and indeed operations of every kind;

c) concerning fortitude and temperance, with the virtues annexed to them, which are in the sensitive powers concerning the passions, so that, by impelling the appetite against those passions which draw back from the good, or by drawing it back from those which impel toward evil, man may be well disposed toward himself.

1. I, in the prologue to question 2.

2. The order to be followed in the treatment is the natural order which exists among the cardinal virtues:

1. the first and principal is prudence, because it is in reason, and directive of the others, as rule and measure;

2. the second is justice, because it is in the will, which is nearer to reason and therefore participates reason more, and orders man well not only in himself but also toward another;

3. the third is fortitude, which subjects the appetite to reason concerning the arduous, indeed concerning that which is greatest in man, life and death itself;

4. the fourth is temperance, which subjects the appetite to reason concerning delights, even the greatest, which immediately serve life as to the individual and as to the species.

These virtues are to be considered in turn with their annexed virtues.

Treatise: On the Cardinal Virtue of Prudence and on the Annexed Virtues

Introduction

3. Prudence (*phronesis*) in the broader sense is any cognition of the true pertaining to morals, speculative or practical, for example, faith, moral science; in the strict sense it is practical cognition ultimately directive of morals, whether in doing good, and thus a prudent virgin is spoken of (cf. Mt. X, 16; I Pet. IV, 7; Wis. VIII, 7), or even in doing evil, as when, for example, a prudent thief is spoken of (cf. Lk. XVI, 8; Rom. VIII, 6, 7). Hence good prudence, namely the acquired or natural virtue of prudence, from Aristotle, *Ethics* VI, chapter 5, is usually defined as right reason of things to be done (*ton prakton*, deeds), that is, the right notion, idea, exemplar, and dictate determining what things are to be done.

Thus it is defined in opposition to art, which is called right reason of things to be made (*ton poieton*, products): for human acts as such consist in the one operating and render him honorable and perfect him, whence things to be done are called those things which are done by man insofar as they remain in him, such as to will, to see, to desire, to be angry, to live chastely, to endure patiently, to move the arm, etc.; things to be made are those which are constituted by man in exterior matter, such as a house, a painting, a ship, to build, to cut, etc. In the former, namely, there is considered a change of the subject; in the latter, a transmutation of the object; in the former the end is the rectitude of the operation itself and of the one operating from the honesty impressed upon the action; in the latter the end is the very thing worked and its perfection, from the artificial form introduced not indeed into the action but into the external work. For art does not intend the good of the human appetite, but the good of artificial works.[1]

[1] It should be noted that prudence and art are distinguished from the objects concerning which they are concerned per se, immediately, and formally:

1. per se, for Lessius notes, chapter 1, doubt 2, that art also is concerned with certain operations remaining in the agent, such as the art of playing the psaltery and of dancing, but this happens per accidens: for such actions are not directed by art insofar as and because they are immanent, but insofar as they are an external work of man, upon which work produced art impresses an artificial form accommodated to the uses of men; whence per se they are not action, *praxeis*, for from these man does not become good or evil, but they are, as it were, a work, *poieton*. Whence it happens to art per accidens that it leaves no external work or thing worked outside man, for since it is concerned with external action, from its genus it requires leaving some thing worked (cf. Suarez, *De Virt.*, disp. 3, sect. 2, n. 6);

2. immediately, for mediately prudence too is concerned with external things, and conversely art is concerned with internal things. Art, namely, immediately regards the external work, but mediately the internal insofar as it has the force of moving to the work; prudence immediately regards the good will or election itself, mediately external things as to be disposed and brought through to the end intended by the one operating, insofar as moral goodness flows from the interior to external operations;

3. formally, for prudence is materially concerned with things to be made, not as such (as to dictating those things about which they are) but as to use, so that man may rightly, that is, honorably, use art (II-II, q. 47, a. 4, ad 2; I-II, q. 57, a. 3, ad 2).

4. Supernatural prudence can be defined a little more fully: A divinely infused virtue by which practical reason dictates what, all things considered, here and now is to be done as truly fitting to the supernatural ultimate end, and what is to be fled as unfitting. In this definition there is indicated:

1. the genus to which prudence pertains: an infused virtue, that is, a good habit rendering man perfect in order to the supernatural end;

2. the subject in which it inheres: practical reason. Thus it differs both from the moral virtues strictly so called, which are in the appetite, and from habits which are in the speculative intellect, such as faith and science;

3. the proper act by which it is distinguished from others: it dictates in the perfect sense, that is, from deliberation or counsel it judges at the same time by commanding and intimating. Thus it differs from the virtues annexed to it, which do not command but only inquire and deliberate, or even judge, what is to be done and commanded. A judgment of this kind is right conscience, to the formation of which the annexed virtues concur under the direction of prudence; prudence applies the judgment in fact to the action and commands its execution;

4. the material object: what, all things considered, is to be done here and now, in the concrete. Thus it is distinguished both from synderesis and moral science, which dictate what is to be done in the abstract and in general, and from art, which judges what is to be made in exterior matter;

5. the formal object, or proximate motive: as being truly fitting to the supernatural ultimate end, and thus it differs from natural, acquired, and imperfect prudence.

That this definition is real will be shown throughout the whole treatise.

5. The necessity of prudence. - The virtue of prudence is most necessary to man, because without it he cannot choose well and live honorably, as we have already shown in the treatise on Virtues, I, n. 589. It is proved:

1. Since election is concerning the means to the end, hence for choosing rightly, operating well, and living honorably, it is not sufficient that man will the good end, but it is also most especially required that he rightly order the means to the end. Therefore, just as for willing the due end man is well disposed by the moral virtues which are in the appetite, so for rightly ordering the means human reason must be well disposed by some virtue: for reason inquires about, judges, and commands the means to be chosen. But prudence disposes precisely for doing this well (I-II, q. 57, a. 5).

2. Prudence is necessary for finding, forming, and executing the judgment of right conscience. But right conscience is most necessary, because it is the proximate rule of all human actions,

so that, if they are conformed to it, they will be good, and evil if they are not conformed. Therefore prudence also is most necessary.

See, therefore, how much is lacking in modern moralists, who speak so little of prudence.

6. Division of the treatise. - The treatise is divided into two parts: the first is concerning prudence itself; the other, concerning the virtues annexed to prudence.

In the first part one must treat:

1. of prudence according to itself, namely a) of its subject; b) of its object and act; c) of the habit and cause of prudence;

2. of the parts of prudence: a) integral; b) subjective; c) potential; to which is joined d) the gift of counsel;

3. of the sins opposed to prudence: a) by defect, imprudence; b) by excess, false prudence.

Nothing special is said concerning the precept of prudence, because precepts are given directly concerning moral principles, that is, concerning due ends; but prudence is concerned with the means to the end, and therefore prudence is included implicitly in all precepts, and all precepts pertain to it indirectly, according as it is directive of all virtuous and prescribed acts.[2]

[2] Concerning prudence the following can usefully be consulted: Aristotle, *Ethics* VI with the Commentary of St. Thomas; St. Thomas in the *Summa*, II-II, q. 47-56, with the Commentaries of Cajetan; likewise Fr. de Victoria, Sylvius, Billuart, and Pegues; likewise Goudin, in Philosophy. Among theologians of the Society of Jesus: de Valentia, Commentary on St. Thomas; Lessius, *On Right and Justice and the Other Cardinal Virtues*; and Schiffini, *On Infused Virtues*. Others, and especially present-day moralists, either copy out Lessius, or hand down few and not very accurate things. Nevertheless the Most Illustrious Waffelaert, *On the Cardinal Virtues*, deserves to be consulted.

The following are usefully read: Janvier, *Christian Prudence*; Sertillanges, *The Moral Doctrine of St. Thomas*; Gardeil, *The Personal and Supernatural Government of Oneself*, in *Revue Thomiste*, 1918; Noble, *The Virtue of Prudence*.

First Part: On Prudence Itself

Question One: On Prudence According to Itself

Article I: On the Subject of Prudence

St. Thomas, II-II, q. 47, a. 1, 2, 3.

7. Prudence is not in the appetite, nor in the senses, but in reason. - For a prudent man is, as it were, one seeing far ahead (*verre-* or *vooruit-zichtigheid*) or foreseeing; whence men call those prudent who, from past or present things, conjecture and judge future things to be provided for. But the appetite does not see nor judge; and the senses do not compare past things with future things, but only know present things which are offered to them. Therefore (a. 1).

1. Isidore, *Etymologies*, book 10: "Prudent is said as if seeing far ahead: for one who is perspicacious foresees even the events of uncertain things." And St. Thomas in the present question 47, a. 1.

2. Cicero, *De divinatione*, I, 49: "Prudent, that is, foreseeing?"; and frag. apud Nonius, XLI, 31: "For this belongs to the wise man, to foresee, from which prudence has been named." And St. Thomas, q. 55, a. 1, ad 1, and q. 49, a. 6.

3. Cf. I, q. 22, a. 1; II-II, q. 49, a. 6 and ad 1; III Sent., d. 33, q. 3, a. 1, qc. 1, and ad 3.

8. Corollaries. - Several things can be deduced from this, which are noted by St. Thomas:

1. The prudent man has memory of past things and conjectures future things in order to acting, namely, he "considers those things which are far off, insofar as they are ordered to helping or impeding those things which presently are to be done." Whence the things which prudence considers it orders to other things as to an end (ad 2), and it applies them to the work to be done (ad 3). Cf. III Sent., d. 33, q. 3, a. 1, qc. 1, ad 2 and 3.

2. Concerning those things which are to be done for the end, there are several acts, among which are counsel or deliberation in reason, and election in the will. Of these, counsel, because it is in reason, properly pertains to prudence, whence Aristotle says: The prudent man is one who deliberates well. But election presupposes counsel, and therefore to choose can also be attributed to prudence insofar as it directs election through counsel (ad 2).

3. Since no one takes counsel about necessary things, or about past things, which by that very fact are necessary, but only about contingent and future things which are in our power and at the same time have uncertainty (cf. q. 49, a. 6), and since it belongs to prudence to apply to the work to be done, hence it is said to know particular and singular and contingent things: for operations are concerned with particular and singular contingent things. "To providence," says St. Thomas, "there pertains not only the consideration of reason, but also application to the work, which is the end of practical reason. But no one can fittingly apply something to another unless he knows both, namely, that which is to be applied and that to which it is to be applied. But operations are in singulars. And therefore it is necessary that the prudent man know both the universal principles of reason and the singular things concerning which operations exist" (a. 3).

4. Cf. treatise *On Human Acts*, I, n. 107.

9. Prudence is only in practical reason. - For it belongs to the prudent man to deliberate well; but counsel is about those things which are to be done by us in order to the end. But those things which are not only to be known but to be done in order to the end pertain to reason not speculative but practical. Therefore (a. 2).

10. Observations. - 1. Since prudence is concerned with particular and singular things to be done, and the cogitative faculty knows particulars, hence prudence, while it is principally in reason, which applies universal principles to particular and singular things and therefore knows both together, nevertheless secondarily reaches to the cogitative power through a certain application: namely, in that power there is a habit (of memory and experience), which is subordinated to and serves reason and prudence for an easy estimation of particulars (a. 3, ad 3). Therefore prudence is in reason using the

cogitative power, says Cajetan; and therefore secondarily and ministerially it is in the cogitative power insofar as this cooperates dispositively with the intellect.

2. It belongs to prudence to order other things to an end; whence according to various ends various prudence is distinguished: prudence in order to a particular end, for example, victory or good trading, is prudence in this genus and in a qualified and imperfect way; prudence simply will be that which is in order to the end of the whole human life, or to the whole of living well (a. 2, ad 1).

3. Prudence, simply so called, since it is concerned with things to be done for the ultimate end, is sometimes called human wisdom. For wisdom considers the highest causes; whence wisdom, simply so called, is that which considers the highest cause of every being. But in the genus of human acts the highest cause is the ultimate end. Therefore, just as wisdom, simply so called, knows the highest cause of all things, so prudence is called wisdom in human affairs because it considers the supreme good of man (a. 2, ad 1).

4. Prudence and art are both ordered to work; but prudence applies right reason to doing, which is the end of practical reason, not so art. For the perfection of art consists only in judging how the work is to be made; the perfection of prudence consists not only in judging how one must act, but also in acting. Whence art gives only the faculty of making a good work, but not the use; on the contrary, prudence also gives good use. And therefore an artisan who sins against art willingly is praised more than one who does so unwillingly; but he is more imprudent who sins willingly than one who sins unwillingly.

Hence prudence applies itself to acting; but art must be applied to the work through the command of reason and will, for which, so that it may be done rightly, moral virtue is required, for example justice, and prudence. And therefore the operation of art (as also of science), insofar as it is voluntary, can be from prudence, not as to the species, namely as the making of such an artful work (thus it is from art), but as to exercise and use, namely so that it may also be done honorably from a good will and man may rightly and honorably use his art (a. 1, ad 3; a. 2, ad 2; a. 4, ad 2; a. 8; I-II, q. 57, a. 3 and 4).

Article II: On the Object and Act of Prudence

St. Thomas, II-II, q. 47, a. 4-10.

11. The object of prudence is the thing to be done - conformed to the right appetite or to the due end - under the aspect of the true. In this one object three things can be considered:

1. the material object which prudence touches and effects is any human actions whatever, intrinsic to the agent himself, in any matter of the virtues;

2. the primary material object which it touches principally, per se, and by reason of itself, is precisely that actions are here and now to be dictated and commanded in order to the due end which is rightly desired (a. 5). Nevertheless, not only the actions of individuals but also the actions of the community are the object of prudence, because in these too one arrives at the due end, namely the good of the community (a. 10);

3. the formal object or proximate motive on account of which prudence commands these actions is their practical truth, that is, rectitude or conformity to right appetite and to the due end and moral law, insofar as it is perceived by the intellect: for prudence commands actions because it has it as true that they are conformed to the due end and therefore are to be done (a. 5, and ad 3).

Hence prudence regards its object first and essentially under the aspect of the true; but since it does not know that object except that man may will and operate it, consequently and secondarily it also regards it under the aspect of the good (which is the object of the will); and therefore, although by reason of motive and subject it is an intellectual virtue, nevertheless by reason of matter and end it is a moral virtue, as directive of good acts (a. 4).

"The speculative true," says Billuart, "is attended to through the conformity of the intellect to the thing, namely so that the intellect conceives and enunciates the thing as it is; the practical true, through conformity to right appetite, namely so that the intellect conceives and enunciates that which is conformed to right appetite: such an action befits a right will (cf. I-II, q. 57, a. 5, ad 3; and q. 19, a. 3, ad 2). Therefore prudence first touches its object under the aspect of the practical true, because its object is the thing to be done and conformed to right appetite, and therefore practically true; and under this aspect it is an intellectual virtue and falsity cannot be subject to it. And because it does not know that honorable thing, or that which is conformed to right appetite, in such a way as to rest in the cognition of it, but so that through the other moral virtues it may operate it, which is good, therefore secondarily it regards its object under the aspect of the good; and thus by reason of matter and end it is a moral virtue, not indeed elicitive of morals, as the other virtues, justice, fortitude, and temperance, but directive of morals."

1. Diss. I, a. 1.

12. Prudence does not pre-establish the end for the moral virtues; - but it determines the mean of reason which they must have between excess and defect.

The first part is proved: Prudence, by reasoning and concluding, applies universal principles of reason to particular operations. But in operable and moral things the end is, as it were, the principle, for example, good is to be done, justice is to be preserved, one must live temperately according to the mean or measure of reason. Therefore prudence does not pre-establish the end for the moral virtues, but only disposes concerning the means to the end, insofar as from the end it rightly concludes which particular operations are the means by which one arrives at the end.

Briefly: Reason through synderesis establishes the ends to be pursued by the moral virtues, by enunciating the universal principles of practical reason. But prudence, by reasoning, applies those practical principles of synderesis and deduces conclusions concerning those things which are to be done for the end (a. 6).

The second part is proved: Nevertheless prudence determines the mean of reason. To touch the mean of reason and to be conformed to right reason is the end of moral virtue. But prudence disposes concerning the means to the end, insofar as it determines and dictates in what way man in operating touches the mean of reason: for it determines and dictates what sort, how, where, how much, through what things, and other circumstances, as congruous means by which the other virtues are to

be exercised or not exercised; and thus it indicates the mean of reason between excess (too much) and defect (not enough). Therefore (a. 7).

Therefore, although the mean of reason is the object and the very end of moral virtue, nevertheless through the right or prudent disposition of those things which are for the end, the mean is found (a. 7).

1. Moral virtue from synderesis and from its own nature tends to its end, namely the mean of reason, but considered in the abstract and in common; but what sort the end is in the concrete and in particular, what the mean is in this or in that, is determined by prudence. Whence it is understood that St. Thomas, who in the present place denies that prudence pre-establishes the end for the moral virtues, affirms the same in I-II, q. 66, a. 3, ad 3. Nor nevertheless is there a contradiction. Here he speaks properly and denies that prudence first and principally pre-establishes the end considered absolutely and in the abstract and in common; there he says that prudence pre-establishes the end not first but in application to special matter, by determining what sort it is in the concrete and in particular. Whence prudence directs the moral virtues also by pre-establishing the end in the concrete, saying: such is a temperate act; this is the mean, namely so much as is required between excess and defect. Hence Cajetan: "it looks upon the end as the principle of the means (it does not dictate it) and prepares the way for moral virtue so that it may touch the end by choosing those things which are for the end" (a. 6, ad 3).

But do not conclude from the fact that prudence does not pre-establish the end for the moral virtues, but only determines the means, that it is inferior to them since it receives the end from them. For 1) prudence pre-establishes the end for them in the concrete, and thus the moral virtues, as perfect, depend upon it as to their proper object and perfection, and it is nobler than they; 2) nor do the moral virtues per se give prudence the end in the abstract: for they tend to the end only executively, but they do not pre-establish the end, because they do not authoritatively dictate and intend it first, but have this from synderesis (a. 6, ad 3). Whence it must be concluded that synderesis, not the moral virtues, is nobler than prudence, and this conclusion is right.

Hence prudence is called the measure and rule of the moral virtues, because it determines their mean or object (from which they have that they are virtues), and therefore it is worthier than they; moreover, it is the charioteer of all the virtues: it directs the moral virtues, over which it presides as moderator; it serves the theological virtues, but directs them according to the exercise of the act, insofar as it discerns when they are to be used.

13. There is a threefold act required for prudence, or function of prudence. For it is the right reason of things to be done. But reason which is concerned with things to be done has three functions or acts:

1. to counsel or deliberate, which is to inquire for the finding of means and circumstances, so that the work may be done well;

2. to judge concerning the things found, whereby reason concludes that the means are good and suitable for the due end, or not, and therefore here and now are to be used, or omitted; of such

a kind is antecedent moral conscience directing our acts;

3. to command the things judged, whereby the means found and judged are applied to operating, and the moral virtues are moved to execution (a. 8).

Counsel (*délibération; raad*) is discourse; judgment (*jugement; oordeel*) is the conclusion of discourse; command (*décision; bevel, besluit*) renders the conclusion effective.

This last act is the chief one, because it moves proximately to operating and thus is nearer to the end: for no one is judged prudent who knows how one must act rightly and does not act rightly, because the last effect and end of prudence is lacking. But so that this act of command may be done well, solicitude (*bezorgdheid, zorgvuldigheid*) or diligence (watchfulness) is necessary, which is quickness in commanding and pursuing those things which are to be done, after one has deliberated concerning them not quickly but slowly (a. 9).

1. "And the sign of this is that the perfection of art consists in judging, but not in commanding. Therefore he is reputed a better artisan who willingly sins in art, as having right judgment, than he who sins unwillingly, which seems to be from defect of judgment. But in prudence it is the contrary, as is said in *Ethics* VI, c. 5. For he is more imprudent who sins willingly, as deficient in the principal act, which is to command, than he who sins unwillingly" (a. 8).

2. *Ethics* VI, c. 9: "In counsel many things must be considered, whence one must deliberate slowly."

14. Observation. - Several authors, such as Lessius and Billuart, require solicitude or diligence for the three acts, all of which must be exercised with great attention, care, and sedulity so that they may be done rightly. This is true, but then solicitude and diligence are taken in another and diverse, broader sense than with St. Thomas in the present place. Solicitude and diligence is an unrest of mind and watchfulness concerning uncertain things, and therefore in the broader and general sense it is unrest for doing all things attentively, accurately, and sedulously (whether slowly or quickly), according as is required (*nauwlettendheid*), and thus it also pertains to counsel and judgment (cf. q. 49, a. 1, ad 2); but in the strict and special sense it is only agility in commanding, or prompt quickness in executing at once that which has been commanded, and thus it pertains only to command and the execution of judgment, because counsel and judgment are not to be done quickly.

2. In French a distinction is made: *faire avec diligence*, and *faire diligence*.

Article III: On the Habit and Cause of Prudence

St. Thomas, II-II, q. 47, a. 4, 5, 11-16.

15. Prudence is virtue properly and simply so called, because it gives not only the ability to act well, but also to use well and to act honorably.

For virtue simply so called is that which renders one simply good, and therefore tends to the good under the aspect of good; but the good insofar as it is good is the object of the appetite. But through prudence there is made the application of right reason to the work, namely to willing and operating it, which does not happen without a right and good will. Therefore prudence also tends to the good

under the aspect of good, namely through the mediation of the appetite, and is virtue properly so called. Whence, in the Scriptures, it is numbered among them (Wis. VIII, 7); it is commanded and praised (Prov. III, 13-14; IV, 5-9; Wis. VI-IX; Ecclus. VI, 18-37); and by the Fathers it is called the fountain of virtue (a. 4).

Hence one understands why perfect prudence is necessarily connected with all the moral virtues, as was shown in the treatise on Virtues, I, n. 605. "Prudence imports order to right appetite, both because the principles of prudence are the ends of operable things, concerning which someone has a right estimation through the habits of the moral virtues which make the appetite right..., as was shown in I-II, q. 58, a. 5; and also because prudence is preceptive of right works, which does not occur unless right appetite exists" (a. 13, ad 2).

16. Prudence is a special virtue distinct from all others. For it is distinguished

1. from the moral virtues by reason of formal object and subject together, because it inheres in reason and immediately is concerned with the true, while those virtues are concerned with the good and inhere in the appetite;

2. from the intellectual virtues by reason of the material object, in that a) the speculative habits of the understanding of principles, science, and wisdom are concerned with necessary and universal things which are known more by the speculative intellect, while prudence is about contingent and particular things to be done, which are touched by the practical intellect; but b) art is concerned with things to be made, which are constituted in exterior matter, while prudence is about things to be done, which consist in the one operating himself;

3. from the theological virtues, by reason of material and formal object together, because they are concerned with the ultimate end itself, God, on account of God Himself, while prudence is about the means to the end; especially from faith, which inheres in the speculative intellect and is not immediately about things to be done here and now, whence it does not express conformity to right appetite (a. 5; a. 13, ad 2).

17. Prudence is an intellectual virtue and therefore always touches its object: the practical true, and has certitude of truth.

For although it is concerned with particular and contingent things about which perfect certitude and truth cannot always be had, but only as in the majority of cases, and therefore it sometimes has a speculative error joined to it, nevertheless it can be practically true and certain, indeed altogether evident, that even with that error, in these circumstances, one must act in such a way according to prudence for such an end. Thus if someone in good faith but erroneously thinks theft is sometimes licit, or that this exposed money or that woman is his own, although he errs speculatively, nevertheless it is practically true and certain and evident that in these circumstances he can steal, or take the money or the woman. This judgment of prudence is not false but true, as conformed to right appetite (I-II, q. 57, a. 5, ad 3); and this is the proper certitude of prudence.

1. Cajetan, on II-II, q. 47, a. 3, ad 2. From these things it follows that an opinion of the honorable is not a judgment of prudence, because it is not borne toward its object in such a way that it

cannot be false; for which reason it is not virtue, as Aristotle rightly has it, book VI of the *Ethics*, c. 3.

18. Prudence is not one virtue in the lowest species, but has several diverse species according to the diversity of object or end, as will be said later, q. 2, a. 2.

For diverse ends are the proper good of one person, the good of the family, the good of the city and kingdom; and therefore there is monastic, economic, or political prudence. This last, whose office it is to rule and govern, is not only in superiors directing and commanding, but also in subjects; not indeed insofar as they are subjects and servants (thus they do not direct or command), but insofar as they are men: for insofar as they are rational, they participate in some way in the rule of reason. Whence political prudence, says St. Thomas, is architectonically in the prince, but in subjects after the manner of an art working by hand; or, as Lessius says, as in the master of a work and as in the ministers executing the work (a. 11 and 12).

19. Perfect and supernatural prudence, which counsels, judges, and commands for the good end of the whole life, cannot be in sinners; but it inheres in all the just according to habit, and in adults it exists according to act as to those things which are of the necessity of salvation (a. 14, ad 3); and if some "need to be ruled by the counsel of another, at least in this they know how to counsel themselves, if they have grace, that they seek the counsels of others, and discern good counsels from evil" (ad 2).

Nevertheless in sinners there can be imperfect prudence as to right disposition to some particular end, for example for trading, or that which sometimes rightly counsels and judges concerning those things which pertain to the whole life, but does not efficaciously command (for otherwise they would be converted). Moreover, false prudence is often present, which disposes well things to be done for an evil end (a. 13).

20. The cause of prudence. - Supernatural prudence can be infused by God alone. Natural prudence does not inhere in us by nature but is acquired by our acts, because the cognition of particular means and circumstances is not acquired except by experience and time; whence it cannot be in youths either according to habit or according to act (a. 14, ad 3). Nevertheless, from nature there can be a disposition or aptitude for easily acquiring it: an aptitude either for the right end or for right judgment, by which it is easily acquired (a. 15).

Nevertheless supernatural and natural prudence are distinguished not only: 1) on the part of the cause, in that the latter is acquired, the former infused; but also 2) by reason of extension, on the part of matter, both because infused prudence extends itself further to supernatural acts for the supernatural end, and because it can dictate a diverse mean, according to conformity not only of human reason, but also of law or divine reason (cf. treatise on Virtue in general, I, n. 628); and 3) on the part of foundation or root, because natural prudence arises from synderesis and the natural inclination of the will to the good, supernatural prudence more from faith informed by charity.

"Thus, therefore, is the genesis of supernatural prudence and of its effects," says Prummer, *Moral Theology* I, n. 628: "Prudence has as its highest principles the theological virtues, and especially formed faith (since this shows the end as practically certain and moves efficaciously to the end); these principles are scientifically explained and illustrated by the science of theology...; prudence

deduces the conclusions of this science as to singular and contingent things; conscience finally, as an act of prudence, judges and dictates what in individual cases is to be done and omitted."

21. Observation. - Prudence is not totally lost directly through forgetfulness, because it includes right will, but through passions which dispose one not to command; indirectly, however, it can be lost through forgetfulness, which can impede prudence, insofar as prudence proceeds to commanding from some cognition which can be taken away through forgetfulness (a. 16).

Question Two: On the Parts of Prudence

22. State of the question. - All moral virtues are reduced to the cardinal virtues as their subjective or potential parts; moreover they have integral parts.

Integral parts (*éléments qui intègrent, auxiliaires; aanvullende of volledigende deelen*) are so called by a likeness to the integral parts of a body, for example, the eye, arm, hand, etc., without which the body is not perfect; and therefore they are conditions, acts, dispositions, without which the act or use of some virtue is not perfect.

Subjective parts (*sous-espèces; ondersoorten of onder deelen*) are those into which a virtue is divided, as a genus into species: in the same way a lion and an ox are called parts of animal.

Potential parts (*dépendances; aangehoorigheden, machtelijke deelen*) are so called by a likeness to the powers of the soul, for example, the sensitive, nutritive, and volitional powers, which have power from the soul but not its whole power; and therefore they are habits which in something agree with the cardinal virtue, but in something else fall short of its perfect notion. They are called annexed virtues (*vertus annexées, ou qui s'y rattachent; toegevoegde deugden*).

Besides, to the individual principal virtues there corresponds some one of the gifts of the Holy Spirit (I, n. 633).

All these things must now be determined for prudence.

1. Moderns are accustomed to affirm that certain other virtues are reduced to the cardinal virtues also as integral parts. But, according to St. Thomas, integral parts are not virtues, but conditions of virtue. Cf. I-II, q. 57, a. 6, ad 4; and III Sent., d. 33, q. 3, a. 1, qc. 1.

Article I: On the Integral Parts

St. Thomas, II-II, q. 48 and 49.

23. There are eight principal parts of prudence required for its perfect act, of which five pertain to prudence insofar as it is cognitive, namely memory of past things, understanding of present things, docility, shrewdness, reason; and three insofar as it is preceptive: foresight, circumspection, and caution. This can be shown as follows:

For prudence there is required:

A. insofar as it is cognitive: a) right cognition of things to be done, namely 1. memory of past things; and 2. understanding of present things; b) acquisition of cognition, for which there is necessary 3. docility for learning from others; and 4. shrewdness or sagacity, that is, one's own and swift

conjecturing for the discovery of means; c) use of cognition, namely 5. reason, which from known things judges unknown things.

B. insofar as it is preceptive, there is required: 6. foresight, by which it orders what according to itself befits the end; 7. circumspection, by which it orders what according to circumstances befits the end; and 8. caution, by which it orders what befits the end against extrinsic impediments.

1. Lessius notes that not all proceed from diverse habits. Caution, circumspection, foresight, and understanding are acts of prudence, because they are intrinsically included in prudent judgment and execution; memory, reason, docility, and shrewdness are only required for acquiring prudence, or for the perfection of acquired prudence.

24. Insofar as it is cognitive, five things are required for prudence:

a) right cognition of particular and contingent operable things, namely,

1. recollection or memory of past things (*souvenir du passé; herinnering*), especially of those things which someone has experienced: for concerning contingent operable things we can be directed only from those things which ordinarily and in the majority of cases happen; but these things we do not know except by experience (q. 49, a. 1); "whence from past things we must take, as it were, an argument concerning future things, and therefore memory of past things is necessary for taking counsel well concerning future things" (ad 3); likewise

2. understanding or right cognition of present things (*sens du présent; begrip, doorzicht, verstandigheid*), whether of necessary things (that is, universal principles) or of contingent things, especially of the particular thing presently to be done (a. 2);

b) acquisition of cognition, which

3. happens from others by learning through discipline; to receive this, docility (*docilité d'esprit; leerzaamheid*) is required: for "particular operable things, in which there are, as it were, infinite diversities, cannot all be sufficiently considered by one man, nor within a brief time, but through length of time. Whence in those things which pertain to prudence, man especially needs to be instructed by others, and chiefly by the aged... (nor is there anyone who suffices for himself in all things, ad 3) ...But this pertains to docility, that someone be receptive of discipline in a good way" (a. 3);

4. likewise it happens through one's own discovery, to which sagacity or shrewdness pertains (*promptitude de l'esprit; vlugheid, scherpzinnigheid, vindingsvermogen*), that is, good conjecturing, especially for the discovery of means, chiefly where one must act unexpectedly (a. 4). For example, "when someone, seeing certain persons made friends, by conjecturing thinks that they are enemies of the same man" (ad 1);

c) use of cognition, namely,

5. reason (*raison déductive; goede redeneering*), that is, good reasoning, which from all the aforesaid known things rightly proceeds to knowing and judging other things (a. 5).

1. Or otherwise, according to Tully. Three things are required for prudence: 1. foresight of future things, to which circumspection and caution pertain; 2. understanding of present things, to which reason, docility, and shrewdness look; 3. memory of past things (q. 48, ad 1).

2. Hence it is clear that those who have many experiences are generally more prudent than those who do not have so long an experience.

3. This perspicacity occurs from natural aptitude and also from exercise.

25. Three things, moreover, are required by prudence insofar as it is preceptive, by applying cognition to the work:

a) that, by looking ahead into the future, it may rightly order what according to itself befits the due end, and this is done by

1. foresight (*prévoyance; vooruitzicht*), which regards "contingent future things insofar as they are orderable to the end of human life," and "imports... a certain respect of something distant, to which those things which occur in the present are to be ordered" (a. 6). But solicitude (*zorgvuldigheid*) pertains to foresight of future things (q. 48, ad 5);

b) that it attend to the circumstances of the affair, which can render it evil or inopportune, and this is done by

2. circumspection (*omzichtigheid*): "Because prudence is concerned with singular operable things in which many things concur, it happens that something considered according to itself is good and suitable to the end, which nevertheless from certain concurrent things is rendered either evil or not opportune for the end: just as to show signs of love to someone, considered according to itself, seems suitable for alluring his soul to love; but if pride or a suspicion of flattery should happen in his soul, this will not be suitable for the end. And therefore circumspection is necessary for prudence, namely so that man compare that which is ordered to the end with those things which surround it" (a. 7), in which there is a special difficulty (ad 3);

c) that it avoid extrinsic impediments which can impede the good, and this is

3. caution (*précaution; behoedzaamheid*), for example, lest damage be incurred, such as adverse health, lest the neighbor be offended, lest one be exposed to an occasion of sin, etc. (a. 8).

2. Foresight is the principal part of prudence (I, q. 22, a. 1). Cajetan explains how it agrees with prudence, how it does not agree, how it is a part of prudence, and how it is prudence itself. Several understand foresight to be mere cognition of future events, but this is not according to the mind of St. Thomas.

26. Observation. - If the act is of great moment, it will not be perfectly prudent unless all the aforesaid conditions are present.

Article II: On the Subjective Parts

St. Thomas, II-II, q. 47, a. 11 and 12; q. 48 and 50.

27. Prudence is divided into several species, and indeed it is monastic (solitary) or personal (*persoonlijke v.*), by which one rules himself in order to his proper good, or governing (*leidende, bestierende v.*), ruling a multitude in order to the common good. This latter is divided into diverse species according to the diverse species of multitude and rule. For a multitude is united either a) for a special business, namely an army for fighting for the common good, which military prudence rules (*krijgsbeleid*); or b) united for ordering the whole of life, as the multitude of one house or family, which economic prudence rules (*domestique; huishoudelijke v.; huisbeleid*); or c) as the city itself or kingdom, to which political prudence belongs (*stadhoudelijke v.*), especially regnative (*royale; regeerende, wetgevende v., Staatsbeleid*) and positive of laws in the prince who rules others, and simply political or civil prudence (*burgerlijke v.*), in subjects who rule themselves, voluntarily obeying princes, in order to the good of the community.

1. Military prudence is art insofar as it knows how one must fight; prudence insofar as it commands for the due end. Some, besides military prudence, here posit several species of prudence for diverse particular affairs; but this seems to be contrary to St. Thomas and Cajetan, q. 49, a. 4, ad 2.

2. Political prudence directs legal justice.

3. Lessius understands civil prudence otherwise: not as the virtue of subjects who obey laws, but of judges and magistrates who see to it that laws are observed and govern the whole republic. He says, namely, that Aristotle posits two parts of this: consultative and judicial; the former furnishes counsel in doubts, the latter exercises judgments in tribunals, each of which belongs to a public person. He adds that there is no need of a peculiar prudence in a citizen, so that he may obey the laws of the community, just as neither in domestic persons, so that they may obey the precepts of the father of the family. Nevertheless these things are not conformed to the interpretation of St. Thomas.

28. Observations. - 1. Personal prudence is prudence absolutely and simply so called (Aristotle, book VI *Ethics*, c. 8), because it renders man honorable and immediately orders him to the ultimate end; the others are prudence in a qualified way, with an adjunct and determination, and render a man a good citizen, a good king, a good father of a family, etc.

2. Nevertheless regnative prudence is the most perfect: "for rule is the more perfect the more universal it is, and the more it extends itself to many things, and the further end it touches. And therefore to a king, to whom it belongs to rule a city or kingdom, prudence belongs according to a special and most perfect notion of itself" (q. 50, a. 1). For if there are "diverse ends of which one is ordered to another..., as the good of one person is ordered to the good of the multitude...; from this it follows that the habit which is ordered to the further end is the more principal and commands the other habits" (q. 47, a. 11, ad 3).

3. Yet these virtues are connected, as St. Thomas has it, q. 47, a. 11, ad 2, and Cajetan shows there. For he who has perfect proper prudence is disposed to rule others prudently, because he

has this in proximate potency and is proximately apt for it.

4. Indeed, they can mutually include one another. For monastic prudence indirectly regards the common good as the proper good of a part, and political prudence indirectly regards the proper good insofar as it is part of the common good. "Personal prudence can embrace the others," says Lessius, c. 2, dub. 1, "because it can extend itself to all their functions, by dictating concerning the same actions, but under another aspect, insofar as they are the honorable good of one's own action, for example, so that one may satisfy his office: thus a magistrate does not satisfy his office if he does not know how to administer the republic. Therefore it includes all as parts, adding over and above a respect to one's proper good," which is to act honorably.

5. Nevertheless they are not confused. Monastic prudence regards the proper good immediately, the common good indirectly and mediately; political prudence regards the common good immediately and per se.

1. Cf. St. Thomas, on Aristotle, lecture 7.

Article III: On the Potential Parts

St. Thomas, I-II, q. 57, a. 6; II-II, q. 48 and 51.

29. Potential parts are annexed virtues which are ordered to certain secondary, preparatory, and easier acts, and do not have the whole power of prudence, but fall short of it in something. The principal virtue uses them in the manner by which the soul uses its powers (q. 51, a. 2, ad 1; I-II, q. 57, a. 6, ad 1): for just as in the individual powers of the soul the force and condition of the soul shines forth, although not fully, so in these faculties and their functions the nature and condition of prudence shines forth, although not adequately. There are three:

1. Eubulia (*eu-boule*, good counsel; *goede raad, welberadenheid*), which is concerned with counsel: namely, it is the habit of counseling well or of finding means suitable to the end. Moreover, "for counseling well there is required not only the discovery or devising of those things which are opportune for the end, but also other circumstances, namely the congruous time, so that one be neither too slow nor too swift in counsels, and the manner of counseling, namely so that one be firm in his counsel, and other due circumstances of this sort" (q. 51, a. 1, ad 3).

2. Synesis (*synesis*, composition of two = judgment: *bon sens; gezond oordeel; eusynetoi* = persons well-sensed), concerning judgment of those things which are done according to law: it is the habit of judging well concerning things to be done according to common rules, namely laws and their particular ends.

3. Gnome (*gnome* = reason, judgment: *sens de l'exception; gematigd, milddadig, getemperd oordeel*), concerning judgment of those things in which one must depart from the law and judge from a higher principle of reason: for there are unusual cases which the law does not know, or in which it does not oblige because of special circumstances, for the determination of which a special perspicacity is required. Whence it is the habit of judging well according to higher principles concerning things to be done beyond the common law. Hence gnome directs epikeia

(*équité; rechtmatigheid, billijkheid*), that is, equity in the application and observance of laws according to the equitable and the good (cf. treatise on Laws, I, n. 296).

1. The reason why one virtue suffices for counsel, while two are required for judgment, St. Thomas hands down in I-II, q. 57, a. 6, ad 3: "Judgment concerning each thing is made through its proper principles. But inquiry is not yet through proper principles (but through common ones), because once these were had there would be no need of inquiry, but the thing would already have been found. And therefore one virtue alone is ordered to counseling well, but two virtues to judging well; because distinction is not in common principles but in proper ones. Whence also in speculative matters dialectic, which inquires concerning all things, is one; but the demonstrative sciences, which are judgmental, are diverse concerning diverse things. But synesis and gnome are distinguished according to the diverse rules by which judgment is made. For synesis is judgmental concerning things to be done according to common law; but gnome according to natural reason itself in those things in which common law fails." Cf. II-II, q. 51, a. 4, ad 2.

30. Potential parts are true virtues, but annexed. - They are virtues, because they render perfect an act proper to man, namely to counsel or judge.

They are virtues distinct from prudence, because they are concerned with acts which are distinguished from the act of prudence according to a diverse notion of goodness, indeed are even separated from it; for he who counsels well does not always judge well, and he who judges well does not always command well, but sometimes delays or acts negligently or inordinately. But if they were not distinct from prudence, prudence would not be a cardinal virtue, because it would not be the foundation of others.

They are annexed virtues, because their acts, to counsel well and to judge, are ordered to commanding well as to a more principal and more difficult act, whence the whole power of the virtue of prudence does not inhere in them. "And just as to counsel (or to judge) is ordered to commanding as to the more principal thing, so also eubulia (likewise the others) is ordered to prudence as to the more principal virtue, without which it would not even be a virtue," just as neither would the moral virtues be virtues without prudence (q. 51, a. 2). And thus prudence is the cardinal virtue in which the others are founded, which it commands, which it uses, and through the mediation of which it acts (ibid. ad 1; I-II, q. 57, a. 6, ad 1).

1. If prudence did not command good counsel, man would not always counsel well.

2. Therefore the annexed virtues are commanded by prudence, which acts mediately through them. According to Lessius they are commanded by love of the end(!), and are not really distinguished from prudence. Thus prudence would not be a cardinal virtue.

31. Observation. - Inquiry and counsel pertain to reason, which compares the means with the end and among themselves, and discourses through individual, many, and diverse things. Judgment properly pertains to the intellect, which sees and considers that which is to be done: "for consideration imports an act of the intellect beholding the truth of the thing." Command looks to

reason because it orders the means to the end; but to order belongs to reason. Cf. q. 53, a. 4; q. 51, a. 3.

Article IV: On the Gift of Counsel

St. Thomas, II-II, q. 52.

32. What the gift of counsel is. - The gifts of the Holy Spirit are dispositions by which the soul is rendered well and easily movable by the Holy Spirit, especially in arduous things which pertain to salvation. Therefore the gift of counsel (*gave van goddelijken raad*) is a certain light by which, as if by counsel received from God, man sees what is to be done in order to salvation. Whence just as through prudence or eubulia man is one counseling well, so through the gift of counsel he is capable of taking counsel well; in the same way as in human affairs those who do not suffice for themselves in the inquiry of counsel seek counsel from wiser men (a. 1, ad 1).

Man needs to be moved by God Himself, through a supernatural inquiry of reason, concerning the means to the supernatural end: for human reason is not able to comprehend all individual and contingent things. But for such motion acquired or infused prudence is not sufficient, nor are the other virtues. Therefore a special habit must be posited, so that man may be moved by God through a supernatural inquiry of reason concerning the means to the supernatural end; this we call the gift of divine counsel.

It is distinguished a) from faith, which, although it is secondarily practical, is practical only remotely by way of universal rule, not proximately and applicatively to a work here and now to be placed in singulars;

b) from science and wisdom, for a similar reason. For they treat of things to be done scientifically and speculatively, namely of practical principles in common, and are not immediately concerned with singular contingents;

c) from the supernatural virtue of prudence also, chiefly in that prudence moves in a human mode, as a dictate proceeding from deliberation dependently upon human reason, nevertheless illustrated by faith; but the gift itself moves in a divine mode, according to the instinct of the Holy Spirit, immediately dependently upon divine reason, from connatural supernatural affection and union with the supernatural end: from this union, namely, and connaturality, man is rendered fit and perfect for judging concerning things to be done for the supernatural end. Thus the gift of counsel is a completing co-principle of the infused virtue of prudence.

A threefold grade is distinguished in its use.

"The first grade of the gift of counsel is that by which man is receptive of the counsels of the Holy Spirit as to those things which are necessary for salvation, namely for observing the precepts; indeed he who is not adorned with this grade of counsel is in a state of condemnation... The second grade of the gift of counsel is that by which we incline the ear of the mind to the evangelical counsels of Christ... The third grade... perfectly to fulfill the counsels themselves of Christ."

1. Dionysius the Carthusian, *On the Gifts*, tr. III, a. 7.

33. The gift of counsel corresponds to prudence as helping and perfecting it, because it is concerned with the same things to be done here and now for the sake of the end.

"The inferior moving principle is chiefly helped and perfected by this, that it is moved by a higher moving principle... But it is manifest that the rectitude of human reason is compared to divine reason as an inferior moving principle, which is moved, to a superior one...: for eternal reason is the supreme rule of all human rectitude. And therefore prudence, which imports the rectitude of (practical) reason, is most of all perfected and helped according as it is ruled and moved by the Holy Spirit; which pertains to the gift of counsel... Whence the gift of counsel responds to prudence as helping and perfecting it" (a. 2).

But it is rightly called divine counsel, and not judgment or command: "To judge and command does not belong to one moved, but to one moving. And because, in the gifts of the Holy Spirit, the human mind does not have itself as moving, but rather as moved..., hence it is that it was not fitting that the gift corresponding to prudence be called command or judgment, but counsel, by which there can be signified the motion of the mind counseled by another counseling" (ad 1).

34. The gift of counsel is in all the just, at least as to those things which are necessary for salvation (a. 1, ad 2). And it remains in the fatherland, where man is perfectly directed by the Holy Spirit; but there it will have another act. For there it is not according to some inquiry and doubt about things to be done (which does not befit the perfection of the fatherland), but partly insofar as the cognition of those things which they already know are to be done is continued by God in the blessed, for example, in praising God or praying for others; partly insofar as they are illuminated concerning those things which they do not know about things to be done. For they do not know all things which pertain to the governance of things and are not of the essence of beatitude, but that which is revealed to them as it pleases God, as is explained by St. Thomas, I, q. 12, a. 8 (a. 3).

The fifth beatitude is said to correspond to the gift of counsel: Blessed are the merciful, for they shall obtain mercy. For counsel is properly about those things useful for salvation; but mercy is most useful. And "therefore the beatitude of mercy specially corresponds to the gift of counsel, not as eliciting but as directing" (a. 4). And although the counsel of the Holy Spirit directs in all acts of the virtues, nevertheless it specially directs in works of mercy, for the reason already given (ad 1).

Question Three: On Sins Opposed to Prudence

35. Sins are opposed to prudence by excess or by defect: by defect, those which come from defect of prudence or of those things which are required for prudence, and are called by the general name of imprudence; by excess, those which have some likeness with prudence and occur through abuse of those things which are required for prudence, and therefore are called false prudence.

Article I: On Imprudence

St. Thomas, II-II, q. 53 and 54.

36. Imprudence is taken 1. negatively, for the mere absence of prudence, and thus it can be without sin, as is clear in children; 2. privatively, for the lack of prudence which someone can and ought to have, and thus it is an indirectly voluntary sin, by reason of negligence or omission, because someone does not sufficiently strive to have prudence; nevertheless it is not a special sin but a general one, that is, any sin whatever or the condition of every sin: for it is included in every sin, since none

occurs without defect in the act of directing reason; 3. contrarily, for imprudence directly and in itself intended, by which, namely, reason is directly moved and acts against prudence, by despising and repudiating counsel (judgment, command) of reason or divine rules; which rarely occurs. This is a special sin of commission according to the proper notion of prudence, mortal from its genus, and therefore to be declared in confession if there is grave contempt of divine rules; otherwise it is venial.

1. Cf. q. 53, a. 2, and q. 51, a. 1, ad 3. Hence it seems to be a sin of omission, although some, such as Cajetan, say that it is reduced to commission; but this is a question of name. It is a sin against the affirmative precept of prudence; this is not a special precept but a general one; whence that is a general sin, not by essence insofar as it is predicated of every sin, but by participation insofar as it is included in every sin, just as in every sin there is that it is against charity of God and of oneself.

2. It is a sin of commission against the negative precept of not contemning divine counsels and rules; special, because directly and in itself voluntary, just as to will the rectitude of prudence is a special act of virtue. Several, such as Lessius and generally the Jesuits who copy him, say that imprudence is venial from its genus and only mortal per accidens; whence precipitation and inconsideration are only mortal by reason of the danger of mortal sin; inconstancy only if someone is bound by vow or precept to persist in a judgment, or from something extrinsic, for example because of scandal; negligence only if that is omitted which obliges under mortal sin or if there is danger of mortal sin. Their reason is that the defect of prudence alone, without defect of another virtue, is defect in the act of reason alone, which is not great: for the rectitude of reason is not sought for its own sake, but on account of the work to be directed; thus perversity is to be estimated from the work which follows.

But no defect of practical reason exists alone; therefore always and per se there is present the defect of another virtue, just as prudence alone is also never exercised, but always together with some other virtue, which consequently is the proper matter of prudence; and therefore the defect of prudence is not mortal per accidens, but per se and from its genus, because a great defect in another virtue is a defect in the proper matter of prudence. Otherwise prudence, which is called the virtue most necessary (I-II, q. 57, a. 5), would oblige only under slight sin!

They object a) the example of a lie, which of itself is venial. But this does not prove the point, because a lie can exist without injury to another virtue.

b) They also allege St. Thomas, who, q. 54, a. 3, says that negligence is mortal either by reason of necessity for salvation or by reason of the cause: both per accidens, because not only the sin of imprudence distinct in species is considered, but at the same time with the work which is omitted from negligence, and this is per accidens. But this is false: negligence is always considered with the omitted work, and thus it is considered according to itself, because the work to be placed is the proper matter of prudence. And even if it were true concerning negligence, it would not yet be true concerning imprudence: the former is by omission, the latter by commission.

37. Various species of imprudence. - Imprudence is divided into various species:

1. By opposition to the annexed virtues and the diverse acts of reason, there is distinguished

a) against counsel and eubulia: precipitation (*overhaasting, voorbarig oordeel*), by which, with the various modes of inquiry neglected and necessary things to be considered passed over, someone through impulse of will or passion immediately undertakes the work or judges concerning the means of executing it. Whence there is a defect in the inquiry of reason, insofar as reason does not descend in an ordered way to the execution of the work through means according to the required grades, which are five integral parts, namely memory of past things, understanding of present things, shrewdness in considering future events, docility by which someone acquiesces in the judgments of elders, and reasoning comparing one thing with another: for when all these, or several of them, are neglected, there is disorder of counsel. But if this happens from contempt of counsel, it is called temerity (*vermetelheid*);

b) against judgment and synesis and gnome: inconsideration (*onbedachtzaamheid, onbezonnenheid*), by which someone, with diligent inspection omitted, contemns or neglects to attend to those things from which right judgment proceeds; whence there is a defect in the judgment of the practical intellect;

c) against command and prudence properly so called: inconstancy (*wankelmoedigheid, onbestendigheid, onstandvastigheid*), which is a retreat from a good established proposal, whereby reason, because of slight motives, and without any cause or without a just cause, repudiates what it had before rightly dictated;

d) against solicitude (watchfulness in executing), required for prudence strictly so called and for command: negligence (*nalatigheid*).

2. By opposition to the integral parts required in prudence. But because all those are ordered to directing the aforesaid three acts of reason, concerning which under 1, thence the opposed imprudences are reduced to the sins enumerated above.

3. By opposition to the diverse species of prudence, it is divided into personal, regnative, political, economic, and military imprudence.

1. Cf. q. 53, a. 4, ad 2: "Consideration of those things which are attended to in counsel is ordered to judging rightly. And therefore consideration is perfected in practical judgment. Whence also inconsideration is most of all opposed to the rectitude of judgment."

38. The cause of imprudence. - Precipitation, inconsideration, and inconstancy arise especially from luxury, which most of all impedes the use of reason, because it absorbs the soul and draws it to sensible delight, while the perfection of intellectual virtue consists in abstraction from sensible things. And although envy, anger, avarice, ambition, etc., also draw reason away to something else, luxury extinguishes the very judgment of reason.

39. Negligence is taken in two ways: 1. generally, for the omission of any due act whatever, and thus it is not opposed to prudence but to the virtue in whose matter it is concerned, for example, negligence in counsel, in restitution, or in prayer is opposed to eubulia, justice, or religion; 2. for the defect of solicitude in commanding efficaciously, required, namely, in the act of reason for exciting and directing the will in the execution of the work; and thus it is opposed to prudence strictly so called: namely, it is an act of reason not commanding when it ought or in the way in which it ought.

Therefore it differs from inconstancy: this latter is from weakness of reason which does not hold itself firmly in the good proposal conceived, and denotes lightness of soul in a judgment once prudently received. On the contrary, negligence is the omission of judgment and command: reason is deficient in commanding the things which were counseled and judged.

Negligence can be a mortal sin (Prov. XIX, 16): a) per se, on the part of that which is neglected, if it is something of the necessity of salvation; b) per accidens, on the part of the cause, if it comes from a mortally evil will, for example from perfect contempt. Otherwise it is venial, as if it is concerned with something small, and comes from defect of fervor.

40. Observation. - Billuart notes from St. Thomas: Negligence strictly is distinguished from omission, sloth, torpor, and inconstancy. Negligence consists in the defect of an interior act of reason not commanding what it ought or in the way in which it ought. Omission properly pertains to an exterior act; sloth and torpor to execution, yet in such a way that sloth imports slowness in executing, while torpor imports a certain remissness in execution. Finally the inconstant man is deficient in commanding as if impeded by something; the negligent man, through defect of prompt will (q. 54, a. 2, ad 1, 2, 3). For "negligence comes from a certain remissness of the will, through which it happens that reason is not solicited to command those things which it ought, or in the way in which it ought" (a. 3).

Article II: On False Prudence

St. Thomas, II-II, q. 55.

41. False prudence is a sin opposed to prudence by excess. There are various species of it: for there can be 1. abuse of prudence itself a) concerning a false end, through prudence of the flesh, b) concerning false means, through cunning, or the devising and knowledge of false means, c) concerning the execution of false means, through deceit in words and fraud in deeds; 2. abuse of solicitude, through excessive solicitude.

42. Prudence of the flesh is concerned with the end (*voorzichtigheid des vleesches of der wereld, wereldswijsheid*, Lk. XVI, 8) and is the excess or abuse of prudence itself strictly so called; it devises and dictates suitable means to an evil end, namely for accomplishing the works of the flesh or fulfilling the instinct of corrupt nature (Rom. VIII, 5-7; Gal. V, 16). Whence it is skill in finding and employing ways for doing evil. Since it is found in every sin, just as true prudence is found in every virtue, hence it is not a sin distinct from the evil work itself, unless it is directly and in itself voluntary, precisely insofar as it is opposed to prudence.

It is a mortal sin if someone sets up an evil end for himself as the ultimate end or the end of the whole life: for by that very fact he is turned away from the true ultimate end, God; as if it proceeds from a mortally evil affection, or someone on that account is prepared to sin mortally, for example if he preferred a temporal good to the eternal good of the soul. But if someone proposes a particular evil end for himself without being turned away from the ultimate end, it is a venial sin, for example if he were to employ effort for pleasure alone.

1. Hence false prudence does not necessarily judge erroneously by speculative error, because the means can be truly suitable to the end, and it does not necessarily judge that they are absolutely good, but that they are suitable for us to the end proposed. But it is practically false,

because it is the cause of evil election: for it is not conformed to right appetite, but conformed to dishonorable affection.

2. The works of the flesh in the present place are understood not in the strict theological sense, but in the more general sense of the Apostle concerning all works of corrupt nature; these are of three kinds according to the threefold perverse concupiscence. Whence prudence of the flesh can be distinguished as threefold: earthly, animal or strictly carnal, and diabolical, according as it tends to temporal goods, to pleasure, or to pride (*hebzuchtige, vleeschelijke of dierlijke, eerzuchtige v.*).

43. There are various species concerning the means:

a) cunning (*listigheid, arglistigheid, sluwheid, doorslepenheid*), which is excess or abuse in counsel (and judgment); this devises for an end, whether good or evil, means not true but false, simulated, or apparent. Namely, it is skill in devising ways not true but simulated, for attaining an end, whether good or evil. It is sin because even to a good end one must not arrive by false ways but by true ones; mortal if it proceeds from a mortally evil affection, or inflicts grave harm (II Cor. IV, 2);

b) deceit, and c) fraud (*bedriegerij, bedrog in woord en daad*), which are nothing but the external act and execution of cunning: deceit principally through false words, which hold the principal place among signs; fraud through false deeds.

44. Excessive or immoderate solicitude (*overdreven bezorgdheid*) can be: either of temporal things, namely an excessive occupation of the mind in acquiring or conserving temporal things; or of future things, namely an excessive occupation of the mind concerning future things, especially things necessary for life, with anxiety and little confidence in divine providence. In three ways it can be illicit: a) if we seek temporal things as the ultimate end, by preferring them to spiritual things, which is mortal; b) if superfluous effort is employed for acquiring or conserving temporal things, so that we are withdrawn from due spiritual things: this is mortal if it withdraws from spiritual things prescribed under grave obligation; otherwise it is venial; c) if there is only superfluous fear, namely lest, by doing what must be done, necessary things fail us: this is venial, unless per accidens it were the effect or cause of mortal sin.

1. For a work of virtue, among other circumstances, due time also is required, and this also has place in interior solicitude. Thus if in the time of summer someone were already solicitous about the grape harvest, he would be superfluously solicitous (St. Thomas, q. 55, a. 7).

45. The cause of false prudence. - The species of false prudence arise especially from avarice, which is most of all opposed to the virtue of justice, in which the use of right reason chiefly shines forth. Thus, for example, excessive solicitude arises from the inordinate love of having or fear of losing.

Second Part: On the Virtues Annexed to Prudence Considered in the Formation of Conscience

46. Object of the treatment. - The virtues joined to prudence are given for forming a right judgment concerning particular operations; here chiefly the judgment of moral conscience comes to be attended to. Good counsel (of eubulia) is ordered to right practical judgment (synesis or gnome), through

which it is terminated, just as judgment is ordered to command or precept, which judgment commits to execution. Therefore, just as command is the proper and chief act of prudence itself, so the right judgment of conscience, which is formed from the counsel prerequisite and according to which command must be made, is a certain proper or chief act of the annexed virtues which prudence uses for its own proper end. Whence, after we have spoken of prudence itself, now one comes to speak specifically of the virtues annexed to it, considered in the practical formation of conscience.

1. Thus John of St. Thomas, on I-II, q. 18-21, disp. 12, n. 14 and 16; Suarez, on I-II, disp. 12, n. 8; Laymann, *Moral Theology*, on conscience, c. 2, n. 3; Mercorus, *Basis of the Whole of Moral Theology*, a. 1; Contenson, *Theology of the Mind and Heart*, diss. 3, spec. 1, q. 1; Gotti, *Scholastic-Dogmatic Theology*, on conscience, dub. I, XV, and 2; Billuart, *Theology*, on human acts, diss. 5, a. 1; Patuzzi, *Moral Theology* I, on conscience, a. 1, VI; and among more recent authors: Beaudoin, *Treatise on Conscience*, p. 9; Prummer, *Moral Theology* I, n. 303; Aertnijs-Damen, *Moral Theology* I, n. 48bis; Garrigou-Lagrange, in *Revue Thomiste*, 1925, p. 346; Dumas, *Moral Theology* I, thesis XX, B.

2. St. Thomas does not treat specially of the virtues annexed to prudence; nevertheless he is accustomed to do this for the virtues pertaining to the other cardinal virtues. This perhaps can be explained from the fact that they are ordered to operating together with prudence, and not to exercising offices separately; also from the fact that they are immediately concerned with particular and contingent things, and therefore pertain less to science but more to a certain art of directing life. But since special questions about conscience and its formation have now obtained a great place in practical theology, therefore they must be specially attended to and specifically considered; and indeed in the treatise on prudence and the virtues annexed to it, to which they pertain as to their proper place. Cf. those things which we wrote in *Revue des Sciences philosophiques et théologiques*, 1926: *What place must be assigned to the treatise on Conscience?*

But it is sufficient to consider antecedent conscience concerning things to be done in the future, nor is it specially necessary to regard consequent conscience concerning past deeds: for from antecedent conscience an act is easily judged after it has been done, because according to the same habits and according to the same principles an examination is made concerning deeds already done, and counsel and judgment concerning things to be done.

47. What we suppose known from the general part of moral science. - From the general part of moral theology, which treats of moral conscience in general, we have already learned several things, to be briefly recalled in the present place, namely:

1. What antecedent moral conscience is. It is a proximately practical judgment concerning the honesty of an action, that is, a judgment of the practical intellect dictating concerning the goodness or malice of those things which here and now, that is, in the individual, all circumstances considered, are to be done; or affirming that an act in particular and in the concrete is licit or illicit and therefore to be placed or omitted by us. Therefore conscience is a judgment not merely speculative concerning the truth of the thing alone, but practical concerning the honesty of the action, and indeed proximately practical, so that it may shine before the operation here and now to be placed and direct it, that it may be honorable.

2. That conscience, since it is a judgment, is an act, not a permanent habit, and therefore is distinguished:

a) From synderesis (*sens des évidences; bevattelijkheid der grondbeginselen of grondregels*), which is the habit of first practical principles (for example, Good is to be done, evil is to be avoided), and from moral science (*kennis der zedeleer*), which is the acquired habitual cognition of general conclusions deduced from first principles concerning the goodness and malice of acts in the genus and in the abstract (for example, theft is evil); conscience is an actual judgment, namely a particular conclusion deduced from first principles concerning the goodness and malice of an act in particular and in the concrete, such as it is here and now with the end and all circumstances to be placed by the agent (for example, this act is theft and now is to be avoided by me).

Synderesis and moral science are habits which form a speculatively practical judgment concerning the objective and material morality of our acts according to themselves, or in the genus and in the abstract (what in the genus is good or evil), and remotely direct practice; conscience is a practically practical judgment concerning the subjective and formal morality of our acts in particular and in the concrete (what is here and now to be done and licit for me), and proximately directs our acts.

b) Likewise from law, which is a universal norm permanently imposed by the legislator, and known through synderesis or moral science, concerning the goodness and malice of acts in the genus, while conscience is the application of law made by each private man to a particular case or act here and now to be placed, by which he judges whether that act is conformed to law or not. Whence law is called the remote and objective rule, conscience the proximate and subjective rule of our acts. Namely, the morality of an act is not from the law as it is according to itself, but as it is applied to us through the knowledge and judgment of conscience.

c) Likewise from prudence, which is the cardinal virtue inclining to three acts or functions: to rightly inquiring into and estimating all circumstances of the concrete act; to judging well concerning its suitability and morality, and forming a right conscience; and most of all to commanding that which the judgment of conscience dictates. But right conscience is some act of prudence, formed through the mediation of the annexed virtues.

Conscience, nevertheless, depends upon all the aforesaid things, because each of them concurs in forming it rightly, as will be said later (for example, n. 56).

1. "It is clear how synderesis, natural law, and conscience differ; because natural law names the universal principles themselves of right; synderesis names the habit of them; but conscience names a certain application of natural law to something to be done by way of a certain conclusion." St. Thomas, on II Sent., d. 24, q. 2, a. 4.

2. Judgment is prepared by eubulia; it is elicited by synesis (or gnome) under the direction of prudence, which commands.

3. That conscience is the proximate and subjective rule of all human acts, obligating not by its own force and from itself, but by force of the divine precept, because it applies the objective and remote rule, or law, to a particular case. Namely, it is the intimation and as it were promulgation of law in second act as to the act here and now to be placed. The force of

obligating belongs to law; but conscience applies law; therefore the same obligatory force belongs to conscience as belongs to law. And because every obligation of law must be derived from the eternal law of God, conscience is commonly called the voice of God.

"Conscience," says St. Bonaventure, II Sent., d. 39, a. 1, q. 3, "is like God's herald and messenger; and what it says, it does not command from itself but commands as from God, as a herald does when he publishes the edict of a king; and hence it is that conscience has the virtue of binding." Hence to act against a preceptive conscience can never be licit: What is done against conscience builds unto gehenna. Thus Innocent III, in c. 13, X, 2, 13.

But just as law commanding, prohibiting, permitting, counseling is distinguished, so also conscience is distinguished.

4. But in order that it may be the rule of our acts, it must have two qualities: namely, it must be at once right and certain:

a) on the part of the object it must be right; for a rule and measure cannot be falsified, but must be adequate or true and right; whence conscience must rightly apply the law and thus be at least practically true or conformed to right appetite (of the due honorable end), so that an act conformed to conscience is truly honorable and conformed to the eternal law, the supreme rule of morality;

b) on the part of the subject it must be certain: for a rule and measure cannot be ambiguous but must be certain; otherwise man could not be certain concerning the honesty of his actions to be placed, and thus would perpetually be exposed to the proximate danger of formally sinning.

These things were fully demonstrated in the general part and will be more evident from the things to be said below.

48. Matter to be treated and its division. - These things having been posited, since a right and certain conscience cannot always be had at once and easily, it must now be investigated how one must prudently proceed in practice to form a right and certain conscience; whence we shall speak of the various states or species of conscience in special, of the mode of forming conscience in the individual states, and of the mode of sinning as to conscience, by not rightly forming it or by acting against it.

But all defective states are reduced to three categories: defect of rectitude or truth, defect of certitude, defect of truth and certitude at once. Whence we must speak in three chapters:

1. on the mode of forming a right conscience for removing error;

2. on the mode of forming a certain conscience for taking away uncertainty;

3. on the mode of forming a conscience at once right and certain, in a case of uncertainty and error at once.

The first concerns the formation of right conscience: 1. on the obligation and means of solicitously forming a right conscience; 2. on the species of conscience from the part of the object or rectitude: a. on true conscience; b. on invincibly erroneous conscience; c. on vincibly erroneous conscience; 3. on the practical formation of right conscience in oneself and in others.

The second concerns the formation of certain conscience: 1. on the obligation and means of sufficiently forming a certain conscience; 2. on the species of conscience from the part of the subject: a. on negatively doubtful conscience; b. on positively doubtful conscience; c. on opinative or probable conscience; d. on the right use of probable opinions; 3. on the practical formation of certain conscience in oneself and in others; 4. on the sin of one acting against conscience.

The third concerns the formation of a conscience at once right and certain, that is, on the species of conscience from the part of the object and subject at once: a. on perplexed conscience; b. on lax conscience; c. on scrupulous conscience.

In this order we do not consider separately the individual annexed virtues: for eubulia is connaturally exercised together with the others, because judgment supposes the deliberation of counsel and the deliberation of counsel is terminated in judgment; but synesis and gnome proceed in like manner in the formation of the judgment of conscience. Nevertheless the first part chiefly pertains to eubulia, because rectitude of judgment depends especially upon preceding deliberation (St. Thomas, q. 51, a. 2, ad 2; a. 1, ad 1); the second part looks to synesis (or gnome), because certitude is a quality of judgment (q. 51, a. 2, ad 2); in the third, all the annexed virtues are considered together.

Chapter I: On the Formation of Right Conscience for Removing Error

Question One: On the Obligation and Means of Solicitously Forming a Right Conscience

49. Thesis. In order to act prudently, man is bound to employ serious solicitude for inquiring into and always having a right and true conscience.

It is proved: 1. Conscience is nothing other than God's herald and messenger. But every diligent herald ought altogether to report nothing other than the truth committed to him by the one commanding. Therefore every man is obligated to employ serious diligence so that his conscience faithfully report the laws established by God, which rule the moral life.

2. One who is bound to observe laws is bound to employ diligence for knowing and inquiring into them, because it is a means altogether necessary for observing them in his actions; but if he did not diligently inquire, he would be in ignorance that is vincible and culpable. But conscience is nothing other than knowledge, the intimation of law in second act, and the application of law to a particular act. Therefore man, who is bound to observe laws, is bound to having a true and right conscience, by which the law is known in second act and applied to particular acts. - It is confirmed: Any law chiefly obligates to knowledge of itself; whence the adage: The law of acting imports the law of knowing.

50. The diligence required in the formation of conscience is not the greatest and extraordinary, by employing all possible means (for example, by consulting all the learned of the city and afterward by going to other provinces): that would be an intolerable burden, and would give place to perpetual anxieties, disturbances, and scruples. Rather, ordinary and moral diligence suffices, which alone is accommodated to human nature and which prudent and God-fearing men are accustomed to have in a similar affair, with attention to the conditions of persons and the gravity of laws and other circumstances of place, time, etc. Whence greater diligence is required the graver the matter is, both

in itself (for example, for divine law than for human law), and in its consequences (for example, if there is harm for the neighbor); the more cultivated the person is and the greater means he has for investigating the truth; the more he is obligated from office to knowing something or procuring good or avoiding evil; the more the reasons seem of greater weight; the more the matter admits of greater delay, etc.

Thus for the ordinary uneducated man it suffices to consult the parish priest or confessor; for the theologian and confessor greater diligence must be employed, by his own study and by consulting several authors.

51. Means of arriving at a right and true conscience. - The following are accustomed to be enumerated:

a) one's own consideration and cognition of moral science, proportioned to the state and condition of the agent, for acquiring understanding of the thing presently to be done: for man has reason so that he may direct himself. For this there is required sincerity of soul in the desire and study of truth, so that man not seek his own advantage or utility, or indulge cupidity or passion, but intend to please God in his acts;

b) consultation of experts (especially superiors), useful for the learned, but necessary for others; to this also look the example of good and God-fearing men operating thus without scruple. Let the learned man, namely, consult more learned men or also equals, such as he would consult in a grave temporal business; let the unlearned man consult especially superiors, for example the parish priest. For this, docility is required;

c) prayer, so that God may grant light and grace: for it is a question of cognition to be acquired for acting rightly in order to salvation; whence the counsel of the Holy Spirit is sought;

d) removal of impediments which impede the perception of practical truth, namely, of evil habits, passions, prejudices. This mortification is altogether necessary, because the practical judgment of reason, because of an evil inclination of soul, often deflects from the truth.

These means must be employed not indeed with the greatest diligence, but with moral diligence of the sort which prudent men use in their own affairs.

1. "Sincere conscience, which is without duplicity of intention, proceeds from a pure heart, namely, one purged of vices (I Tim. I, 3), and from a good conscience, that is, according to Bernard, one whose reason is not deceived, nor greatly perverse." St. Antoninus, *Summa Theologica*, p. I, c. X, § V, col. 185.

2. Cf. II-II, q. 180, a. 3, ad 4.

52. Observation. - He who is negligent in inquiring for the formation of a right conscience sins by the sin of precipitation.

Question Two: On the Species of Conscience from the Part of the Object or Rectitude

Article I: On True Conscience

S. Th. I-II, q. 19, a. 3; Q. D. *de Veritate* 17, a. 3.

53. State of the question. - Inquiry having been made for attaining conscience concerning the morality of an act, there can arise from it a threefold state or species of conscience from the part of the object or rectitude: for by reason of conformity with law, conscience is true or erroneous according as it dictates truth or falsity. True, namely, if it dictates that what is really licit or illicit is licit or illicit; erroneous if it exhibits something as licit which really is illicit, or vice versa: this, moreover, is invincibly erroneous if here and now it cannot be overcome by moral diligence; vincibly erroneous if by moral diligence it can be overcome here and now, but voluntarily is not overcome, whether directly from lack of industry, or indirectly from negligence.

Hence it is asked whether each of these consciences is a sufficient rule for acting prudently, or practically true.

54. Thesis. True conscience is per se a rule for acting prudently which we can follow; indeed it is obligatory, if it is commanding or prohibiting, so that we are held to conform ourselves to it both negatively, by not acting against it, and positively, by acting according to it.

It is explained: True conscience a) is that which from true principles dictates that something in particular is licit or illicit which really is such;

b) it is a rule for acting safely, so that we can always conform ourselves to it, and by acting according to it we ourselves act well;

c) sometimes, namely if it commands or prohibits, we are also held to conform ourselves to it.

It is proved: Conscience, because it intimates and applies the law, is the proximate rule of human acts, upon which their morality depends. But true conscience applies the law: namely, it is a faithful herald. Therefore the act which is conformed to that rule is prudent and morally good, and the act which departs from that rule is morally evil.

It is confirmed: 1) True conscience is, as it were, the promulgation of law in relation to a particular act, made to us through reason. But we are bound to follow a law certainly known. Therefore.

2. Whence Scripture, Rom. XIV, 23: Everything that is not from faith (good faith, *de bonne foi; uit goeder trouw*) is sin; that is, what is not conformed to conscience, or what is not from persuasion or the judgment of conscience, is sin.

55. Sense of the doctrine. - True conscience is called a) a prudent rule per se, that is, from its own nature, because it faithfully exhibits the law as it is in itself; whence it is simply right and under every respect, formally and materially, and consequently it is a rule absolutely and in every event; and therefore an act conformed to it is per se prudent and good;

b) it is an obligatory rule if it is commanding or prohibiting: for if it counsels or permits, to act against it is not illicit, because we are not bound to do or omit what is commanded or prohibited by

no law, although nevertheless it is illicit to contemn conscience counseling, even if we are not bound to fulfill it. But we can always act according to true conscience; indeed, we have the right so to act.

1. "We are said not to be bound to counsels. He who passes over a counsel does not sin, provided contempt is absent." Q. D. *De Veritate* 17, a. 4.

56. Formation of true conscience. - True conscience is formed by a ratiocination rightly deduced from true principles. Its major, which enunciates the universal principle, is from synderesis, for example: Evil is to be avoided; the minor, which regards the particular fact, is from reason rightly estimating all its circumstances, for example: to take this sum of Peter's money, without his knowledge, here and now, without any reason, is evil (for example, because prohibited by God, or by human law, or dishonorable, etc.). For rightly forming this minor, reason can use both moral science insofar as it applies the general rule to the particular act, and prudence for rightly estimating all circumstances, through eubulia. The conclusion is the very judgment of conscience: therefore to take this money of Peter, without his knowledge, here and now, without any reason, is illicit for me and to be avoided. This conclusion is enunciated through synesis.

Thus, therefore, true conscience can be formed:

"What is evil or prohibited by the law of God is to be avoided.

"But to have intercourse with this unmarried (or married, or related, or sacred) woman here and now is evil or prohibited by the law of God.

"Therefore to have intercourse with this woman here and now is to be avoided."

This ratiocination is not always formed explicitly, but more often is present implicitly.

Article II: On Invincibly Erroneous Conscience

St. Thomas, I-II, q. 19, a. 5 and 6; Q. 17 *De Veritate*, a. 2 and 4; on II Sent., d. 39, q. 3, a. 2; Quodl. III, a. 26 and 27.

57. Invincibly erroneous conscience is that which, from false principles but invincibly reputed true, judges something in particular to be licit or illicit which is not really such. For although in the major synderesis cannot err as to first principles, nevertheless reason can err in the minor concerning particular principles, and in the conclusion concerning the particular act. And indeed the conclusion, or conscience itself, can be false in two ways: a) on the part of the matter, because it is deduced from a false principle, for example: What is not prohibited is not evil; but theft for helping the poor, a lie for bringing help to the neighbor, is not prohibited; therefore it is not evil; b) on the part of the form, because it is badly deduced from true principles, which are not rightly applied, for example: God must be obeyed; but God commands that one in need must be assisted; therefore here and now I must assist such a neighbor. This second error, however, can be reduced to the former, because in such a ratiocination a false principle is always implicitly affirmed by man, namely, that in reasoning thus he proceeds rightly and concludes rightly; which in the case is false.

58. Thesis. Invincibly erroneous conscience is per accidens a rule of acting prudently which we can follow; indeed it is also obligatory, if it is commanding or prohibiting, so that we are

bound to conform ourselves to it both negatively, by not acting against it, and positively, by acting according to it.

It is proved: 1) Conscience is the proximate rule of human acts insofar as it announces the law which it applies to a particular action. But it is always prudent and licit to follow a law falsely announced, but in good faith esteemed as true, because it is to will to preserve the law and reverence it; on the contrary, it is always illicit to act against even a false law, but one esteemed as true, because it is to will to withdraw from the law and is contempt of the law. Therefore it is licit to act according to an invincibly erroneous conscience; it is evil to act against it.

2. He who in good faith intends the good has a good will and acts well; he who wills sin has an evil will and sins. But he who acts according to an invincibly erroneous conscience wills the good, because he does what in good faith he judges to be good; he who acts against this conscience wills sin, because he does that which he judges to be evil. Therefore he who follows an invincibly erroneous conscience acts well; he who acts against it sins.

3. Everything that is not from faith is sin (Rom. XIV, 23). But he who acts against an invincibly erroneous conscience does not act from good faith, and consequently sins. And this is the sense of the Apostle, who says that those persons sin who, from invincible ignorance, suspected that it was illicit to eat foods prohibited by the Mosaic law. Cf. I Cor. VIII, 7; Gal. V, 3; Jn. IX, 41; XV, 21-24; proposition 2 condemned by Alexander VIII.

The foundation of the resolution is that the will is borne toward the object not according as it is in itself but as it is proposed by reason and conscience; similarly, the eternal law of God obligates not according as it is in itself but insofar as it is known and promulgated and applied to our acts by conscience.

1. "Although invincible ignorance of natural right may be granted, in the state of fallen nature it does not excuse one operating from it from formal sin."

2. "Since an act receives its species from the object, it does not receive its species from the object according to the matter of the object, but according to the notion of the object, just as the vision of a stone does not receive its species from stone but from the colored, which is the per se object of sight." St. Thomas, Quodl. III, c. 27. Cf. I-II, q. 19, a. 5.

59. Sense of the doctrine. - Invincibly erroneous conscience is called a) a prudent rule per accidens, that is, not from its own nature, because it is not conformed to the law, but by reason of ignorance, because it is believed to be conformed to it; whence it is not a rule absolutely and in every event, but under condition if such a conscience endures and so long as it is not laid aside; and therefore an act conformed to it is per accidens prudent and good;

b) it is an obligatory rule, if it is commanding or prohibiting: for if it counsels or permits, to act against it is not illicit, because involuntary error excuses from sin; but we always act licitly according to it, although nevertheless we do not have a true right of acting according to it, because there is no right of following error.

60. The rectitude and formation of invincibly erroneous conscience. - Invincibly erroneous conscience, although it includes speculative error, nevertheless, because it is a rule of acting prudently, ought in some sense to be right or prudently formed, at least formally and as to us, and practically true, that is, conformed to right appetite or honorable will, and to the eternal law. For when all things have been considered with sufficient diligence, if something invincibly appears to someone as good or commanded, or as evil and prohibited, in these circumstances, such an invincible error standing, it is true that to do such an apparent good is good for that man, and to do such an apparent evil is evil for him. Whence he altogether rightly and prudently forms the true judgment of his conscience (n. 17); he does this not indeed from a direct judgment concerning objective morality, but from a reflex judgment concerning formal morality.

To understand this, it must be observed that a twofold proximately practical judgment can be distinguished: one direct and erroneous concerning the object as it is in itself, the other reflex and true concerning the object as it is subject to the act of the reflecting intellect. The first is the conclusion of the syllogism:

"What the law commands is to be done.

"But the law commands stealing or lying for helping another (killing an enemy, procuring abortion, cutting the fetus, or procuring pollution for the sake of health, hearing Mass today, etc.).

"Therefore I am bound to do it."

In this case, the minor is false, and therefore the conclusion must be denied.

But in another, reflex way the ratiocination can be conceived:

"What after diligent examination appears good to be done and commanded is certainly good and licit and obligatory for me.

"But after diligent examination stealing or lying for helping another, etc., appears good and to be done by me.

"Therefore it is certainly good and licit and obligatory for me."

This judgment is true: for since the minor of the syllogism regards not the truth of the judgment but its existence, it is true, and consequently the conclusion is true, as a practical judgment concerning the morality of the action here and now to be placed.

Moreover this last reflex judgment is more proximately practical than the first, because it supposes that judgment and regards all circumstances of the act more, for example on the part of the agent; and therefore it should rather be called the judgment of conscience than the first. Indeed, such a reflex judgment implicitly accompanies every prudently formed conscience, because each one implicitly says to himself that he is proceeding prudently and with sufficient diligence in judging his acts to be placed. Whence it can well be said that conscience invincibly erroneous by reason of the direct judgment is right and practically true by reason of the reflex judgment.

Such a conscience receives the force of obligating not from the particular law concerning which it errs, but from the universal principle of natural law: What is known as good is to be done; what is known as evil is to be avoided. It is conformed to this principle, and thus is conformed to the eternal law and practically true.

61. Practical corollaries. - From the aforesaid it is concluded:

1. that one to whom conscience invincibly dictates that he is bound to lie (or steal), so that he may free his neighbor from danger of life, does not sin if he lies; indeed he sins if he does not lie; on the contrary, one to whom conscience dictates that lying is mortal, sins mortally if he lies;

2. that one who thinks there is a fast when there is not, because of erroneous conscience sins if he does not fast; likewise one who thinks Mass must be heard, while he is excused by law, sins against conscience if he does not hear it;

3. that one who in bed takes a woman whom he invincibly thinks to be his wife (as Jacob did) does not sin; on the contrary, one who takes an unmarried woman whom he thinks to be married is guilty of adultery;

4. that one who thinks he is killing a man and kills a deer incurs the guilt of homicide; on the contrary, one who from invincible error thinks he is killing a deer but kills a man does not incur it;

5. that one who consumes his own thing which he thinks to be another's sins against justice, gravely or lightly, according to the persuasion of conscience; on the contrary, one who invincibly thinks that a man mortally wounded can be killed lest he suffer further pains, does not sin if he kills him.

Article III: On Vincibly Erroneous Conscience

St. Thomas, in the same places.

62. Vincibly erroneous conscience is that which, from false principles vincibly reputed true, judges something in particular to be licit or illicit which is not really such. It arises from insufficient diligence in inquiring concerning the morality of the act, so that by moral diligence it can be laid aside but from carelessness is not laid aside; this carelessness is voluntary, whether indirectly from negligence, while someone adverts to the obligation of inquiring further, or even directly from contempt: it is voluntary, namely, in the mode by which ignorance can be voluntary. Hence, in the same way as ignorance, according to the diverse grades of the voluntary, erroneous conscience can be distinguished as simply vincible, crass or supine, and affected.

Thus a judge who, while adverting that he does not sufficiently know the cause, nevertheless gives sentence and does not will to acquire more perfect knowledge, rashly exposes himself to the danger of erring.

63. Thesis. Vincibly erroneous conscience is not a rule of acting prudently and licitly, as being naturally suited to expose one to the danger of formally sinning, but regularly must be laid aside by a more diligent inquiry into truth, so that he who follows it when it permits, and he who acts against it when it commands or prohibits, sins.

It is proved: He who acts against such a conscience when it commands or prohibits does what he judges to be evil and thus sins; he who follows it when it permits does that which he cannot

prudently judge to be truly licit and good because he has negligently inquired and judged concerning the morality of his act; and thus he operates rashly and exposes himself to the proximate danger of formally sinning and sins. "He sins by acting against it, by choosing an evil which he judges to be evil; but he sins by acting according to it because, since he ought and can conquer the error, by not laying it aside he operates rashly." St. Alphonsus, *Moral Theology*, book I, n. 4.

It is confirmed: 1) He who adverts that further inquiry must be made concerning the truth of the honesty of his act and does not do it commits a sin of precipitation against prudence in counsel; whence with such imprudence he is not able to establish a rule of acting prudently. Cf. Jn. IX, 41; XV, 24.

2. He who acts conformably to a vincibly erroneous conscience, in fact acts against law; nor is he excused, because ignorance of the law is here and now voluntary.

Hence he who, so that he may help his neighbor, erroneously but vincibly judges that he must lie or steal, while at the same time adverting to the obligation of inquiring further into the truth, sins whether according to conscience he steals, or against conscience he does not steal. And nevertheless it does not follow that he is simply perplexed or necessarily sins, because he can do a third thing, by which, when done, he does not fall into sin, namely, lay aside the erroneous conscience: just as a priest who is bound to celebrate Mass and is in sin, sins by not celebrating, and also by celebrating.

64. Sense of the doctrine. - Vincibly erroneous conscience is said not to be a rule of acting but ordinarily and regularly to be laid aside, because it is naturally suited to cause sin, namely while it permits evil or prohibits a good that must be done. For one exception is given: if there were question of an act certainly good in itself which someone erroneously thought to be commanded, or of an indifferent act certainly not commanded which he erroneously thought to be prohibited: then he could follow the erroneous conscience, nor would he be bound to lay it aside, because in the case no danger of sinning would be present.

Thus if someone from voluntary error thought that one must fast or hear Mass, or that hunting is prohibited on Sunday.

65. Observations. - 1. In order that someone sin by acting against vincibly erroneous conscience, the act must be free. Hence he does not sin:

a) who, imprisoned, omits to hear Mass if it is not celebrated in the prison, while nevertheless he thinks that he sins;

b) the scrupulous person who thinks that dishonorable or blasphemous thoughts are always sins, while he is unable to make them not enter his mind;

c) likewise one who altogether involuntarily suffers distractions in prayer, or nocturnal pollution in sleep, or a girl who suffers menstrual flow, while nevertheless he or she thinks it to be a sin.

2. Vincibly erroneous conscience is in no sense right or true, not even practically and according to a reflex judgment, because, with sufficient inquiry lacking, the agent cannot say in truth, "all things diligently considered," nor sincerely judge the act to be good. Whence such a conscience is simply erroneous and also practically false.

Question Three: On the Practical Formation of Right Conscience

66. The laying aside of erroneous conscience and the formation of right conscience. - He who, because of a serious reason, doubts or suspects or is certain that he has an erroneous conscience, so that it now becomes vincible, in order to act prudently is bound to institute further inquiry and new deliberation with sufficient and moral diligence, so that he may form for himself a right and true conscience, and lay aside the erroneous one, as is clear from n. 49.

But he must do this prudently, not rashly, lest he change conscience without sufficient reason and thus expose himself to the danger of erring and acting badly; but only on account of grave and sufficient motives of reason or authority, by which he will prudently judge that the prior judgment was erroneous and that the motives on which it rested were insufficient, but on the contrary that the opposite judgment is founded (cf. n. 51). But if, after moral diligence has been employed, a sufficient reason does not occur to someone so that assent may prudently be given to the opposite, by that very fact the error becomes invincible.

But as Sylvius observes, on I-II, q. 19, a. 5, q. 6, he is judged to lay aside rashly the conscience which he has erroneously: 1) who does not care for it, but acts or omits just as if he had conscience of no thing; 2) likewise who according to his own will, with no examination first made, averts his mind from the dictate of conscience lest he be found evil, but so that he may act more freely and operate what he wills without actual remorse: thus he contemns conscience, as does one who affects to be ignorant whether the contract proposed to be entered is licit and does not desire to examine its circumstances lest perhaps he find that it is unjust (likewise whether a book is prohibited...); 3) likewise who is moved to lay aside even an erroneous conscience by certain reasons, but light or insufficient ones, for example (Scavini notes) one who quickly acquiesces in any little arguments whatever, provided they favor liberty, or too easily believes doctors speaking things pleasing to him, and does not consult (as Sylvius notes elsewhere) more learned men who are beyond suspicion that they will deceive him from malice or from negligence.

67. Signs by which a vincibly erroneous conscience can be recognized can be enumerated as follows: 1) if someone has seen other good persons act otherwise; 2) if he fears or suspects the malice of his action and nevertheless without sufficient foundation judges it to be licit; 3) if he has been admonished in some way concerning the malice of the action; 4) if he has thought that further investigation must be made and a confessor or another prudent man must be asked, and has voluntarily neglected the occasion of inquiring.

But if these signs are absent, generally the conscience will be invincibly erroneous.

By similar signs the confessor will be able to judge whether the conscience of his penitent is vincibly or invincibly erroneous, namely:

a) if there is question of the first principles of natural right and proximate conclusions, it is presumed vincible;

b) likewise if there is question of obvious obligations proper to one's state, for example, a mother not sending her son to Mass or catechism;

c) on the contrary, if the penitent is ordinarily diligent and accurate in those things which upright men are accustomed to observe, he will easily be judged inculpable; for example, if he employs

sufficient diligence for knowing the duties of his state, and knows many things, but is ignorant of one thing from inadvertence, he is judged not culpable; not so if he is accustomed to transgress;

d) likewise if he grieved when he discovered the error: this excludes present fault in the conscience, though not always fault in the cause;

e) likewise if the matter is difficult to know, invincible error can easily be presumed.

But to investigate this, the penitent can be asked:

1. whether he adverted to a certain indecency in the act,

2. whether at least some doubt concerning licitness preceded the action,

3. whether conscience suggested that investigation should be made, or a confessor or another prudent man asked,

4. whether he abstained from asking out of shame or fear of moral evil; not out of shame merely of acting against civility, for example, by speaking about menstruation.

If he denies all these things, it must be judged invincible; if he affirms, ordinarily the conscience can be judged vincible.

68. The office of forming the conscience of others. - Those who have the office of instructing and directing others and forming their conscience, such as parents, instructors of children, pastors, preachers, catechists, and other educators, should diligently take care that they rightly instruct those committed to them in true conscience. Specifically:

1. Let them avoid exaggerations and not propose as precepts things which are not certainly such, but only as counsels or pious customs; nor as mortal sins things which perhaps are only venial.

2. Whence parents and nurses act imprudently and badly, for example, who, so that they may avert little children from evil, persuade them that all things are grave sins, or are greatly detestable, or lead to hell: for thus a tender and credulous mind is often imbued with errors which grow with age, and by which an entangled conscience is often an occasion of sinning where there is no matter of sinning, or of sinning gravely where there is only light matter.

3. They should not, on account of consequent conscience, say that others are guilty or not guilty. For antecedent conscience alone, as rule, influences the act to be placed or omitted; consequent conscience supposes the act as constituted in moral being. Whence past sin does not depend upon a subsequent judgment of the doctor or confessor, but upon the dictate of antecedent conscience, upon the practical dictate which one had in acting.

Hence a) the Christian people are to be admonished that the formal goodness or malice of human acts is not taken from consequent conscience but from antecedent conscience;

b) they act unsuitably who, after a work has been perpetrated, begin to be distressed and inquire from books or from a confessor whether they have sinned; and uneducated persons are deceived who, while they read books or hear sermons, judge that they have sinned in certain things, although in

doing those acts they never thought about or suspected their malice; likewise, on the contrary, those who act in doubt and afterward, knowing that the action placed was not evil, are no longer distressed. For subsequent judgment does not influence the morality of a past act, but that morality depends wholly upon the dictate of conscience antecedent and concomitant with the act;

c) whence in these matters penitents are rather to be instructed than interrogated, unless the interrogation is made to direct them better for the future;

d) nevertheless he acts prudently who asks superiors so that he may know the truth, namely, in what manner in the future, in a similar case, he can or ought to conduct himself.

4. But if they detect some error in conscience, it is their office to correct it.

1. Hence St. Alphonsus observes, *Moral Theology*, book V, n. 52, into what danger he casts himself who, following rigid doctrines, easily condemns men of mortal sin in those things in which grave malice does not appear by evident reason, thus exposing them to the danger of eternal damnation; and the same must be said of those who easily brand with the mark of laxity opinions which do not seem openly improbable. Whence St. Thomas, Quodl. IX, 15: "Every question in which mortal sin is asked about is determined dangerously, unless express truth is had...: the error by which something is believed to be mortal which is not mortal binds one, from conscience, to mortal sin."

69. The office of the confessor as doctor and physician is to form a good conscience in the penitent, and to reform a harmful erroneous conscience. And indeed the instruction of the penitent is useful and therefore generally to be done:

1. if the error is vincible and gravely culpable, for example, if someone is not in good faith but doubts, as if he asks;

2. if the error would soon become vincible, as if someone is ignorant of laws which cannot long be ignored, for example the first principles and proximate conclusions of natural right or the obvious duties of one's state (of a priest, father, judge, etc.);

3. if the error is not gravely culpable, but harmful to the penitent, for example if it is concerned with things necessary for salvation or for absolution, or induces an occasion or proximate danger of sinning or persevering in sin, or is a cause of thinking that something is a sin which is not, or that something is mortal which is venial;

4. indeed even if the error is invincible and favorable, but the admonition is likely to be beneficial, at least after some time, unless graver inconveniences for others are feared, such as formal sins or grave harms, such as scandal, hatreds, quarrels, for example from the dissolution of an invalid marriage: thus if the wife could be admonished concerning the nullity of the marriage without any danger, but danger of sinning were to be feared on the part of the husband.

The reason is that laws are to be made known and known so that they may be observed, and it is the office of the confessor as doctor to instruct penitents concerning them, if this can be done without notable inconvenience.

On the contrary, generally it is to be omitted on account of a greater evil, namely, if the error is not gravely culpable and:

a) the admonition is doubtfully beneficial and equally doubtfully harmful, with a positive doubt, because formal sin is more to be guarded against than material sin;

b) more so, if it is likely not to be beneficial, unless nevertheless greater harm is feared, whether public (for example, great scandal), or of a third party (for example, omission of restitution), or of the penitent himself (as an evil custom, for example of pollution, to be conquered with difficulty);

c) most of all, if it certainly will not be beneficial; unless nevertheless silence is equivalent to approbation, for example if a priest is silent when asked or when seeing the goods of many being injured, or unless from non-admonition there follows a great harm of many or a public harm, because the common good or the good of many is to be preferred to a private good: thus per se if a priest is invalidly consecrating or teaching errors, or spouses with some good faith are exercising the act of marriage in such a way that they impede generation; but not if the harm of one person follows, because the spiritual good of the penitent is to be preferred.

1. This is speaking per se, because if knowledge of the truth would certainly be more gravely harmful, the confessor would have to dissemble as if he had not heard, or say that there is no need now to treat of this: in the meantime he can do that by which he judges God not to be offended; provided nevertheless that from this the confessor is not thought to approve the evil. Similarly, the confessor must beware lest, if no fruit is hoped for, he answer more than is necessary or than he is asked; for example, if someone bound by a simple vow of chastity asks whether the marriage, because of the vow, was invalid, he should answer negatively, being silent about the debt; if he asks whether he ought to render the debt to the spouse, he should answer affirmatively, being silent about the obligation of not asking. Cf. St. Alphonsus, book VI, n. 616.

2. In a negative doubt it is to be done, because no one is presumed evil unless it is proved.

70. On the education of conscience. - So that man may be able prudently to form his conscience, reason needs a special education and formation, to be acquired by natural and supernatural means.

I. The natural means are:

A. Direct instruction through doctrine; for this educators (parents, teachers, catechists, etc.) should diligently and gradually inculcate that there is a distinction between good and evil, that certain actions are conformed to divine reason and will, others altogether difform from them, so that thus children may become accustomed to perform good from conviction and not only on account of obtaining a reward or praise, or for avoiding punishment, being persuaded that the chief reward is placed in the testimony of conscience and the approbation of God.

Therefore 1) there should be inculcated in them the necessity of following a good conscience, namely, a) of offering attentive ears to conscience, as to the voice of God Himself, and b) in actions of not seeking pleasure or one's own advantage as an end, but whatever is honorable, whatever is holy, whatever is pleasing to God; c) but if they doubt concerning the licitness of some action, let them approach experts and honorable men, not evil or imprudent men.

2. So that they may know their duties better and fulfill them more diligently, it is necessary to explain to them not only what they ought to do, but why, by declaring namely the reasons on account of which they ought to do this and avoid that: for thus they will learn to do good not from blind instinct, but from the intimate persuasion of the soul.

3. But while horror of sin is impressed upon them, let nothing false or less true be said: thus slight sins should not be exhibited as an enormous crime, but as venial, although nevertheless as dishonorable and base, to be diligently fled.

B. Indirect instruction through examples: for since younger persons are accustomed to imitate what they have before their eyes, if they see noble actions performed by parents, teachers, and other educators, by that very fact they will be moved to acting nobly, while on the contrary they are easily drawn to evil by wicked examples.

Whence 1) if sometimes they are witnesses of someone's wicked action, educators should seize that very opportunity to manifest the baseness of that action, and inspire horror and hatred of sin into their souls;

2. let them likewise take care that those youths read only books in which examples of virtue are praised, but vices are severely condemned: for from those things which they read, the mind is vehemently borne toward good or evil;

3. likewise that those youths frequent companions who conduct themselves honorably and in a Christian manner: little by little, without noticing it, we commonly embrace the judgments and manner of acting of those with whom we often converse;

4. if it is impossible to avoid all those who act perversely, let adolescents learn as quickly as possible to contemn the judgments of the wicked, and, contrary opinions and examples notwithstanding, to act manfully according to the dictate of conscience and the law of God.

C. The condition required in him whose conscience is to be formed is perfect sincerity, not only with others but also with himself, which is obtained by faithful, continual, and candid searching of one's own conscience, by which he judges his own actions as if they had been performed by another.

Concerning this Chrysostom says: "Do you not have a book at home, in which you write daily accounts? Likewise have a book in conscience, and write your daily sins; for example, when you lie in your bed, and there is no one who troubles you, before sleep creeps in bring the little book into the midst, and reckon your sins with yourself, saying within yourself: Have I sinned today either by word or by deed?... But when you count them, hang your soul up, tear it, open it by fear of gehenna... so that on the next day you may approach the perpetration of sins more sluggishly" (on Psalm 2, hom. 2, n. 5-6). Truly, he who seriously and sincerely thinks over and discusses his actions, investigates the causes of his sins, and foresees the consequences, grieves more easily and efficaciously over past offenses, guards against future ones, and in this way rightly forms his conscience, which otherwise, often transgressing without penance, would become lax.

II. The supernatural means are:

A. Frequent and fervent prayer to God, the Father of lights, that He will illuminate us concerning His reason and will, by which He is the supreme rule of morals, and give strength by which we may more easily fulfill the law.

"Give me understanding, O Lord, and I shall search Thy law, and I shall keep it with my whole heart... Give me understanding, and I shall learn Thy commandments" (Ps. CXVIII, 34-36, 73). "We beseech Thee, O Lord, pursue the vows of Thy supplicating people with heavenly loving-kindness: that they may see those things which are to be done, and be strengthened to fulfill those things which they have seen."

B. The practice of Christian virtues with strenuous battle against inordinate passions.

For just as conscience is easily clouded by passions and frequently repeated wicked actions, which are as a dense smoke intercepting the clear rays of reason, so it is not a little illuminated by the assiduous practice of good works: for we perceive moral truths much more distinctly when with a pure heart and sincere will we seek, without any prejudice, what must be done. "Each one judges according as he is affected" (I-II, q. 58, a. 5). For this reason daily experience establishes that men captive under the yoke of passions have a lax and erroneous conscience; on the contrary, the conscience of those who devote themselves wholly to cultivating virtues becomes more tender and delicate.

C. Frequenting sacramental confession, and obedience rendered to a prudent spiritual director: for these things suppose a diligent examination of conscience, the utility of which even the pagans recognized, establishing the principle of moral life: Know thyself. Then after the manifestation of the secrets of the heart has been made to the director, he, helped by divine light, will give the best counsels.

By these things the penitent will be able to judge 1) what is good and what is more expedient; 2) what is commanded and what is counseled; 3) how doubts are to be solved: for with the help of the confessor, who is endowed with greater science and experience, he will be able to solve them more prudently; 4) what means lead to Christian perfection. Thus he will walk more safely in the ways of the Lord, and will form for himself an altogether right conscience under the leadership of him who bears the place of God on earth; whence it happens that, after a good confession and obedience rendered to the director, all remorses of conscience are accustomed to cease. But obedience must be rendered to the confessor not only by the uneducated but also by the learned, both because it is often impossible to judge in one's own cause, and because the confessor is a judge, to whom whoever desires to receive the sacrament of Penance is bound to submit himself.

These are the chief means for cultivating conscience, so that it may be conformed to divine reason and law, and consequently be a safe norm of acting.

1. Prayer of the Sunday within the Octave of Epiphany.

2. These things are taken from Tanquerey, n. 422 ff., and from Prummer, n. 353 ff. Gillet, *The Education of Conscience*, can be consulted.

Chapter II: On the Formation of a Certain Conscience for Removing Uncertainty

S. Th. II-II, q. 1, a. 4; q. 2, a. 1; q. 4, a. 8; Q. D. *de Ver.* 14, a. 1.

71. Various states of mind: doubt, suspicion, opinion, certitude. - Besides certitude, which is the state of a mind firmly adhering to one part totally and determinately, a threefold state of mind can be distinguished, with respect to adhesion or assent to the object: doubting or suspension of assent, - suspicion or inclination to assent, - opinion or assent, but not firm assent, because it is with fear of the opposite.

1. Doubt properly so called, or positive doubt, is the state of an intellect placed in equilibrium, which, namely, suspends assent and adheres to neither part, nor inclines more to one part than to the other, but wavers between the two on account of the apparent equality of reasons. It differs strictly from nescience, which is suspension of assent on account of a defect of reasons moving to assent, and which is improperly called doubt and is customarily called negative doubt.

2. Suspicion is the state of a mind inclining more to one part than to the other, without assenting to it, because for it there stands a reason, or an excess of reasons, a little greater than for the other.

3. Opinion is the adhesion of the intellect to one part without being totally determined to it, or the acceptance of one part with fear of the other, because there are sufficiently graver reasons for one part than for the other.[1]

[1] Cf. II-II, q. 2, a. 2.

Since in human operable matters a little is reckoned as nothing,[2] because it helps or impedes little for obtaining the end, and therefore it does not much matter whether it is done thus or thus, for that reason slight reasons are reckoned as none, and a slight excess of reasons as none. Whence although psychologically they differ, nevertheless morally suspicion is judged doubt; positive doubt on account of slight reasons is judged negative; only doubt on account of grave reasons equal or almost equal on both sides is judged positive;[3] opinion founded on graver reasons in such a way that against it there stand only slight reasons is judged practical certitude, to which it comes near and from which it is separated by a slight distance. Hence in practice there remain only doubt, opinion, and certitude.[4]

[2] "Reason takes what is slight as almost nothing," I-II, q. 14, a. 4. Cf. St. Alph., *Th. M.*, book I, n. 55.

[3] St. Alphonsus, *Th. M.*, book I, n. 20; and the Dissertation of the year 1762.

[4] Cf. Q. D. *de Ver.* 14, a. 1.

72. What probable opinion is. - Opinion is properly taken subjectively, and is a judgment by which we adhere to something as true, not firmly, but with fear of the opposite, because for it alone there stand grave reasons, or reasons sufficiently graver than for the opposite;[5] whence although the truth is not manifested, nevertheless there is had a notable appearance of truth. Often, however, it is taken improperly, objectively, for the doctrine to which we adhere in this way; but this is not opinion, but that which we opine and approve by judgment, and therefore it is properly called probable or truthlike; hence such a doctrine is often called a probable opinion.[6]

[5] We speak thus because of the manner of speaking of the equiprobabilists, who acknowledge only reasons a little graver and notably graver. They affirm with us that these latter found certitude broadly so called; but that reasons a little graver do not suffice for founding opinion, or the assent of one part with fear of the other, is manifest; whence in practice they do not distinguish opinion from certitude broadly so called. - But according to others, reasons can be so notably graver than the opposites that the intellect can adhere to them, although with fear of the opposite; yet not so notably that they constitute prudential certitude. Therefore, lest confusion arise, we abstain in the definition from the word "notably," and we say that opinion is founded on reasons which are sufficiently much graver than the opposites, so that the excess is not slight but grave, without however being altogether grave.

[6] Thus passim in St. Alphonsus and recent authors.

Now probable is that which is worthy to be approved, which is apt to move a prudent man to assent and merits the assent of a prudent man; whence properly it is that for which there stand reasons absolutely grave and relatively graver than for the opposite, and therefore it is more often joined with truth than with falsity; otherwise it would not merit approbation, nor would it be worthy to be approved rather than the opposite, nor would it be like the true.[7] Therefore only the doctrine more founded is probable in the strict philosophical sense; whence Aristotle (*Top*. I, c. 1): "Probable things are those which seem so to all, or to most, or to the wiser, and among these either to all, or to most, or to the most known."

[7] This definition is rejected almost unanimously by the more recent Probabilists, indeed it is held to be something unheard of in Philosophy; according to them, probable properly is everything for which there stand grave reasons, even less grave ones. Yet our definition is generally admitted by philosophers of the Dominican school, "in which," as St. Alphonsus says, *Th. M.*, book I, n. 80, "great doctrine has always flourished," indeed even by certain authors of the Society of Jesus, and it was commonly handed down by the philosophers of the middle age. That doctrine, says de Caigny, *On the Genuine Moral System of St. Alphonsus*, n. 263, "seems in no way to differ from the ancient definition of probable which the Angelic Doctor and other scholastics commonly handed down until the sixteenth century: which doctrine, like very many others, was rejected in the time of the false reformation; but in our days, like so many others, deserves to flourish anew in the Schools."

73. Opinion is an adhesion of the intellect commanded by the will. - Since the intellect does not have evidence of the thing, it does not adhere to it from the necessity of its nature, by which it would be carried to it without impediment, but adheres only dependently upon the free will, which moves it to assent (II-II, q. 1, a. 4). Namely, one thing is the judgment by which we affirm that on one side there are graver reasons and on the other side reasons are not present or are less grave: this judgment is necessary, because the intellect, sedulously comparing the reasons, cannot but see which are the graver; another thing is the judgment by which we adhere to the more founded part, and approve it and make it our own: this judgment is free from the motion of the will and is the judgment of opinion, while the former is presupposed so that the will may be able rationally to incline the intellect to adhere to that part.

Hence the will 1) can refrain from commanding assent, and thus will be the cause that the intellect suspends assent;

2. although it cannot directly compel the intellect to judge that there are grave or graver reasons, and yet to adhere to the less grave, nevertheless indirectly it can turn the intellect away from consideration of the graver reasons and bend it to consider the less grave reasons, which are also worthy of a certain attention and consideration.[8] Indeed,

[8] The reason why the will cannot directly determine the intellect to adhere to the less founded part is that the intellect is not, like the will, a free power, but a necessary power, not something blind, but a spiritual light; whence it necessarily sees the greater likelihood and tends toward it. Even Fr. Arendt was compelled to concede this in his *Critique of the Apologetic*

Work of Fr. de Caigny, p. 23: "Therefore, in order that the will may obtain the assent which it wishes, it will be necessary for it somehow finally to avert the attention of the mind from contrary motives, and to see that the memory of the probability previously judged in those motives is erased, and at the same time that weights from elsewhere are increased for the part which the will itself favors." In this indirect way, namely, by causing the opposite reasons, in the course of time, to vanish totally from the mind through forgetfulness, the will can move the intellect to adhere to less grave reasons. - But what he adds on p. 40, that the will, on account of an extrinsic reason, for example the authority of another, can command the acceptance of one part which of itself is equally probable as the other, can be admitted if that authority increases the probability of one part; or it must be understood in this sense, that that authority is a sufficient motive for judging that following that part is good in practice; not however that it is a sufficient motive for judging that part to be theoretically more truthlike. For the intellect necessarily sees each part to be founded upon equal reasons, and consequently necessarily judges that neither is to be adhered to as true or more founded, and it tends toward neither. "When," says St. Alphonsus, *Th. M.*, book I, n. 71, "there is present on the other side an equally probable opinion, then on neither side can there remain any probability, or probable reason apt to draw to itself the prudent assent of a man; for from these equal properties nothing other than mere doubt results... St. Thomas clearly teaches this, *De Ver.*, q. 14, a. 1... When two probable opinions occur, they suspend judgment just as if no probability existed on either side." And n. 78: "Where two opinions concur equally probable, neither remains probable, but only doubtful."

3. it can apply the intellect now to one part, now to the other, so that it wavers between the two. In these three cases the will does not act conformably to the nature of reason, nor therefore rightly;[9] yet because it can do this, therefore

[9] "As often as it certainly appears to the intellect that truth stands much more for the law than for liberty, then the will cannot prudently and without fault adhere to the less safe part: since in that case a man would act not resting upon his own judgment, but rather through a certain effort which he would impose by his will upon the intellect, so that it might be removed from the part which appears to him much more truthlike," St. Alphonsus, *Th. M.*, book I, n. 56. And n. 69: "Another principle of certain probabilists is this, that when each opinion is probable, a man suspends judgment concerning the safer opinion, and, leaning upon the probability of the benign opinion, acts. But Fr. Berti justly also rejects such a principle; for it by no means can render us certain concerning the honesty of the action, since this suspension of judgment is merely voluntary; whence it cannot excuse from ignorance being truly vincible, and therefore in this way doubt certainly cannot be put aside." - And Arendt himself admits this, o. c., p. 22: "The will indeed will rightly and without any fault move the intellect to give assent to the thing itself, if it has not commanded an assent firmer than the motives are able to require; but culpably if it has induced the intellect to assent to the thing itself either more firmly than the motives bear, or without any fear, and hence as if the thing were objectively evident."

a) opinion is sometimes called doubt broadly so called;[10]

[10] Cf. St. Alphonsus, *Th. M.*, book I, n. 67.

b) the dwelling of the intellect in considering less grave reasons is by some improperly called opinion; whence

c) moralists are accustomed to speak of opinion as more, equally, and less probable.[11] For for them probable is taken in a broad sense and is everything which, if not worthy of proof, is nevertheless worthy of attention and consideration, namely, that for which there stand grave reasons, even reasons less grave than for the opposite.

[11] The manner of speaking can also be explained in an objective sense concerning an opinion which exists among different persons, so that the opinion of certain theologians seems more probable to someone and therefore is his opinion, and the opinion of others appears to him equally or less probable than the other, and is not his opinion. The old writers are to be understood thus.

74. Various degrees of probability. - By reason of the gravity of the foundation or of the firmness of the motive, the probable has several degrees, so that it has so much more of probability as it has of gravity. And indeed:

a) If it is considered absolutely in itself, from its approach to the truth, three degrees are distinguished: truly and solidly probable - very probable - most probable, according as the reasons are grave - or very grave - or so grave that scarcely any prudent fear of the opposite remains.

Below true probability from a truly grave motive, there can be an imperfect appearance of truth from a doubtfully grave motive or from slight motives which do not merit the assent of a prudent man: this they improperly call doubtful, or light or slender, probability.

b) Comparatively to the opposite, however, there are distinguished: uniquely probable and not probable - probable and equally probable - more probable and less probable - indeed also much, very, notably more probable, and much less probable.

But in order that the reasons upon which probability is founded may be rightly estimated, it is necessary that they be considered both absolutely, so that according to themselves they are grave, and relatively, i.e., with attention to the reasons in the opposite direction:[12] for it can happen that a reason grave in itself, comparatively to another, is judged slight, for example if the contrary is very notably more probable,[13] or even none, if the contrary is certain.[14]

[12] Concerning those who would not weigh opposite reasons, Lehmkuhl writes, *Th. M.*, book I, n. 190: "He who is accustomed so rashly (namely, by not weighing the reasons of the contrary opinion) to pour forth his opinions... does not deserve the name of theologian."

[13] Then the first sentence can only be slenderly and doubtfully probable.

[14] For example, from a decree of the Church. Then from the motives there arises a difficulty perhaps here and now insoluble, but not probability.

Yet it does not seem to be denied that, even in moral matter, there can be opposite reasons and sentences which are truly grave and solidly probable, not only because they appear equal to each other and equally probable, but even when one seems more founded or more probable, the other less founded and less probable, without however the former being judged much, very, or notably more probable. And then the intellect, in adhering to the more probable sentence, can and must at the same time judge that the other, to which it does not adhere, is founded and in some way, though less so, probable.

By reason of security, the probable is safe, safer, or less safe, according as it wholly removes, or more, or less removes, the danger of sinning, either formally or even materially.

And so safer and more probable do not sound the same. Probability is said from the appearance of truth, security from the removal of danger, in this case of sin; whence the more probable is that which has a greater appearance of truth than the opposite, the safer that which more removes the danger of sinning even materially, or of transgressing the law. Therefore, since that which favors the law removes the danger of sinning more than that which favors liberty, for that reason that part which favors the law is safer and that which favors liberty is less safe. Hence the safer can be less probable, for example, if it is less probable that an obligation exists; - and on the contrary the more probable can be less safe, if it is more probable that the obligation does not exist. Thus, for example, the opinion of St. Bonaventure, establishing that after sin confession must be made at once, is safer; the opinion of St. Thomas denying this is more probable.

75. Various species of certitude. - Certitude A. is one kind when it is strictly so called, fixed, demonstrative, and philosophical or speculative, which excludes every fear of erring, and therefore is

the determination of the intellect to one thing.[15] This, on the part of the negative element, i.e., insofar as it excludes every doubting or fear, does not admit degrees but is in the indivisible; - on the part of the positive element, i.e., insofar as it adheres firmly to the object, it is greater or lesser. And indeed on the part of the cause, i.e., by reason of the firmer motive and of that to which error is more or less repugnant, natural certitude[16] is metaphysical, physical, and moral, according as it is founded in the essential necessity of things (for example, the principle of causality, God exists), in their natural necessity (for example, from hydrogen and oxygen water is produced), or in the testimony of others which in the case is certainly demonstrated not to err (for example, the Chinese empire exists). But on the part of the subject, i.e., by reason of the manifestation of the object or of clarity, it is evident or intrinsic, which necessitates the intellect, and inevident or extrinsic, which does not necessitate and is taken from the authority of others.

[15] "The firmness of adhesion of the cognitive power to its cognoscible." St. Thomas, II Sent., d. 26, q. 2, a. 4.

[16] We are speaking only of natural certitude, and we abstract from the supernatural certitude of faith, which exceeds even metaphysical certitude. I, n. 721.

B. Another kind is broadly and improperly so called, conjectural or probable, which does not exclude every fear, but only the reasonable and prudent fear of erring. This is not strict certitude, because it does not prevent every fear, but is the greatest probability; and therefore even on the part of the negative element it admits degrees and is greater or lesser, more or less perfect, according as it excludes doubting more or less. By most it is called moral; for it suffices in moral matters, and moreover, although not physically, nevertheless morally it determines the intellect to one thing, insofar as there is lacking every serious reason for doubting which moves to the opposite. Whence although in practice it is equivalent to certitude, because it suffices for acting rightly and prudently, nevertheless it renders us morally, i.e., almost and equivalently, certain, rather than being true moral certitude. And therefore, that it may be distinguished from moral certitude strictly so called or historical certitude, it is better called practical and directive, because it suffices for acting and directing our acts; or prudential, because it suffices that men act prudently.

This, by reason of the principle or cause, is direct if it arises from proper principles or reasons taken from the very thing to be examined, for example from comparison with a particular law, from the institution of Christ, etc., for instance whether such a work is servile, or such a manner of baptizing is good; - or indirect, if it arises from principles extrinsic to the thing, for example from authority, or from general and higher principles of practical reason called in to aid in having a certain norm of acting; for instance: even if the work is servile, it is licit for me because the pastor said so; even if the manner of baptizing is perhaps good, it is illicit because it exposes the sacrament to the danger of nullity. These principles are called by theologians indirect or reflex, because the intellect, reflecting upon its state of uncertain conscience, uses them to render it certain by a reflex judgment.[17]

[17] St. Thomas too acknowledges indirect principles, in the case in which gnome and epikeia intervene. Cf. I-II, q. 57, a. 6, ad 3; II-II, q. 120, a. 1 and 2; q. 51, a. 4; q. 80, a. 1, ad 4 and 5.

76. State of the question. - When diligent inquiry and deliberation have been completed, for forming conscience concerning the morality of an act in particular, therefrom a threefold state or species of conscience can arise directly on the part of the subject, or of adhesion to the object and of certitude: doubtful, opinative, or certain conscience, according as the reasons appear morally equal, - or on one side are graver or more probable, - or convincing.

Now a) if conscience is sufficiently certain, it can be a prudent rule of acting; but because b) absolute or direct certitude is for the most part impossible, it does not always easily appear whether there is sufficient certitude; c) but if conscience is not sufficiently certain, further inquiry must be made, provided there is a founded hope of arriving directly at certain conscience, because we must attend to this with every moral diligence (n. 49); but if d) it now appears morally impossible, it must be seen whether it is possible to arrive at indirect certitude from a reflex judgment. Hence it is asked:

1. whether there is an obligation of forming certain conscience, and what certitude is sufficient so that conscience may be a rule of acting prudently and practically certain;

2. how in a case of opinion or doubt, according to prudence, someone can form for himself an indirectly certain conscience, which may be a rule of acting prudently and practically certain.

77. Various solutions and diverse systems of theologians. - For solving the aforesaid questions, various systems have been devised by theologians:[18]

[18] Absolute tutiorism or Rigorism says that it is always imprudent and illicit to follow the part favoring liberty or the less safe part, unless it is certain. Hence the saying: Safer or certain; or: Always the safer.

Thus Sinnichius, a doctor of Louvain (d. 1666), is said to have taught in the book *Saul Ex-Rex* I, c. 95; likewise Wendrochius (pseud. Peter Nicole) and several Jansenists. This was condemned by Alexander VIII in prop. 3: "It is not licit to follow an opinion even the most probable among probable ones."

2. Mitigated tutiorism says that it is always imprudent and illicit to follow the less safe part, unless it is most probable. Hence the saying: Safer or most probable.

Thus several doctors of Louvain in the eighteenth century: Steyaert, van Opstraet, Daelman, Henry of St. Ignatius, Dens; likewise Fagnanus, Habert, Cardinal Gerdil.

3. Probabiliorism says generally that it is imprudent and illicit to follow the less safe part, unless it is manifestly and solidly more probable than the opposite. Whence the saying: Safer or more probable.

Thus several older Thomists, such as Conrad, Sylvester, Cajetan, and after the year 1656 until the approval of the doctrine of St. Alphonsus, Dominicans generally;2 also several from the Society of Jesus, such as Thyrsus Gonzalez (f. 1681), who thus taught with Innocent XI yielding consent.3

To this is added the system of compensation, which says that the more probable is to be followed unless there is an excusing reason which compensates the probability of transgressing the law, and indeed one proportionately grave in comparison with the gravity of the law and with its greater probability.

Thus Potton, Manier, Laloux, Lehu, Prummer, Mc. Donald.

4. Equiprobabilism says generally that it is prudent and licit to follow the less safe part which is equally or almost equally probable, because the law does not oblige unless at least it is certainly more probable. Hence the saying: The more benign, provided it is equally probable.

More recent equiprobabilists, however, after St. Alphonsus, add a restriction to the principle and say that it is licit in the case in which there is doubt about the existence of the law and liberty possesses; but illicit, on the contrary, if the law possesses and there is doubt about its cessation, because it does not cease to oblige unless it has more probably ceased. Hence the saying: The part for which possession stands, provided it is equally probable.

Yet this restriction is not essential to the system, nor proper to it, since certain probabilists also make it.

Certain older writers already seem to have adhered to equiprobabilism; some theologians from the seventeenth century proposed it systematically; St. Alphonsus especially defended it, and many followed him, even several in the school of St. Thomas.

5. Moderate probabilism says generally that it is prudent and licit to follow the less safe part solidly and truly probable, even if the opposite is certainly more probable. Hence the saying: The more benign, provided it is solidly and certainly probable.

Thus B. de Medina in the year 1577, and after him theologians generally, even in the school of the Thomists, from the end of the sixteenth century until the middle of the seventeenth century; and especially the theologians of the Society of Jesus; but from the middle of the nineteenth century also many others.

6. Laxism or laxer Probabilism says that it is always prudent and licit to follow the less safe part even if slenderly or doubtfully probable. Hence the saying: The more benign, provided it is in some way, even doubtfully, probable; or: The more benign, unless the law is truly certain.

Thus in the seventeenth century several from the Society of Jesus, such as John Sanchez, Leander, St. Bauny, Escobar, Tamburini, M. Moya; also Diana, the Theatine, who was called "the lamb who took away the sins of the world"; likewise Caramuel, the Cistercian, prince of the laxists. It was condemned by Alexander VII in prop. 27, and by Innocent XI in prop. 1, 4, 21 and 64.

1. A brief historical excursus concerning the systems is placed by way of appendix at the end of the volume.

2. In the general chapter of the Order of Preachers of this year, it was decided that thereafter the theologians of the Order should attack the laxer opinions. But they did not attack only Laxism; from this moment they also positively defended Probabiliorism, at least generally, although this had not been commanded. After the laudatory approvals of the doctrine of St. Alphonsus, several now follow equiprobabilism, while some teach the system of compensation.

3. You will find the system well expounded in Billuart.

Question One: On the Obligation and Means of Forming a Sufficiently Certain Conscience

S. Th. I-II, q. 91, a. 3, ad 3; q. 96, a. 1, ad 3; II-II, q. 47, a. 9, ad 2; q. 70, a. 2; Quodl. VIII, a. 13.

78. Thesis. A certain conscience is the rule altogether required for acting prudently and licitly, by which, namely, a man prudently forms for himself a certain judgment that the action to be placed

here and now is licitly and honorably placed.

Now a certain conscience is that which, formally in itself and in all the principles from which it is immediately formed, excludes fear of the opposite, and therefore firmly and without fear of erring dictates that something in particular is licit or illicit. We say that such a conscience is required as the rule of acting.

It is proved: 1) from Scripture, Rom. XIV, 23: *Everything that is not from faith is sin.* But everything that is done from an uncertain conscience is not from faith or from certain persuasion; therefore it is sin;

2. from reason: He who, uncertain whether his action is evil and prohibited by God, or prudently fearing lest it be prohibited and evil, nevertheless acts, wills to place the action even if it really is evil and prohibited, and thus has an evil will, and contemns the law of God, and exposes himself to the proximate danger of sinning formally and sins (I, n. 214).

Hence a) one acting with an uncertain conscience violates the obligation of inquiring into the truth concerning the existence of a precept, for every precept first of all obliges to knowledge of itself;

b) he prudently fears that by his operation he is sinning formally; therefore he voluntarily casts himself into the proximate danger of sinning;

c) whence it is never licit to act in a practical doubt concerning the honesty of the action.

79. A conscience broadly or indirectly certain suffices. - For acting prudently and licitly there suffices:

1. When certitude strictly so called is lacking, certitude broadly so called. For certitude, says St. Thomas, is not to be sought in the same way in all things, but in each matter according to its proper mode. Now human actions are particular and contingent things, in which ordinarily absolute certitude, which takes away every solicitude, is not given. Therefore probable certitude suffices, which ordinarily and in the greater number of cases attains the truth, and sometimes, in the fewer cases, fails of the truth.[1] - But if strict certitude were required, says St. Alphonsus,[2] the yoke of God would be heavy and hard and unbearable, would incite to straits and desperation, and thus would expose one to the danger of sinning.

[1] Thus II-II, q. 47, a. 9, ad 2; and q. 70, a. 2; likewise I-II, q. 91, a. 3, ad 3, and q. 96, a. 1, ad 3; commentary on Aristotle, I *Ethics*, lect. 3. - Likewise St. Antoninus, *Summa Theol.*, p. I, tit. 3, c. 10, § 10, speaks of "the certitude of a probable conjecture," which arises "from probable conjectures, broad and figurative, bearing more toward one part than toward the other." - Certain persons, such as Arendt (*Crisis Apol. Aequiprob.*, pp. 59, 77, 231 sq.), have interpreted these things as if they were valid only concerning moral certitude which is concerned with facts, but not concerning the conclusions of moral science, for which they demand stricter certitude. But this interpretation is opposed to St. Thomas, who in his Commentary on Aristotle also speaks of principles: "It is manifest that moral matter is varied and difform, not having certitude in every way. And because according to the art of demonstrative science principles must be conformed to conclusions, it is agreeable and desirable, when making a treatment of such matters, i.e., of matters so variable, and proceeding from similar things, to show the truth 1) indeed roughly, i.e., by applying universal and simple principles to singular and composite things in which there is act... 2) it is necessary to show the truth figuratively, i.e., verisimilarly; and this is to proceed from the proper principles of this science. For moral science is about voluntary acts; but the motive of the will is not only the good, but the apparent good. 3) It is necessary that, since we are about to speak of those things which happen for the most part, i.e., of voluntary acts which the will does not produce from necessity, but perhaps inclined more to one than to another, we also proceed from such things, so that the principles may be conformed to the conclusions." In the same way St. Alphonsus, *Th.*

M., book I, n. 56: "Where the truth cannot be found clearly, we are bound to embrace at least that opinion which comes nearer to the truth."

[2] St. Alphonsus, *Th. M.*, book I, n. 82 sq.

It should nevertheless be noted that from the aforesaid doctrine it cannot be concluded that every probability properly so called, i.e., every more truthlike opinion, constitutes probable certitude, but only that which comes nearer to certitude, or, as they say, a vehement opinion, which is only with some or slight doubting.

2. When direct certitude concerning the material and objective honesty of the action is lacking, indirect certitude concerning its formal honesty suffices: for then it is not required that someone be certain that there is no law which prohibits the action, but that, even if there is a law, he is excused from it. The reason is that often another certitude, direct certitude, cannot be obtained in practice, since the doubts are insoluble for us, and yet man generally must act. Now no one is held to the impossible, nor does God demand more than the human condition bears: thus Cajetan. - Moreover, the truth of an opinion is one thing, the use of an opinion and the honesty of the action another; and therefore the principles and reasons by which we judge of the truth of a thing, the probability of an opinion, doubt, etc., for example whether a war is just, a marriage valid, are one thing; those by which we judge of the honesty of an action are another, for example whether in such a perhaps unjust war, when a superior commands, it is licit to fight, or whether one doubting about the validity of a marriage can render the conjugal debt.[3]

[3] St. Alphonsus, *Th. M.*, book I, n. 25.

80. Practical certitude varies according to the diversity of matter, person, and circumstances, so that greater certitude is required in matters of great moment, in persons of greater knowledge, and in circumstances which require greater diligence or more easily admit error. Thus the counsel of one learned man or pastor is prudence for a countryman or laborer, not for a theologian; and greater care is required that someone act prudently in administering a sacrament than in observing an ecclesiastical law.

"Therefore," says d'Annibale, *Summula Theol. M.* I, n. 131, "as civil judgments, though of one small coin, so also penal judgments, though capital, are concluded by the testimony of two, namely because no one calls witnesses of his own offense. And in those things in which it is of no interest to the witnesses to lie (e.g., when it is asked whether someone was baptized), credence is given even to one trustworthy witness. But in those things which admit no witness, we use presumptions, for example when there is doubt whether a wife has brought forth an adulterine child; and each one is believed to have been duly baptized or ordained, although the intention of him who baptized or ordained lies hidden."

But from the agreement now made by all more recent theologians after St. Alphonsus, to practical certitude, which excludes every reasonable and prudent doubt, there is equivalent:

1. An opinion absolutely most probable, which in itself and by force of the reasons upon which it is founded in reality attains the highest grade of probability, although it does not exclude every prudent doubt, but only grave doubt or doubt of some moment:1 for against this there is

opposed only a sentence slenderly or rather doubtfully probable; but in moral matters a little is reckoned as nothing, and slender probability as none.[4], 3

[4] Cf. St. Alphonsus, *Th. M.*, book I, n. 76; book III, n. 562; and Dissertation of the year 1765, n. 8.

Nor does it obstruct that by acting without certitude someone exposes himself to the danger of sinning; for in the case there is not a proximate danger, but almost none and wholly remote, and only of sinning materially. Thus the Theologians teach against the Tutiorists, who for acting licitly always demanded direct and perfect certitude, which doctrine Alexander VIII condemned, namely, prop. 2: *It is not licit to follow an opinion even the most probable among probable ones*; - and against the Laxists, who said that the least probability sufficed, even an opinion doubtfully or slenderly probable, whom Innocent XI condemned, prop. 3: *Generally, when relying upon probability, whether intrinsic or extrinsic, however slender, provided one does not go outside the bounds of probability, we do something, we always act prudently.*

2. Likewise, generally, an opinion much, very, or notably more probable: for then the opposite is only a little, lightly, doubtfully, imprudently, and no longer solidly, gravely, seriously, prudently probable.

Thus they teach against the mitigated Tutiorists, who required at least the most probable opinion; and against the laxer Probabilists, who said that an opinion much or far less, or even almost lightly probable, was sufficient, such as that opinion which says that for satisfying the precept of hearing Mass the presence during the whole time of the sacrifice suffices, the consecration however being omitted, because communion is the more principal part; or even the hearing of two parts, if the consecration and communion do not pertain to the same Mass.

We have said: generally; because in matters of greatest moment men are accustomed to seek greater certitude, such as the sacraments and eternal salvation; - and on the contrary in extreme necessity they are also accustomed to use slender probability: for in extremes, extreme things must be attempted.

3. Likewise, generally, an opinion uniquely but very probable, to which no grave reason is opposed: on account of a reason similar to the preceding case.

For with such probability prudent men are accustomed to direct themselves, unless there is question of matters of greatest moment. Thus right reason judges a penitent to be duly disposed, if no grave reason is opposed.1

1. Practical perfect certitude, namely, excludes every prudent doubt, even slight. Imperfect certitude excludes every grave prudent doubt, or one of some moment; whence someone can prudently doubt: it is more prudent; but he is not bound, because a slight reason ought not to be attended to.

2. Hence several theologians distinguish strict or perfect practical certitude and broader or imperfect practical certitude. Palmieri notes well (*Op. theol. mor.* of Ballerini, I, *de Consc.*, at n. 117): Just as Philosophers rightly distinguish true and strict certitude, which excludes every fear, and an opinion most probable, which is certitude broadly so called or practical certitude, which excludes prudent fear; so Moralists wished to distinguish practical certitude (which they

call strict or perfect), and opinion below this most probable certitude, which therefore does not exclude every prudent fear. Whence according to St. Alphonsus, slender probability is opposed to certitude: "Slender probability does not prevent true certitude from being had to the contrary, understanding this even of moral (practical) certitude strictly so called" (Dissertation of the year 1765); - and doubtful probability is opposed to a most probable opinion. Opinion below practical certitude but most probable is nevertheless equivalent to this and, speaking broadly, is called moral certitude: for this certitude admits several degrees. Cf. St. Alphonsus, *Th. M.*, book I, nn. 40 and 82. - The Probabilists also admit this, of whom one witness, De Lugo, may suffice: "For the sake of clarity we can distinguish two grades of moral (i.e., practical) certitude. The first is the certitude which excludes every prudent fear, and this is proper moral (practical) certitude. The second is certitude less properly so called, which does not exclude every prudent fear, but only prudent (positive) doubt about that object, or a prudent probable judgment about the contrary object," *de Fide*, disp. 1, n. 316. Yet all these can be understood under the one name of certitude broadly so called.

3. St. Alphonsus, *Th. M.*, book I, n. 56.

1. St. Alphonsus, *Th. M.*, book I, nn. 56 and 57, and Dissertation of the year 1762, n. 2. There is a difference between an opinion most probable, and one notably more probable or uniquely probable, because the first is equivalent to certitude considered absolutely and in itself, but the others if they are considered comparatively to the opposite.

81. A conscience broadly or indirectly certain is reduced to an altogether certain conscience. - He who has only a broadly or indirectly certain conscience can form for himself an altogether certain practical judgment from a reflex principle, for example in this way:

"That which, all things having been diligently considered, appears licit to me with certitude broadly so called or indirect certitude, this here and now is altogether certain to be done licitly by me, because in moral matters strict certitude is not possible nor consequently required.

"But, all things having been diligently considered, this appears licit to me with certitude broadly so called or indirect certitude.

"Therefore this here and now is altogether certain to be done licitly by me."

Hence a double ratiocination can be distinguished: the direct, from principles prudently admitted, which is not altogether certain; and the reflex, from reflex principles, which is an altogether certain judgment of conscience. Such a judgment is not explicitly required, but it suffices to make it implicitly.

They object: 1) A reflex principle cannot do more than a direct principle; therefore it does not render conscience certain.

Resp.: I distinguish: A reflex principle cannot do more than a direct principle, as to the truth of the thing, opinion, or sentence, granted; as to the honesty of the action, denied.

2. Thus conscience would be at the same time doubtful and certain.

Resp.: Not precisely the conscience itself would be doubtful and certain, but human reason would be doubtful and certain, yet according to diverse respects: doubtful as to the truth in itself, certain as to the honesty of the action.

3. Probable opinion, even if it is most probable, always knows with fear and doubt; therefore it excludes a certain conscience.

Resp.: I distinguish: it always knows with speculative fear and doubt, granted; with practical fear and doubt, denied.

82. Observation. - Since conscience ought to be certain and true, it is understood in what sense the axiom is to be understood: *Practice differs from speculation.* For although practice differs from merely speculative science, which is occupied only with the truth of the thing, nevertheless it cannot differ from speculation which has practice itself as its object and tends to direct it, as certain priests say under a species of pretext, who are unable to give the reason for their practice, and misuse the said axiom as a cloak of their lack of skill or even of a laxer conscience. For moral science treats of human acts even when considered with all their circumstances; and practice ought to be conformed to this, since it is the measure, exemplar, and rule according to which practice ought to be directed. But those who assert that the principles of moral science are impossible in practice, and that a confessor cannot always follow them, proclaim this absurdity: that conscience is not the application of moral science, that a practical conclusion is given without a practical principle, and a reasonable manner of acting without a reasonable motive.

But the aforesaid prejudice, which always returns in the mind and mouth of certain men, comes from this, that men insufficiently versed in the knowledge and application of moral theology do not rightly apply the principles and thus come to an impossibility. For either they infer the conclusion or solution of a case, which they impose upon theology, from an illegitimate principle which does not contain the conclusion and which therefore is declared impossible in practice; - or the case is not rightly set forth with all its circumstances, and then, as the premise, a principle is posited which does not correspond to the circumstances, and the conclusion will be narrower or laxer and impossible in practice; - or finally, the case with all its circumstances is apprehended, but from the various principles that one is not chosen which corresponds to the case, and again the conclusion can be impossible. But let these bad applications not be attributed to moral science itself.

Nevertheless, for right application in practice, speculative knowledge of moral science does not suffice; there is also need of experience and use, whereby, namely, someone may acquire for himself the art, and the aptitude and facility, of rightly estimating all circumstances and applying precisely those principles which correspond to these. Whence it is far more difficult to reduce principles into practice than to learn them. And if such a sense is attributed to the axiom, according to this it has a certain truth.

Question Two: On the Species of Conscience from the Part of the Subject or Certitude

83. Notions. - By reason of the subject, i.e., on the part of the act, assent, or adhesion to the object, conscience is certain if its judgment adheres firmly to something, doubtful if judgment is suspended, or opinative if it adheres to something not firmly but with fear of the opposite.

Thus certain conscience, as we have already said, is that which with firm assent and without fear of erring judges something in particular to be licit or illicit.

Opinative conscience is that which judges, not firmly but with grave fear of erring, that some action to be placed here and now is licit or illicit.

Doubtful conscience is that which remains suspended and does not give assent, and therefore judges nothing concerning the licitness of an action in particular to be placed here and now: this happens either on account of a defect of grave reasons, and then it is negatively doubtful; or on account of the equality of grave reasons, and then it is positively doubtful. Whence it is not properly conscience, because it is not a judgment, but rather is the absence of conscience; nevertheless it is called conscience reductively, just as privations are reduced to that of which they are privations: in that way omission is called a human act.1

Just as, on the part of the object, judgment is divided into speculative, speculatively practical, and practically practical (I, n. 200), so there is given:

1. Merely speculative doubt concerning the truth of a thing, for example whether Baptism is valid in rose-water.

2. Speculatively or remotely practical doubt concerning the objective and material honesty of an act in general and in the abstract, or concerning something pertaining to it, for example whether Baptism in rose-water is licit; and this is twofold:

a) Doubt of law, which is concerned with law as in the proposed example: whether concerning the existence of a law or obligation, such as rights, offices, and their conditions, causes, force, nature, object, extension, limits, etc.; or concerning the cessation of a law or obligation;

b) Doubt of fact, which is concerned with fact, not indeed in itself (for then it would be merely speculative doubt and in no way would pertain to practice), but insofar as it founds some right or some obligation and thus remotely pertains to law, for example whether someone has made a vow, whether there is no other water besides rose-water.

3. Practically or proximately practical doubt concerning the subjective and formal honesty of an act in particular to be placed here and now, for example whether it is licit here and now to baptize this child in rose-water: this alone is doubt of conscience.[1]

[1] Several say that it is a judgment, expressed or at least tacit, concerning uncertainty, by which we reflexively affirm that our judgment, on account of the equality of reasons, must be suspended. This indeed can happen, while we reflect concerning the state of the intellect; but doubtful conscience does not necessarily include such a reflex judgment by which we affirm that we doubt. Besides, this judgment is not conscience, because it is not a judgment definitively applying science to a particular act or fact.

Only a certain conscience is the rule of acting prudently; hence it is asked how, by force of an indirect principle, a sufficiently certain conscience may be formed so that it may be a rule of acting prudently, and how conscience negatively doubtful - positively doubtful - and opinative may be laid aside and reformed.

1. Several authors, distinguishing speculatively doubtful conscience and practically doubtful conscience, say that with the former we act licitly, but not so with the latter. But the manner of speaking, although from the seventeenth century onward it is commonly employed, even by St. Alphonsus (*Th. M.*, book I, nn. 20, 21, 22, 25), nevertheless is not to be approved. For conscience essentially is an act, namely, a practically practical judgment; but it is impossible that the same act or the same judgment be at once practical and speculative, certain and uncertain; whence there is not given conscience, i.e., an act of certain practical judgment, which is speculative or even doubtful. But it can happen that a man by a diverse act or judgment speculatively doubts, and is practically certain, i.e., is occupied in speculative doubt, and has a certain practical conscience. But that doubt, like the speculative judgment, is not a doubt or judgment of conscience, but precedes this.

Article I: On Negatively Doubtful Conscience

84. Thesis. Negative doubt, as being empty and founded upon no reason or only a slight reason, does not impede prudential certitude, but is ineffective for inducing a new obligation or for extinguishing it, and consequently is not to be attended to, but is to be held as nothing and despised; which is expressed by the axiom: *The condition of the possessor is better.*

It is proved: He would act imprudently who, on account of slight or no reasons, would think himself held to placing or omitting an act. Whence one must act as if the doubt had not arisen, which can be expressed by the axiom: *In doubt the condition of the possessor is better*, whether of law or of liberty; namely, one must stand for that part which before the doubt was practically certain.

Law, namely, and liberty can be considered as two possessors of right: law possesses the force of obliging, liberty the faculty of acting according to one's pleasure and of disposing of oneself and of one's acts, which is true dominion. But that possesses which is prior. Whence when a law or obligation is doubtful, the same liberty remains which man previously possesses; on the contrary, if a law or obligation is certain, while liberation from this law or obligation is altogether doubtful, the same law remains. Possession, namely, is the antecedent certain right of liberty or of law.[1]

[1] Cf. St. Alphonsus, *Th. M.*, book I, nn. 26 and 27.

85. Formation of certain conscience in negative doubt. - Negatively doubtful conscience can be laid aside by force of a reflex principle by which an indirectly certain conscience is formed (at least implicitly), for example in this way:

"That which, all things having been diligently considered, certainly appears prescribed, certainly must be done; that which in no way appears prescribed, certainly need not be done.

"But this action in no way appears prescribed, for no serious reason indicates that it must be done; on the contrary, that one appears prescribed, because no serious reason indicates that the law by which it is prescribed has been taken away.

"Therefore this action here and now certainly can be omitted, that other one certainly must be placed."

86. The axiom: "The condition of the possessor is better" is a general principle, so that it is valid for solving all negative doubts, and therefore it is more determined and expressed by more

particular formulas according as it is applied to various doubts of law or fact. These particular forms are called subsidiary principles by which possession is more discerned. Hence:

1. In negative doubt of law: a) If slight or no reason proves that a law has been passed by legitimate authority, or has been edited or promulgated, liberty remains.

b) Similarly, if slight or no reason proves that the law extends to this case or to such subjects, commands under mortal sin, is strictly preceptive rather than merely penal, or establishes penalties to be incurred in fact. This is enunciated under the more particular form: *In doubt favors are to be amplified, and odious things restricted*; or: *In obscure matters, the minimum is to be held.*

c) On the contrary, if slight or no reason proves that a law has been revoked or abrogated, - or has ceased, - or that dispensation has been given in it, or that someone has been excused from it, the law remains.[2]

[2] Cf. St. Alphonsus, *Th. M.*, book I, n. 27.

2. In negative doubt of fact, since it is often difficult to understand which part possesses, the principle *In doubt the condition of the possessor is better* is enunciated under a more determined form:

a) In a general way: *In doubt one must stand for that for which presumption stands; but presumption stands for the part which is not bound to prove the fact*;[3] - in other words: *In doubt one must judge from things ordinarily occurring*, for the exception must be proved. Thus a child of seven years is presumed to have the use of reason; a superior is presumed not to command illicit things, nor to exceed his power; a God-fearing man is presumed not to have consented to wicked delight.

[3] Ibid., n. 26.

b) Under a more particular form the same principle is enunciated for the existence of an act or fact: *A fact is not presumed, but must be proved.* Hence in doubt of a fact founding an obligation, liberty remains, as if slight or no reason proves that I emitted a vow or oath or by it obligated myself to this, that I committed mortal sin, that harm was inflicted, that the time for an obligation to begin is present, for example that Friday has begun, that someone has reached the age of 7 or 21. On the contrary, in doubt of a fact supposing a law, and exempting from it, the law remains, as if slight or no reason proves that I recited the hours, was confessed, satisfied a vow or oath, paid a debt, that the time for the obligation to end is present, for example that Friday has passed, or that I have reached the age of 60.[4]

[4] Cf. St. Alphonsus, *Th. M.*, book I, n. 32.

c) Likewise for the condition or value of an act or fact: *In doubt one must stand for the value of the act*, or: *What has been done is judged rightly done*, for example, if slight or no reason proves that I did not have the intention and attention required in Mass or in the hours, that I possess this thing unjustly, that Baptism conferred was invalid, that the wine of the sacrifice is not genuine, that the confession was not integral, etc.[5]

[5] Ibid., n. 26.

87. Observation. - Authors do not always agree for which side possession stands, for example, in doubt whether midnight has passed, whether liberty of eating before communion possesses, or the law prescribing the natural fast; - whether a debt must be paid if even the creditor doubts about payment; - whether a father can invalidate the vow of a son in doubt whether it was emitted before or after puberty or majority; etc.[6] If their reasons are grave, the question is reduced to positive doubt, and is to be solved in the same way; of which we must now speak.

[6] Ibid., nn. 38-39.

Article II: On Positively Doubtful Conscience

88. Most certain principles placed beyond all controversy. - Positive doubt, which, namely, is founded upon grave reasons morally equal, i.e., equal or almost equal on both sides, is serious and therefore impedes direct practical certitude, and consequently is not to be neglected but attended to. But conscience ought to be certain (n. 78). Therefore it is never licit, but always illicit, to act with a positive practical doubt concerning the honesty of the action to be placed here and now, or with a positively doubtful conscience. This, namely, is not a rule of acting prudently.

But from positive speculatively practical doubt there follows per se and ordinarily practically practical doubt or doubtful conscience: for he who doubts concerning the honesty of an action in general, per se and ordinarily doubts concerning the honesty of the same action in particular. Hence there follows the obligation of laying aside the said doubt, and

1. of acquiring certitude concerning the honesty of the action, and indeed direct certitude if this is possible: for he who is held to observing laws is held to knowing and inquiring into them; otherwise he would be in ignorance that is vincible and culpable;

2. but if he cannot have direct certitude, he is held, before he acts, to acquire indirect certitude and to form conscience by force of an indirect or reflex principle;[1]

[1] According to one of the systems of probability: Probabiliorism, Equiprobabilism, Probabilism, as we shall see later.

3. but if he also cannot have indirect certitude, he is held to act more safely, namely, to abstain from the action which is doubtfully honest; and if he must altogether act, he must do what is safer and what removes more from the danger of sinning even materially. Here the principle is valid: *In practical doubts the safer way must be chosen.*

89. Thesis I. In all practically practical doubts the principle must always be applied: In doubts one must act more safely.

Namely, it is to be applied a) if the one doubting does not wish to inquire into the truth; or b) if the means of arriving at certitude is lacking, for example if there is no time for examining or approaching a learned man, or if the indirect principle is not known, etc.

It is proved: In these cases and doubts the formation of a certain conscience concerning the honesty of the action is impossible, and therefore man is held to do the safer thing, i.e., to abstain from the action about whose honesty he doubts, and if he must altogether act, he is held to choose what removes more the danger of sinning; - for otherwise he would voluntarily cast himself into the

proximate danger of sinning, and would will to place the action whether it is honest or is not, which is sinful (n. 78).

Therefore, in the case of practically practical doubt or doubtful conscience, the principle is valid: *In doubts - in which we cannot arrive at certain conscience - the safer way must be chosen.*

90. Thesis II. Even in certain speculatively practical doubts of fact, sometimes one must act more safely, as often as there is a certain and absolute obligation of obtaining a determinate end or effect, and there is doubt not only about the honesty, but also about the value and conditions of the act, or about the necessity of a means so required for the end that without it perhaps the end would not otherwise be obtained. Whence: *In doubts about the validity of an act to be placed, one must act more safely*, or by that whereby, with perfect security, the end to be obtained is attained.

Thus as often as a good effect (for example, salvation, health, a sacrament) is absolutely to be obtained, or an evil one (damnation, death, unjust harm) is absolutely to be avoided, and there is doubt not only about the honesty, but also about the necessity or efficacy of the fact or means required for this, or about the value of the act which one is altogether bound to procure, or about one's own or another's harm which one is altogether bound to impede. In other words, as often as a determinate effect is to be obtained or avoided, which the use of a means doubtfully or probably inept would bring into danger, so that the effect could fail to be obtained or avoided.

It is proved: 1) He who is absolutely and certainly held to obtain a good end is also held to the means by which the end is certainly (or more certainly) obtained, and he who must absolutely beware of evil must also beware of an action by which the danger of evil is brought in. But by the safer part alone the end can be certainly (or more certainly) obtained: for, from the hypothesis, a means doubtfully or only probably apt brings into peril the end which someone is held absolutely to attain. Therefore it is illicit to use a means doubtfully or only probably apt; rather, fitter means, and the same safer ones, are to be chosen.

2. The foundation is that, if the honesty of an action depends upon reason and conscience, not so its value and efficacy or the aversion of harm; for our judgment, doubt, persuasion, or system, is not able to change the nature of things and consequently to render a null act valid, or to bring it about that what is required for the validity of an act is not required, or to cause the due effect to arise from some action, or to prevent harm from following from it. Thus doubt or an opinion, however probable, cannot effect that what is not a sacrament should be a sacrament, or that what is rather poison should be medicine; it cannot remove the danger of not obtaining the intended end or of incurring harm which someone fears. Therefore to expose oneself to such danger, by following a doubtful or probable sentence, is not licit.

"We say," says St. Alphonsus, *Th. M.*, book I, n. 42, "that it is never licit to use a probable opinion with probability of fact, with danger of harm to another or to oneself, because probability of this kind by no means takes away the danger of harm: for if that opinion is false, the harm of the neighbor or of the one acting will not be avoided; for if, for example, Baptism conferred with saliva is really null, so that the infant remains without Baptism, probability in the opposite direction cannot effect that it be valid."

3. For in these cases there is no practical doubt or probability present for the licitness of the less safe part, and therefore the formation of a certain conscience concerning the honesty of an action doubtfully valid or harmful is impossible, because the reflex judgment of conscience (or system) is incapable of taking away positive doubt concerning the value and efficacy of the means and of removing the danger. And therefore there is a certain obligation of placing the action which will certainly obtain the effect, and of abstaining from the action which perhaps inflicts harm; - and if that certitude cannot be had concerning the obtaining of the effect, there is a certain obligation of employing at least fitter and safer means for pursuing the end or averting harm. Otherwise the one acting would voluntarily expose himself to the danger of not attaining the said end and of inflicting harm, while nevertheless, as much as he can, he ought to obtain the end or avert the evil.

This obligation is certain, not indeed directly by force of the particular law which is doubtful, but indirectly

a) by force of a certain higher law (of charity, religion, justice) which imposes this end as to be absolutely obtained;

b) or by force of a special obligation arisen either from a vow, for example if someone has obligated himself to doing the safer thing, or from positive law, for example a priest doubting whether he was the efficacious cause of a homicide cannot exercise sacred order.

Thus, after the propositions of the laxer probabilists were condemned by Alexander VII and Innocent XI, all now teach.

91. The higher law which imposes the safer part is:

A. First, the law of charity, which sometimes obliges absolutely to procuring certainly one's own or another's good, or to avoiding certainly spiritual or temporal harm; and then it is certain that we cannot choose the less safe part (even if it is more probable), but we are bound to choose the more secure and safer part, for example in the matter of faith and in things necessary for salvation, according to the axiom: *No security is excessive where eternity is imperiled.*

Hence we are held a) to inquire concerning the true religion and faith until we arrive at certitude, and we are not excused by a less probable opinion (prop. 4 condemned by Innocent XI),2 nor is faith in only probable knowledge (prop. 21);3 - b) explicitly to believe and to teach others the mysteries of the Most Holy Trinity and Incarnation, although perhaps they are not necessary to be believed by necessity of means (prop. 64);4 - c) again to receive or confer (under condition) Baptism or another necessary sacrament, although perhaps it has already been administered; - d) to impose the safer opinion and not to teach the less safe, if, with attention to the common or special fragility of the one acting, it is certainly joined with the proximate danger of sinning formally, as can easily happen in the matter of lust and vengeance.

B. Similarly, the law of religion obliges absolutely to reverence toward sacred things, especially the sacraments, and therefore the minister or recipient cannot expose the sacrament to danger of nullity; whence it is certain that he cannot choose the less safe part when there is question of the value of a sacrament (even if it is more probable), but he is held to make or receive a certainly valid sacrament (Innocent XI, prop. 2),5 or to abstain from it, for example if the matter or form is doubtful, or a

condition for valid reception is doubtful; similarly, if the ordination of a priest is doubtful, he cannot celebrate.

An exception is made a) if there is a case of grave necessity and a certainly valid sacrament cannot be had: then let it be administered under condition, because then the law of charity prevails, which urges more than religion; - b) if the doubt does not render the sacrament doubtfully valid, because the Church supplies the defect, namely: if a priest absolves with probable jurisdiction, if persons enter marriage with a probable impediment of ecclesiastical law, if a priest has probable delegation for assisting at marriage. But the Church cannot supply those things which are of natural or divine law.

C. Likewise the law of justice. And indeed:

1. Commutative justice obliges absolutely and strictly

a) to wholly guarding against certainly unjust harm1 to the neighbor.

Whence someone is certainly held to abstain from an action which can be harmful for a third party and violative of a certain right, although perhaps it does not inflict harm, for example from the divulging of a secret or crime even if it is probably already public.

b) to procuring the good from office or contract.

Thus a physician is held to employ safer remedies of health, a pastor to indicate the more salutary way, an advocate to bring better arguments, a notary better counsels, a priest from a stipend to apply a certainly valid Mass.

2. Distributive justice absolutely obliges the judge

a) in civil causes, as to the fact applying the law, to await the proof of the plaintiff, according to the axiom: *proof lies upon the plaintiff*, and consequently to leave the possessed thing to the possessor in good faith, unless it is established that he possesses unjustly.

For the common good requires that dominions be stable and secure, and that lawsuits not be multiplied; and therefore possession is judged a certain title, and the condition of the possessor is better until the contrary is proved.

b) as to law, where there are diverse interpretations of law, for example for a thing not yet possessed, he is held to render sentence in favor of him for whom the stronger reason stands, because he ought to distribute right according to the weights of the cause (Innocent XI, prop. 2 condemned2).

And if the reason on each side is equal, let him counsel an amicable settlement or propose division of the thing in controversy (prop. 26 condemned by Alexander VII1), unless however positive law commands him to render sentence, in which case he will strive to form his own opinion.

c) but in criminal causes he is held not to condemn anyone unless he is certainly guilty.

For man possesses life, liberty, just reputation, etc., from which he is not to be deprived unless he is certainly guilty: for by the absolution of a guilty man the republic is injured less than by the condemnation of an innocent man. Hence the axiom: *In doubt one must favor the accused.*

3. Legal justice, by reason of the common good and of order to be preserved and scandal to be avoided, certainly obliges a subject to obey a superior (even a judge) commanding a thing which perhaps is illicit, or useless for the common good, or exceeding the limits of his power.

For presumption stands for the superior, and right order forbids subjects to deny obedience unless it certainly appears that he has abused his power, both because, says Suarez, *de Leg.*, book I, c. 9, n. 11, he has a higher right and possesses it, and also because he can have universal reasons hidden from subjects, and also because otherwise subjects would assume too great a license of not obeying laws, since they can scarcely be so just that they cannot be brought into doubt by some persons through apparent reasons.2

1. Cf. St. Alphonsus, *Th. M.*, book I, nn. 42-52 and 31.

2. "An unbeliever who does not believe, led by a less probable opinion, will be excused from unbelief."

3. "The assent of supernatural faith useful for salvation stands with only probable knowledge of revelation, indeed with fear by which someone fears that God has not spoken."

4. "A man is capable of absolution... even if... he does not know the mystery of the Most Holy Trinity and of the Incarnation of Our Lord Jesus Christ." Cf. Holy Office, 3 May 1703.

5. "It is not illicit in conferring sacraments to follow a probable opinion concerning the value of the sacrament, the safer one being left aside."

1. Unjust, that is, unless a proportionately grave reason excuses, namely, unless our utility or that of a third party prevails over the harm to be guarded against.

2. "I probably think that a judge can judge according to an opinion even less probable."

1. "When litigants have equally probable opinions on their side, the judge can receive money for rendering sentence in favor of one rather than the other."

2. Some, especially among the older authors, place a restriction: unless the precept is too difficult, or brings grave harm. But this is to be understood thus, if from epikeia the law can then be presumed to cease. This can scarcely happen in present-day civil law.

92. Thesis III. In speculatively practical doubts which are not about the validity of the act and the necessity of the means, but about the objective honesty alone of the action and the necessity of the precept, man can, in a positive doubt about the existence of a law remaining after diligent examination, form for himself an indirectly certain conscience concerning the honesty of the action, by force of the reflex principle: An uncertain law cannot impose an obligation, and thus also do what seems less safe.

Thus, after St. Alphonsus, whose doctrine the Church declared safe,1 which at least seems to be understood concerning the fundamental thesis of his system, nearly all present-day theologians teach, against the Tutiorists and Probabiliorists, who held that what is safer must be done, either

always, or unless it is more probable that the law does not exist. For seeing that in doubt there was not a sufficient reason for preferring one part, they said that he acts imprudently and exposes himself to the danger of sinning who arbitrarily chooses the less safe part.

1. The principle is proved: *A doubtful or uncertain law does not oblige.* Law is a rule and bond imposed upon the will. But a rule cannot in fact direct, or a bond bind the will, unless it is applied and imposed upon it. But it is applied and imposed by means of reason: for law is an ordination of reason; and indeed it is applied through science, i.e., certain knowledge of the law. Therefore law, in order to bind in fact, must become known through certain knowledge. The minor is proved: for doubt and mere opinion do not determine the intellect to one thing and consequently do not bind it to one part, nor consequently the will; only science or certain knowledge does this. Thus conformably to the principles of St. Thomas, Q. D. *de Ver.* 17, a. 3.2

In other words: An uncertain law cannot directly by its own force impose a certain obligation: for obligation is the effect of law; but the effect cannot surpass the power of the cause. But an obligation objectively and speculatively uncertain is subjectively and practically none, for:

a) Obligation is a moral necessity by which we are absolutely held to act in some way in order to the ultimate end; but an uncertain necessity is not a necessity for us, because we are not determined by it nor absolutely held; therefore.

b) As to this, the psychological state of one doubting is the same as if the law did not exist: for a man, in the case of doubt, does not feel himself bound, is not conscious of some tie or obligating bond.

c) The condition for a law to oblige subjectively is that it be intimated and made known to us from promulgation; when the law is uncertain, the law itself does not become known but only its doubt or uncertainty; therefore it does not oblige. Cf. I-II, q. 90, a. 4.

The adversaries object: the principle is to be understood of a law doubtfully promulgated; but positive law is almost always promulgated, and natural law is certainly promulgated in each man through reason; therefore generally the law is certain, and then it precedes exemption from the law and possesses against liberty until the exemption is proved.

Resp. Laws are promulgated and therefore oblige habitually and, as it were, in first act; but in order that they actually and in fact bind, actual cognition is required, which is as it were promulgation in second act; but if then there is doubt concerning the law, it is doubtful as to this case, nor is the law promulgated in second act, but only its doubt is promulgated. Each must be certain, namely, both the promulgation of the law and the knowledge of it: for promulgation must be certain only because the law must be able to be known certainly.1 - Moreover, it is not proved that law possesses against moral liberty, but rather liberty possesses against law; for although in reality they are understood correlatively, nevertheless liberty logically precedes law, since law is a restriction of liberty according to that saying of Eccli. XV, 14, 15: "God from the beginning constituted man and left him in the hand of his own counsel; He added His commandments and precepts."1

"That is said to be licit which is prohibited by no law," says St. Thomas, in IV Sent., d. 15, q. 2, a. 4, ad 2. On the contrary, the Tutiorists and Probabiliorists: Nothing is licit except that which is morally established to have been conceded by God.

2. The thesis is proved: A practically certain conscience is the legitimate rule of acting. But man, in a positive doubt about the existence of a law, can form for himself a practically certain conscience concerning the honesty of the action, even if this is less safe. Therefore he can legitimately place the less safe action. The minor is proved: Positive doubt is serious and therefore renders the existence of the law practically doubtful, so that we cannot affirm more than deny that the law exists. But it is certain that a law, concerning whose existence, all things having been diligently considered, there exists grave doubt, does not oblige in second act.

This having been posited, a certain conscience can be formed thus:

"That which, all things having been diligently considered, is not prohibited, is licit.

"But this action here and now to be placed certainly is not prohibited to me: for it is certain that a law, all things having been diligently considered, uncertain, does not oblige; but in the case, all things having been diligently considered, the law is uncertain; therefore it is certain that in the case it does not oblige me.

"Whence this action here and now to be placed certainly is licit."

Such a ratiocination cannot be made except by him who has diligently considered the matter, because otherwise he could not sincerely say: in the case the law is uncertain.

The adversaries object that an obligation is present by force of a higher law or indirect principle prohibiting us from exposing ourselves to the danger of sinning: He who exposes himself to the danger of sinning sins; but he who does that which perhaps seems dishonorable exposes himself to the danger of sinning; therefore he sins.

Resp. to the major: He who exposes himself to the danger of sinning subjectively and formally, sins, granted; he who exposes himself to the danger of sinning objectively and materially, I subdistinguish: if the danger arises from negligence in inquiry, granted; if it exists even after diligent inquiry, denied; for this latter is not proved; indeed, if it were true, we would always have to have perfect certitude, which is impossible, and since many practical doubts occur, this would especially expose one to the danger of sinning formally.[2]

[2] Objective promulgation, namely, must pass into subjective promulgation so that the same law may oblige in second act. By the mere will of prescribing, God does not oblige formally: that is impossible; it is necessary that He communicate knowledge of this will. Yet cognition is not promulgation itself, but the application of it to man which comes from promulgation. Thus St. Thomas, I-II, q. 90, a. 4: "Law is imposed upon others by way of rule and measure. But rule and measure are imposed by this, that they are applied to those things which are ruled and measured. Whence, in order that law obtain the force of obliging, which is proper to law, it is necessary that it be applied to men, who must be ruled according to it. But such application is made by this, that it is brought to their knowledge from the promulgation itself." Hence knowledge of objective promulgation, or the application of law, is as if another promulgation, namely subjective; and by several it is simply called promulgation, even by St. Alphonsus, who writes concerning it, *Th. M.*, book I, nn. 63-66: "We say that no one is held to observing any law unless that law is manifested to someone as certain. For, once it has been posited, as we have seen, that law necessarily must be promulgated in order that it oblige, if a doubtful law is promulgated, only the doubt, opinion, or question whether there is a law prohibiting the action will be promulgated, but the law itself will not be promulgated... If someone continues to ask why a doubtful law does not oblige, we shall answer by this succinct argument: 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 wished to deny this argument would have to prove either that even a non-

promulgated law obliges, or that a doubtful law is truly promulgated... but he will never prove either of these propositions in eternity."

To the minor: He who does that which perhaps seems dishonorable, if he were acting in doubt, would expose himself to the danger of sinning, granted; if he resolves the doubt by saying: although the action perhaps is dishonorable in itself, nevertheless it is certainly licit for me to place it, he exposes himself to the danger of sinning, I subdistinguish: of sinning objectively and materially, granted; of sinning subjectively and formally, denied.

I distinguish the consequence: therefore he sins, if he operates in doubt or if he has neglected to inquire about the existence of the law, granted; otherwise, denied.

1. "He wrote very many books filled with sacred learning and piety, whether, amid the tangled opinions of Theologians, both laxer and more rigid, for fortifying a safe way by which the directors of the souls of Christ's faithful could walk with unoffending foot..." Apostolic Letters, 7 July 1871, on the conferral of the title Doctor of the Universal Church. - That this is true also in the present times is established from the brief of Pius X, 12 June 1905, to Fr. Gaude, editor of the works of St. Alphonsus, "whom all can safely follow in moral doctrines"; and from the brief of 2 May 1906 to Fr. Aertnijs, disciple of St. Alphonsus, "whom every student of this doctrine may always run through with unoffending foot." It is indeed to be regretted that many priests almost ignore St. Alphonsus, and leave aside his most wise works to consult some recent manual whatever; indeed also in several Academies and Seminaries, students almost never hear the name of the Holy Doctor, except to refute one or another of his sentences.

2. Behold the words of St. Thomas: "The command of someone governing has itself for binding in voluntary things in that mode of binding which can befall the will (namely, of moral obligation), as bodily action has itself for binding bodily things by necessity of coercion. But the bodily action of an agent never induces necessity in another thing except by contact of the coercion itself with the thing in which it acts. Whence neither from the command of some king or lord is someone bound, unless the command reaches the one to whom it is commanded: but it reaches him through science. Whence no one is bound by any precept except through science of the precept." Science in the present place in St. Thomas is not taken in the strict philosophical sense for evident cognition deduced from evident principles; but in the broad sense, for knowledge (as is clear from the context) or any certain cognition; for no one is said to know something, to have science, to have knowledge, who is not at least morally certain.

We do not say, in the cited words, that St. Thomas touched upon our question, or even demonstrated the adage: an uncertain law does not oblige; for he does not treat of the case in which there is knowledge of doubt concerning the existence of a precept, but of the case in which there is no knowledge of the precept. Nevertheless the general principle from which St. Thomas argues is also valid in the case of a doubtful precept, because knowledge of doubt does not reach the mind in such a way that it binds it. Namely, the principle: no one is bound except by means of science of the precept, not only shows the necessity of knowledge of the law but also the insufficiency of knowledge of doubt, because cognition of doubt does not bind the human mind. Whence elsewhere he grants the saying of Aristotle, *Metaph.* X, c. 3: "a measure must be most certain" (I-II, q. 19, a. 3, 3; q. 96, a. 1, 3).

1. Cf. St. Alphonsus, *Th. M.*, book I, n. 77.

93. Thesis IV. Even in a doubt about the cessation or fulfillment of a law remaining after diligent examination, it seems that man can acquire a certain conscience concerning the honesty of the action, by force of the principle: A doubtful law does not oblige.

Thus, against St. Alphonsus and the more recent Equiprobabilists, with certain others,2 nearly all Probabilists teach, departing from St. Ligorio in this secondary thesis.3

It is proved: Unlike negative doubt, positive doubt is serious; and therefore if grave reasons are present for thinking that the law no longer exists or that it has been fulfilled, then it becomes actually uncertain and practically doubtful at least as to this case, and consequently it is certain that it no longer obliges me in the present case. Whence a certain conscience can be formed in the same way as in the preceding thesis.

Yet they object: The condition of the possessor is better. But the law is certain, the cessation or fulfillment doubtful. Therefore the law possesses the right that it be fulfilled, and is to be fulfilled. In other words, a certain law cannot be satisfied by doubtful fulfillment.

Resp.: 1) The principle *The condition of the possessor is better*, according to many, is not valid concerning positive doubt except in the matter of justice, where there is true possession in the proper sense (n. 91), but in other matters it is valid only concerning negative doubt (n. 84); at least the contrary is not proved.

2. Granted that the principle is valid in every matter, I reply: The law is no longer certain, and consequently possession itself becomes doubtful. For from the fact that before the doubt arose there was a certain obligation, it does not follow that the obligation remains. Thus, for example, it is ridiculous to say that we must presume that we have not fulfilled because previously we were certainly held to fulfill. Every obligation, namely, must be proved, because it is a restriction of liberty; for this it is not sufficient to prove the prior existence of the law, but its actual obligation.[3]

[3] Cf. Prummer, *Th. M.*, I, n. 346, 1; and Vermeersch, *Th. M.*, I, n. 360.

3. Hence we do not say: an uncertain law is satisfied by doubtful fulfillment; but: the law is no longer certain, and consequently it need not be satisfied.

94. Corollaries. - 1. Although to follow Probabiliorism in doubt is safer, nevertheless it is simply safe, in a case of doubt, to act in the manner of the Equiprobabilists and Probabilists, because it certainly removes the danger of sinning formally.

2. For we are not always bound to act altogether more safely, which absolutely removes every danger of sinning, but it suffices that we act safely, so that we guard against that which is not safe, i.e., that which does not sufficiently remove the danger of sin or harm. Namely, nothing prevents that which is less safe (with respect to material sin) from now being simply and sufficiently safe (with respect to formal sin), because it removes every danger of formal sin.

3. Indeed Probabiliorism seems to suppose the principle: an uncertain law does not oblige. For it establishes that it is licit to follow the more probable opinion, the less probable one for the law being left aside. Now this rule cannot be certainly proved except because the less probable law, as being uncertain, does not oblige. But this almost equally proves the principle of the Equiprobabilists and Probabilists, which nevertheless the Probabiliorists reject.[4]

[4] Cf. St. Alphonsus, *Th. M.*, book I, n. 82.

4. In the case in which an end is not imposed, but in which someone absolutely wills to attain it, he also must, in order to act prudently, employ certain or safer means by which the end is certainly obtained, for example if someone wills to gain an indulgence or to know the truth. For this reason it is rather idle and imprudent, in the time of a jubilee, to indicate to the faithful several probable modes by which perhaps they can gain it; because by employing such modes they incur the danger of not gaining it.

5. Some falsely attack the difference between necessity of means and necessity of precept, saying that every law is a necessary means to the end. For one thing is a means only necessary because prescribed; another thing is a means necessary of itself and prescribed because it is a means.

6. What certain more recent authors say does not please:[5] that one must act more safely in doubts which regard the truth (or value) of the thing according to itself, which is taken according to the notion of commensuration or debt toward another, concerning which is the cardinal virtue of Justice; but that one need not act more safely, and even the probable less safe may be done, in doubts which express order only to the one acting, and are about those things which are taken according to commensuration to the one acting, or about the dispositions alone of the one acting, concerning which are Fortitude and Temperance with the annexed virtues. In other words, in operations of the will toward another one must act more safely; but, on the contrary, in the passions or affections of the one acting, thus applying to the present question St. Thomas's doctrine on the division of the moral virtues.2 - But a) one must not act more safely in all things which express order to another, but only in the matter of justice properly so called, and in acts of religion which are concerned with the validity of a sacrament; but not in other acts of religion or in other virtues annexed to justice; b) even in justice properly so called, one must not act more safely in doubts of law, when the right of another is uncertain, but only in doubts of fact, when the right of another is certain; c) outside the matter of justice, for example from charity, sometimes one must also act more safely, even in those things which regard only the one acting, for example in doubts which concern things necessary by necessity of means for salvation, and in those which would expose one to a doubtful or probable danger of sinning formally.

[5] Recent Equiprobabilists say that the principle *The condition of the possessor is better* is primary and most general; but that the principle *A doubtful law does not oblige* is secondary, derived from the primary principle and consequently to be limited by it. - Yet this does not seem to be admitted. For the principle *a doubtful law does not oblige* admits no exceptions; even in the case in which, on account of an end to be obtained absolutely, one must act more safely, the obligation arises not from the doubtful particular law, but from the higher law which then urges certainly. On the contrary, the principle *The condition of the possessor is better* seems rather to be restricted to the matter of justice or to doubts of fact. St. Alphonsus spoke in diverse ways on

this point. In *Confess. diretto*, c. 1, n. 11, he assigns the first place to the principle of possession, and seems to signify the same in *Hom. apost.*, tr. 1, c. 2, n. 14; but in the final redaction of *Th. M.*, book I, n. 26, he has these words: "Of these (reflex) principles, the most principal is that one, that a doubtful law cannot induce a certain obligation... But from this first principle, that second principle is formed: The condition of the possessor is better." Since, however, this text is later and is found in a strictly theological work, it must be held as stronger and is presumed better to express the definitive mind of the Holy Doctor.

Therefore one must not depart from the received distinction between necessity of means and necessity of precept, validity of an act for the end and mere honesty (n. 90).

2. Certain pure Probabilists also hold this, among whom d'Annibale, *Summula Theol. Mor.*, I, n. 244.

3. The thesis is secondary, because it does not treat of the principle, but only of the application of the principle to certain cases, and because, as the Mechlin theologians say, *Th. Mor. gen.*, ed. 3, n. 190, q. 6: "Here indeed the distance is real, yet not so great. For 1) practically, equiprobabilists rarely invoke the principle of possession in favor of law: namely, in doubt or probability of fact alone, not of law; for they admit that law is satisfied through probable fulfillment by probability of law; and thus one who reads the hours according to that mode which probably only suffices is not held to read them again: the reason is that the law, insofar as it requires more, is doubtful, but a doubtful law does not oblige (cf. St. Alph., book I, nn. 97, 185; book IV, nn. 112, 700; *H.A.*, tr. 15, n. 34). Moreover, probability of fact will be present more rarely: for if there is doubt about the very fact of fulfillment, often either there will be only a slight reason for doubting and therefore one to be spurned, or there will be such probability of fact that it reaches moral certitude. Therefore there remain those cases in which, in doubt about the cessation of a law, there is true probability of fact. Now 2) several principles are given by whose help, according to all, liberty is aided even then. Thus the equiprobabilists, with St. Alphonsus as guide, book VI, n. 477, resolve that one doubting whether he omitted a mortal sin is not held to confess it, if he was diligent in confessing his sins; but if he is accustomed to be negligent, scarcely, even according to the pure probabilists, because of the contrary presumption, will the doubt of confession made rise to true probability. Thus also another principle often solves the doubt: 'In a conflict of laws the higher law prevails'; whence, in doubt whether the recitation of the office, hearing Mass, or observance of the fast, to which the law certainly obliges, will be harmful to health, you are held to nothing; because the natural law or the right of preserving health prevails (St. Alph., book V, n. 154). Other principles also can come into use, for example, 'A way is not to be opened to scruples'; 'Positive laws do not oblige with grave inconvenience'; for these are frequently to be feared, if we oblige someone to fulfill a precept which he has already probably satisfied (St. Alph., book V, n. 177); and so on." Cf. also de Caigny, *De Gemino Probabilismo licito*, pp. 109-115.

1. Thus Beaudoin, Sertillanges and Dumas.

2. I-II, q. 70, a. 2; II-II, q. 57, a. 1; q. 58, a. 10.

Article III: On Opinative or Probable Conscience

95. Notions and certain principles placed outside controversy. - Opinative or probable conscience, properly, is that which, on account of reasons absolutely grave and relatively graver, judges, although not firmly but with grave fear of the opposite, that some action here and now to be placed is licit or illicit. It can arise either because the conclusion is deduced by means of an uncertain but probable principle, or because the application of a certain principle to this particular case is uncertain, but only probable. In either case a certain conscience is lacking.

Such a conscience, of itself, is not the rule of acting prudently, because it is not a certain conscience; and therefore it must be laid aside either by further inquiry and the acquisition of direct certitude, or, if that cannot be had by moral diligence, by the acquisition of indirect certitude by force of a reflex principle. And indeed:

1. in practically practical probabilities, if in the given circumstances a practically certain conscience cannot in any way be had, man is held to choose the part of the law and to do what is safer, even if the law more probably does not exist, lest, namely, he expose himself to the danger of sinning, as was said in n. 89;

2. likewise in speculatively practical probabilities concerning the validity of an act, if there is question of an end absolutely to be obtained and of the value of an act perhaps necessary for the imposed end, man is held to do what is safer, lest he incur the danger of not obtaining the end, according to what was said in n. 90;

3. on the contrary, in speculatively practical probabilities concerning the mere honesty of an action, a certain conscience must be formed by force of some reflex principle. But concerning the reflex principle to be employed moralists do not agree altogether perfectly, since they dispute whether the less safe can be chosen even if it is more probable that the obligation is present.

96. Thesis. In the state of a true and strictly so-called speculatively practical opinion concerning the mere honesty and dishonesty of an action, remaining after diligent examination, man must, before he acts, form a practically certain conscience by force of a reflex principle; and this is different in the different opinions of theologians. According to the Probabilists, he can always do this from the principle: *An uncertain law does not oblige*, and so licitly do that which is less safe, even if it is more probable that the obligation exists or has not ceased; unless, however, it is very notably more probable, because then the law is practically certain (as was said in n. 80). According to the Probabiliorists and Equiprobabilists, not always; for if the law is certainly more probable, it must be observed, since it is now, as it were, practically certain, according to the principle: *In uncertainties, the more truthlike is to be done.*

It is proved: 1. Man must, before he acts, form for himself a certain conscience from a reflex principle, because this alone is the rule of acting (n. 78), and in the case it cannot be had except indirectly from a reflex principle.

2. He must act more safely and observe the law in the case in which it is very notably more probable, because then the law is equivalently or, as it were, practically certain, and the

principle is valid: *The more truthlike is to be done*, as all now admit (n. 80).

3. On the contrary, he can do the less safe thing if liberty is more probable, from the principle: *An uncertain law does not oblige*, because in the case the law is more than strictly doubtful; in this all now agree.

4. One point remains controverted, namely, if the law is simply but certainly more probable, whether the principle *An uncertain law does not oblige* can be employed, or that other one must be employed: *In doubts, the more truthlike is to be done.*

The whole point of the controversy is situated in this: whether every opinion understood in the strictly so-called philosophical sense always is equivalent to practical certitude broadly so called.

A. The Probabilists deny this, and therefore they say: if it is only more probable that the law exists, although the reasons for the law are graver, nevertheless they are not practically certain, because grave reasons remain against it; and therefore it is certain that the law is uncertain, and we judge certainly that it does not oblige. This being posited, they form for themselves a certain conscience thus:

"That which, all things having been diligently considered, is not prohibited, is licit.

"But this action here and now to be placed certainly is not prohibited to me:

"for it is certain that an uncertain law does not oblige;

"but, although I rather think that this law exists and now obliges, and I adhere to this opinion, nevertheless I do not think this with certitude, even broadly so called, and therefore the law is uncertain for me;

"therefore it is certain that in the case it does not oblige me.

"Therefore this action here and now to be placed, all things having been diligently considered, is certainly licit for me."

B. On the contrary, the Equiprobabilists distinguish:

Either the opinion is a little more probable and the excess of reasons is slight; and then in practice it is doubtfully more probable, and almost or morally equally probable, in which case it is judged doubtful, and does not oblige on account of the principle: *A doubtful law does not oblige.* And then they form for themselves a certain conscience by a process similar to that above.

Or it is certainly more probable even by one degree (moral); and this in practice is impossible unless it is notably more probable and the excess of reasons is notable. Then, however, it is practically certain with certitude broadly so called and imperfect (n. 80). This the Probabiliorists also acknowledge.

The Probabilists observe, however, that many degrees of probability are found between equal probability, or strict doubt, and practical certitude; but it would be strange if in practice we could distinguish none of them with certitude, so that opinion would either be equivalent to doubt or equivalent to certitude, and in practice there would be no middle state between strict doubt and

certitude. This seems incredible, they say, and it is nothing other than to eliminate one of the more principal states of mind.

Against this the Equiprobabilists object with St. Alphonsus:[1] That which is certainly more probable is notably more probable, otherwise the intellect could not certainly and evidently, i.e., without any hesitation, affirm that it is more probable. But that which is notably more probable is practically certain (n. 80).

[1] Cf. St. Alphonsus, *Th. M.*, book I, nn. 56, 67, 77; and *Diss.* of the year 1762.

The Probabilists answer that the principle is not always and necessarily true, because, as it seems, a man of keen mind can certainly perceive that one thing is more probable than another, although nevertheless it is only a little, or at least not so notably, more probable. Yet often for many questions and minds that principle is verified; whence the fact that something is certainly more probable will ordinarily be a sign that it is notably more probable. Therefore present-day Probabilists, as being moderate (at least with their principles considered), and Equiprobabilists differ little in practice. For the former teach that a notably more probable law must be observed; the latter, however, teach that a certainly more probable law must be observed, but add that such a law does not exist unless it is notably more probable.

Hence it is clear that in practice this dispute is of lesser importance.

97. It is pleasing to relate various arguments and responses of the controversy, by which the question can in some way be judged.

I. The Equiprobabilists and Probabiliorists say: When something is certainly more probable, the contrary is no longer probable, and consequently we do not licitly do it.

The Probabilists respond, by distinguishing: The contrary is no longer probable in the strict and philosophical sense, i.e., worthy that we adhere to it by our judgment, granted; it is not probable in the broad and moral sense, i.e., founded on grave reasons, I subdistinguish: if the reasons are sought from the same principles on which the more probable opinion is founded, or if this latter notably exceeds it, granted; otherwise, I deny.

The objection contends that the probability of one proposition is elided by the probability of the other more probable proposition. But the elision of one probability by another does not consist in this, that one is destroyed by the other, but in this, that the other takes away its power of moving the intellect to prudent speculative assent. Yet the less probable opinion keeps its power of moving the intellect at the same time to judge that the opposite more probable opinion is not certain.

And St. Alphonsus himself at one time confessed this: "Our authors rightly respond that it is false: that the greater probability elides the lesser, unless that lesser probability is drawn from the same principle, or unless the probable opinion has for itself so convincing an argument that the contrary seems truly improbable, or no longer gravely and certainly probable."1 2 Nevertheless we acknowledge that the Holy Doctor afterward no longer held this, but rather taught the contrary.

II. The very recent Equiprobabilists argue: In all things we are held sincerely to tend toward truth and conformity with the objective order and the eternal law, or with the divine reason and will establishing this order; and consequently, if it is impossible to arrive at that conformity certainly, we must tend as much as we can and embrace what comes nearer to it: in uncertainties, namely, the

more truthlike is to be chosen. But he who chooses what he judges less probable does not sincerely tend toward truth and the eternal law, because he does not do this as much as he can. Therefore he does not do what he ought, and he sins.

a) To this some observe that the argumentation, if it is right, also proves - which nevertheless the Equiprobabilists deny - that one must adhere to an opinion a little more probable, because in it there is greater hope of conforming oneself to objective truth and to the eternal law. Indeed, logically it leads to tutiorism: for if there is an obligation to tend as much as we can toward conformity with a law prescribing good, which does not oblige for always, there will be a much greater obligation of tending toward conformity with a law prohibiting evil, which obliges for always. But this we shall never obtain better than by doing what is safer.

But, setting this aside, the Probabilists respond briefly thus:

In all things we are held sincerely to tend toward truth and conformity with the eternal law, I distinguish: i.e., we must endeavor to know the law and observe it once it is known as morally certain, granted; when we cannot know the law as morally certain, we must choose and do what is more probable, I deny. He does not sincerely tend toward truth and law who does not make serious efforts to know the law, granted; he who seriously endeavors but cannot know it certainly, denied.

b) But since the matter is of greater moment, a fuller response can also be brought forward. Before we hand it down, it must be noted: a) with St. Alphonsus,[2] with respect to us the eternal law is not a proper law, but only the natural law, i.e., our reason (which is a participation in us of the eternal law), obliges us; whence in the major of the argument nothing else is said except that in all things we are held to follow reason, and if it says nothing certain, we are held to follow what is more probable; b) the major can be understood of direct principles alone of reason and of the eternal law, or also of indirect and reflex principles. This being posited, the Probabilists respond thus:

[2] *Th. M.*, I, n. 72. "The eternal law with respect to men is not a proper law; for the proper law with regard to them is natural law." Cf. n. 77.

1. If there is question of direct and reflex principles together, nothing is stated except what all admit, namely, that we cannot act except that which certainly seems licit or conformable to law, i.e., we cannot act except with a certain conscience (directly or indirectly) concerning the honesty of the action; which conscience, nevertheless, can also be formed from indirect principles.

2. If there is question of direct principles alone, I respond: In all things we are held sincerely to tend toward conformity with right reason and the eternal law and the divine will, and if we cannot conform to them certainly, we are held to do this as much as we can, I distinguish: if there is question of truth to be sought and of acts of the intellect, granted; for it would be absurd, for example, in dogmatic and speculative questions to choose what is less probable, or not to inquire what is more probable; and similarly it would be absurd in moral questions not first to seek, as far as morally possible, direct certitude concerning the existence of the law, as was said in n. 88. If there is question of acts of the will and of things to be done, I subdistinguish: if right reason, the eternal law, the will of God certainly prescribe, granted; if they do not prescribe, or not certainly, denied.

For right reason and the eternal law do not always oblige that we conform ourselves to them, but if they prescribe; and the will of God obliges only if He wills us to will something; moreover it is required that we know this certainly. Besides, as was said, since the same reason and eternal law also dictate that an uncertain law does not oblige, if we do not follow an uncertain law although more probable, we shall still be conformed to the eternal law and to reason according to higher principles through a reflex judgment.

III. They insist: The will, in order to operate prudently, must follow the judgment of the intellect. But the will following the less probable opinion does not follow the judgment of the intellect, but rather brings force and compulsion upon the intellect, so that it does not follow its own judgment, but is bent away from the part which appears more truthlike to a part which it does not have as true, contrary to its own nature.

It can be answered: There is a confusion between the speculative and practical order. The will cannot rightly and without fault bend the intellect to adhering to the less probable part as true - as certain Probabilists erroneously said - but it is not held to observe the more probable law, because this is not certain. And yet it follows the judgment of the intellect, which not only judges that such reasons are graver and that one must adhere to them, but at the same time judges that they are not certain, and consequently that the law does not oblige. And the will is conformed to this judgment of the intellect and to the higher law, and thus it brings no force upon the intellect.[3]

[3] More recent Probabilists defend their system as if its necessary and only foundation were the principle: Under the influence of the will, the intellect can both physically and also reasonably and prudently restrain the judgment, namely, assent to the more founded opinion, and adhere to the less founded. This principle the adversaries very easily prove to be contrary to all sound philosophy, unheard of among the older scholastics, repugnant to psychological experience, and opposed to right reason and prudence; whence they boast that they overturn Probabilism without much effort. The older Probabilists spoke otherwise and more wisely, saying that the intellect prudently, indeed necessarily, cannot embrace anything except that which appears more founded; but that a law even truthlikely existing does not oblige, because for that reason it does not become morally certain. Let Laymann be heard, *Th. M.*, book I, tr. 1, c. 5, n. 6: "Although every part of a question, if it is probable, can produce the assent of those opining, speaking absolutely, nevertheless it cannot do this in every intellect. For if the opposite part of the question seems more probable to you, or if you perceive greater weights of reasons on that side, although you can then restrain every assent, nevertheless, on the hypothesis that you wish to assent to one part or the other, it is necessary that you assent to the more probable; but to the other, which appears less probable to you, you then cannot assent. For if you assent to the less probable, or judge it true, by that very fact you judge the opposite false; which cannot happen while that opposite appears to you more probable or more truthlike, because the judging intellect according to specification is not altogether free, but is determined by the reasons and motives of the proposed object. Nor is St. Thomas opposed to this doctrine, I-II, q. 17, a. 6, where he says that, in those things apprehended which do not convince the intellect, it is in our power to assent or dissent. For this is true absolutely, because the intellect can be moved by command of the will so that, omitting the consideration of the reasons for one part of the question, it considers and evaluates the reasons occurring for the opposite part. But with the hypothesis standing, or in the composite sense, while, I say, one part of a contradiction appears more truthlike than the opposite part, the intellect cannot dissent from the former and assent to the latter, because that would be done without reason, indeed against reason..." And n. 7: "These things... show that it is licit to follow a probable opinion in acting. But that this can be done, even if to the one acting himself speculatively it appears less probable, and the opposite more probable, must be shown from this, that that speculative opining, by the very fact that it is uncertain and perhaps false, cannot be the rule of operation. Consequently the one acting must follow another rule, and that a certain one; namely, that in doubtful questions concerning morals anyone can operate according to an opinion which learned men defend as probable and safe in practice. Nor indeed does he then act against his own conscience, since conscience is not some speculative opining, but a practical certain judgment concerning what is to be done." In the same way Suarez, *De Vol. et invol.*, disp. X, sect. 1, n. 5; Lessius, *de Act. Hum.*, q. 17, a. 6; Pallavicini, in I-II, disp. 8, q. 6, a. 4, n. 9; Vasquez, in I-II, disp. 67, c. 1, n. 4.

From the arguments brought forward each one will be able to form some judgment for himself. But as to practice, as we have said, it does not matter much which system is chosen, provided that Probabilism is understood as truly moderate and is contained within the just limits of sound prudence.

98. Practical observations. - 1. Some Probabilists understand a solidly probable opinion relatively to the opposite. And these agree in substance with the Equiprobabilists and can be called moderate Probabilists.1 Others hold every opinion absolutely and in itself probable to be solidly probable, without caring about relative probability. Namely, they deny that the use of a probable opinion must be confined within limits, and that the part to which another, however much even evidently more probable, is opposed becomes illicit.2 This is absolute Probabilism, which opens the way to Laxism.

There is also a twofold system of Equiprobabilism. Some, the milder, say that St. Alphonsus never intended to found a new system substantially different from moderate Probabilism, but willed to confine it within just limits by positing the restriction: that which is certainly more probable is very notably more probable, and therefore is practically certain. Hence he never enunciated the axiom of the Probabiliorists, *In doubts, the more truthlike is to be chosen*, as absolutely true, nor as a properly so-called reflex principle, but only as an expression of this doctrine: in morals, when we cannot arrive at perfect certitude, we are held to be content with certitude broadly so called and to choose the more probable, not indeed everything that is more probable, but what is certainly more probable, because that comes nearest to perfect practical certitude. And thus they understand St. Alphonsus when he says, *Th. M.*, book I, n. 56: "Where truth cannot clearly be found, we are held to embrace at least that opinion which comes nearer (altogether) to the truth, such as is the opinion (certainly) more probable." And these do not differ as to substance from the moderate Probabilists.1 - But the more recent are stricter,2 and affirm that the principle of the Probabiliorists, *In doubts, the more truthlike is to be chosen*, is a reflex principle by which conscience certainly must be formed in the state of opinion, even if the certainly more probable opinion were not certain with certitude broadly so called; yet this hypothesis is not verified in practice. And these, in principle, approach more nearly to Probabiliorism.

Indeed there is also a twofold Probabiliorism. Some are milder, as the older authors and among the more recent Billuart, and do not depart so very much in various practical solutions from the Equiprobabilists and moderate Probabilists; others are stricter, as Concina and Patuzzi, and wholly approach Tutiorism.

2. They rather often say that Probabilism cannot be brought into practice because it is not certain, since several theologians are opposed to it. But the same could be objected against Equiprobabilism, since the Probabiliorists contradict it. This argument, however, is valid only for those who think that they see certainly that Probabilism (or Equiprobabilism) is false or illicit. For others it is not valid, because they can act according to Probabilism from the authority of the greater part of the moralists of our time, or even perhaps form for themselves, from a certain ratiocination, a practically certain conscience in this matter. For the principle *An uncertain law in practice of itself does not oblige* seems sufficiently certain (n. 92). Whence this principle, in a state of positive doubt or mere opinion, can be applied to form a certain conscience, unless a certain higher law of charity, religion, justice, etc., obliges (n. 91). The Equiprobabilists and Probabiliorists contend that in the state of opinion the higher law obliges: *In uncertainties the more truthlike is to be chosen*; yet they do not prove this sufficiently, with

certitude. Until they prove it, liberty, or the right of applying the principle *An uncertain law does not oblige*, remains practically certain.

3. Formerly certain authors placed as the foundation of Probabilism the axiom: *He who acts probably, acts prudently.* But:

a) This is not a primary principle having force of itself in the formation of an indirectly certain conscience; for prudence requires that we act only with a certain conscience of honesty. But it can be valid as a consequence of the primary principle: probability, namely, is a condition so that a certain conscience can prudently be formed from the more general principle: *A doubtful law does not oblige*, - *The condition of the possessor is better*, - or: *In doubts the more truthlike is to be done.* Probability is the reason by which through discourse we come to a certain conclusion.

b) Nor is it valid absolutely concerning every probability; for to act prudently, a slender, or doubtful probability, or one considered absolutely without comparison to the opposite reasons, does not suffice. For it can happen that a reason probable in itself absolutely, from comparison with much graver opposite reasons, loses solid probability or becomes doubtfully probable (n. 74).

c) Nor is it valid without restriction, because in doubts concerning the validity of an act or the necessity of a means one must not act probably, but more safely (n. 90).

Hence a threefold mode of Probabilism is altogether to be rejected: 1) both that one which rested on the sole principle: *He who acts probably acts prudently*; 2) and laxer Probabilism, which also admits light probabilities, or absolute Probabilism, which necessarily leads to the use of a light probability; 3) and unlimited Probabilism, which posits no restriction and does not exclude from the use of probability cases concerning validity and the necessity of a means to the end.

4. From canon 15 Probabilism is to be applied to ecclesiastical laws, not indeed in doubts of fact, but in a case of doubt of law.[4] But from this an argument cannot be drawn and a conclusion made that the same is valid for natural and divine law, because the obligation of ecclesiastical law alone, not of natural and divine law, depends wholly upon the intention of the Church.

[4] Some have interpreted this more laxly, as if it were enough to doubt approved authors, even if the agent himself judged the benign interpretation of the canon to be false, and thus it were clear to him that there was no doubt of law! Indeed they add: received interpretations of some authors, after some time, found a usual interpretation from which one must not depart. But for a usual interpretation the consensus of some authors does not suffice; all the conditions necessary for juridical custom are required, among which first is the general observance of subjects. Besides, how is such a general usage possible for rarely occurring cases, to which nevertheless they intend to apply their rule? - But if the said interpretation were valid, laws from day to day would always become more lax.

1. Thus, besides those who in the Order of Preachers adhered to Probabilism, also Suarez, Vasquez, Lugo, Lessius, Laymann, Sylvius, Palaus, Viva, Abelly, Reuter, Voit, and several recent authors.

2. Lacroix, Arsdékin, Illsung, Ballerini, Bucceroni are cited.

1. Thus, for example, Scavini and the older disciples of St. Alphonsus, Aertnijs and de Caigny.

2. Among others, Dubois, Janssen, Ter Haar and Wouters of the C.SS.R.

99. Concerning the system of compensation it must be observed:

1. The twofold compensation, of probability and at the same time of the gravity of the law, is very difficult to estimate in practice; whence it is not a system apt to be a practical rule of acting and of forming conscience for all, even those sufficiently cultivated.

2. Not only does an inconvenience arise from the free positing of an act probably prohibited, namely, the danger of materially violating the law and frustrating the end intended by the legislator; but a greater one arises from the imposition of all uncertain precepts, namely, the deprivation of liberty and the danger lest men, on account of their weakness, fall rather into formal sins. Whence one could judge that, in a case of a solidly probable opinion, there is always a sufficiently compensating reason for the danger of materially transgressing an uncertain law.[5]

[5] Thus in the new edition (5th) of the *Tractatus de Conscientia* from the Mechlin Theology, p. 81 sq. **Article IV.**

3. The proposition *an uncertain law does not oblige* seems sufficiently proved, so that of itself it can always be brought into practice, unless there is question of the value of an act and the obtaining of an end.

Yet something true is had in that system, not insofar as it hands down the due rule of acting and of forming conscience, but insofar as it admonishes prudence in the application of the rule, namely: for practice, in the application of any system whatever, all the circumstances of the subject must be considered in order to see whether it is expedient, or whether greater evils are not to be feared. But this only proves that the principles concerning the formation of conscience in such or such a state are to be subjected to the more general principles concerning human acts which govern the whole moral matter.

On the Right and Prudent Use of Probable Opinions.

100. What system of probability it is licit to use. - Here the following things are to be attended to:

1. In the direction of his own moral life, each one can use probable opinions according to the mode of one of the three systems: Probabiliorism, Equiprobabilism, or Probabilism. For although of itself and generally it will be more conformable to reason and more prudent to follow Probabiliorism rather than Equiprobabilism, and Equiprobabilism rather than Probabilism, nevertheless ordinarily we are not held to act more prudently and more safely (this belongs to counsel and perfection), but only safely and prudently. But Equiprobabilism or Probabilism in practice is sufficiently safe and prudent, because it removes the danger of sinning formally, unless for those who certainly saw that such a system was false, in which case they would have to follow the stricter system.

2. In the direction of others, we cannot impose, but only persuade to, our own system, or one or another probable opinion, because priests are not legislators and do not command; unless per accidens, if the other consents in this, or if otherwise some particular danger would follow for him.

3. Hence in practice the three systems do not differ so very much as to application, if the morals of the faithful of the whole Church are considered. We have already seen that what is certainly more probable is rather often notably more probable and practically certain for all (n. 96). Moreover, what some call more probable, others call less probable; what some call less probable, others hold equally or more probable; what appears equally probable to some, appears less probable to others. Besides, if one inspects not only what is strictly licit, but also what is expedient or more fitting, as often happens in practice, the differences will be still smaller.

The sole difference is for those who, from conviction, hold some system as practically certain and judge all opinions by themselves. Indeed even in them it easily happens that after some time an opinion which previously they had held less probable already appears more probable, or vice versa. And therefore the question concerning a determinate mode of forming a certain conscience is not of such great moment as it seems at first sight and as several theologians affirm, calling it a "moral system," and placing it at the threshold of moral theology as if it dominated all the treatises, whereas nevertheless the doctrine concerning human acts, as being more fundamental, rules all the others.[6]

[6] Sometimes, on account of extrinsic circumstances, the question could seem of greater moment: thus, on account of sharp disputes, in the time of St. Alphonsus.

4. Therefore it is understood that the Church has abstained from a formal judgment concerning the systems, and has been content to reprove the two extreme doctrines of Laxism and Rigorism; for in practice, as to forming the morals of the faithful, confessors do not differ so very much.

5. Nor is it strange if, in the Middle Ages, such determinate systems are not found; for this belongs rather to the art of the direction of souls than to moral science. Various reflex principles were indeed known: *In uncertainties, the more truthlike is to be chosen*; - *A doubtful law does not oblige*; - *The condition of the possessor is better*; - *In uncertainties one must stand for that for which the presumption stands*; - *In doubts one must act more safely*, etc. These were applied by some rather than others in doubts of conscience for various cases and circumstances, so that in some way a conscience might prudently be formed as certain, without the matter being expounded systematically, or one determinate mode predominating or being imposed on all. And therefore all the systems can bring forward something from the authors of the Middle Ages in their favor; nevertheless none is found there complete and formed. But from the sixteenth century onward they endeavored to reduce those principles to one supreme principle from which, in any case, in any matter, the practical doubt might easily be solved.

101. The use of probable opinions must be regulated with the greatest prudence, so that it may be conformable to right reason; for it easily provides occasion for abuse, so that Probabilism, or even Equiprobabilism, degenerates into Laxism, if merely probable opinions without selection are also applied to cases in which a determinate end must be attained absolutely, or if doubtfully or lightly probable opinions are too easily admitted as truly and solidly or almost equally probable, as happened in the seventeenth century and even today sometimes occurs.[7]

[7] *Th. M. fundamentalis*, n. 384.

Now, 1) to avoid the first, one must carefully attend in practice whether there is not present a case concerning the validity of an act or the necessity of a means for an end absolutely to be obtained, because such cases occur much more frequently than appears at first sight.

2. To avoid the other, it is asked: what opinion in practice can be held as seriously and sufficiently probable?

To solve this question one must know that, by reason of the principle or motive on which it rests, probability is intrinsic if it rests on reasons taken from the very nature of the thing to be examined (properties, causes, effects, inconveniences of the opposite part); or extrinsic if it rests on the authority of others. The latter supposes the former, and lasts so long as the former can be presumed; for we therefore admit what others affirm because we hold them learned and truthful. But if it is established that they are in error or rest on altogether weak foundations, their authority for this case vanishes.[8]

[8] "The intrinsic force of reasons must principally be attended to; for extrinsic authority does nothing other than bring a presumption of intrinsic force." St. Alphonsus, *Th. M.*, book I, n. 80.

Now, a) concerning intrinsic probability, not indeed of fact but of doctrine, only the learned can rightly judge, and indeed not the moderately learned, but those very versed in moral matters. For them, that is probable which, all things having been duly and diligently considered, and the reasons on the opposite side compared with one another, appears as uncertain and yet resting on grave reasons.

b) Concerning extrinsic probability, the learned and the unlearned can judge. For the latter, that is probable or even practically certain which is said to them by a learned man (especially if he has authority for directing morals, for example, by a pastor or confessor), if there is no serious reason for doubting his skill or the probability of his statement. For since they cannot weigh the reasons, they act prudently by following the judgment of him concerning whose knowledge and truthfulness they have no reason for doubting. Hence St. Thomas, II-II, q. 4, a. 8 ad 2: "someone of little knowledge is made more certain concerning what he hears from someone scientific than concerning what seems to him according to his own reason." But if a reason for doubting is present, for example because the unlearned person sees that it is against common doctrine or the mode of acting, he is held to inquire further.

c) For the moderately learned, i.e., not only for theologians, but also for pastors and confessors, extrinsic probability must be judged not so much from the number of authors as from their merit: authors must not so much be counted as weighed.[9] On this let Tanquerey be heard, conformably to the warning of Benedict XIV:

[9] They ask whether a "probably probable opinion" is sufficiently probable so that we may licitly act according to it. If the obvious sense is taken, so that the word *probably* is taken in the same sense as *probable* (as it must be taken in the same context), it is illicit, because "probability concerning the probability of an opinion does not pour probability into the opinion itself." Thus Marc and Beaudoin. But if *probably* is taken in the strict philosophical sense, for that which is much more probable or as it were practically certain, it could be sustained, and Noldin (n. 27) and Vermeersch (n. 363) seem to understand it thus.

"Confessors especially are held to apply themselves to this kind of study... Wherefore Benedict XIV admonishes them 'that in a doubtful matter, they not rely upon their own opinion, but, before they

decide the case, consult very many books, especially those whose doctrine is more solid, and then come down into that opinion which reason persuades and authority confirms' (*Const. apost. de praep. ad Iub.* a. 1750, § 21). a) Namely, they should not rely upon their own opinion, which is often fallacious: for more wisdom is found in the judgment of many than in that of one. b) They should consult very many books, more easily to guard against the same inconvenience: for what could escape one author does not so easily escape many, especially if they do not belong to the same school, but to diverse schools; for experience establishes how easily authors of the same school, without further examination, confidently repeat the opinions and arguments of their predecessors! c) Moreover, they should choose those books whose doctrine is more solid, which, namely, by knowledge, prudence, and piety, have gained for themselves a greater reputation, and have weighed the matter expressly, not in passing... d) They should come down into that opinion which reason persuades and authority confirms. Whence, insofar as it can be done, both intrinsic reasons and extrinsic authorities must be attended to: the arguments brought forward should be critically weighed with attention to the circumstances of places and times; and generally speaking, the authority of theologians should not be esteemed more than the weight of the reasons which they bring forward. Nevertheless, if by the common doctrine of all schools some conclusion is confirmed, by that very fact it has great probability, even independently of the arguments brought forward; nor must one depart from it unless a new reason is brought into the open which until now was unknown."[10]

[10] "Extrinsic probability must be estimated more from the merit and erudition of the doctors, and also from their study and diligence in investigating the truth of the matter, than from their number; for ten or more authors can hold some opinion whose authority contributes scarcely anything more to its probability than the authority of one, whom perhaps they followed without examination and discussion of the matter." Thus Aertnijs, *Th. M.*, t. I, n. 62, from the *Diss.* of St. Alphonsus, a. 1763, nn. 84-88.

102. Practical rules. - Recent theologians almost all hand down the same rules. Generally in practice, that doctrine can be judged certainly or at least seriously or gravely probable which, with the Church tolerating it:

a) either is commonly or by most authors asserted as such, although not as more probable;

b) or that which some great theologian2 (for example, St. Thomas, St. Antoninus, Cajetan, Sylvius, Banez, Suarez, Lugo, the Salmanticenses, St. Alphonsus, etc.) testifies3 to be probable, i.e., rightly to be held as such by others;

c) or that which five or six grave and approved authors, namely, men distinguished by probity and knowledge,4 i.e., those whose doctrine, prudence, probity, and faith are everywhere acknowledged, hold absolutely as true; - or assert to be truly probable, if this is not very much called back into doubt by others.

On the contrary, that doctrine is improbable or only thinly, lightly, or doubtfully, and not sufficiently probable:

1. which even many theologians have held, if it is reformed by a decree of the Church, or if to someone on account of most grave reasons it seems certainly false;

2. which one or another author hands down, but several contradict;

3. which five or six authors only hold as probable, if as to this assertion their authority is doubtful, either because against them stands a grave reason which they have not solved, or because others strongly contradict, or because it is not sufficiently established whether they have carefully examined the question; for often they call an opinion probable solely because it is held as such by another;[11]

[11] "The doctors judge an opinion doubtfully probable: 1. if there is doubt concerning the gravity of the reasons; 2. if wise men commonly doubt concerning that probability; 3. if the authority of the doctors who affirm or hold the opinion as probable is doubtful; 4. if the reason of the doctor who defends it does not seem sufficiently firm; 5. if it is a singular opinion brought forth by an author, without his bringing forward a sufficient reason; 6. if one or another hands it down, but several contradict." Ballerini-Palmieri, *Opus theol. mor.*, book I, *de consc.*, q. 113.

4. a fortiori something is not probable because it is taught by one recent author; whence Alexander VII condemned the proposition (27): "If a book is by some younger and modern author, the opinion must be judged probable, so long as it is not established that it has been rejected by the Apostolic See as improbable" (cf. St. Thomas, *Quodl.* III, 10).

Yet an exception is made:

a) a general one: if one very learned, prudent, and diligent in examination, and not a lover of novelties, brings forward valid reasons which others have not considered or have not sufficiently solved, and he himself conveniently solves the opposite reasons;[12]

[12] Cf. St. Alphonsus, *diss.* of the year 1755, n. 117; and *diss.* of the year 1763, n. 86.

b) a special one, for St. Alphonsus: from the decree of the Sacred Penitentiary, 5 July 1831, a confessor,[13] while administering the sacrament of Penance, can safely in conscience follow all the opinions of St. Ligorio, even if he does not examine the reasons, but solely because he himself teaches them. And the same is valid a fortiori concerning St. Thomas. - This, however, must not be understood without discretion: for it is not valid for opinions which the author himself, in the case St. Alphonsus, reformed; nor, a fortiori, for those which the Church reformed; nor for opinions contrary to a just civil law or to a new ecclesiastical law; nor for those which appear certainly false to someone.

[13] Even he who has sworn to defend Probabiliorism, as was answered on 19 Dec. 1855.

The aforesaid rules must not be extended more broadly but must be urged strictly, and the more strictly because in our days so many theological writings and responses are published that much more easily than before five or six recent authors are found to assert the sufficient probability of some opinion, especially if they are of the same school, all the more because rather often they do nothing except copy out another recent author.

103. Practical corollaries. - 1. A lightly probable opinion is not to be attended to except in extreme necessity, in which, more certain remedies failing, even extreme and lightly probable things are to be attempted in order to attain the end; for in those circumstances this is now the safer thing.

2. In a practical doubt, probability for acting does not suffice, but one must have certitude; whence one must inquire concerning the truth, and otherwise act more safely. Hence, as to the observance of ecclesiastical law:

a) while the hour of the precept is positively doubtful, one must inquire concerning it, even if diverse clocks indicate differently, for diverse clocks do not suffice to remove a practical doubt. Only in the case in which certitude will be impossible can, from custom, diverse clocks be held as diverse probable opinions;[14]

[14] Vermeersch, *Th. M.*, t. I, n. 370.

b) where two foods, of which one is prohibited and the other permitted, can no longer be distinguished, an insoluble practical doubt is present; wherefore one must act more safely and abstain from both - unless there is present so grave an inconvenience; but then it will be licit, not on account of the doubt, but on account of the inconvenience.[15] 3

[15] Ibid.

3. A fortiori it is illicit voluntarily to bring about an insoluble practical doubt concerning the law and nevertheless not to observe it, although, once the doubt has arisen involuntarily, it can be licit not to observe it. Hence if someone does not know whether midnight is at hand or has passed, he is held first to inquire into the truth; if he neglects this, he will sin unless he acts more safely and observes the doubtful law. Thus one who is uncertain, for example, cannot drink unless by renouncing communion on the following day; and if he has drunk, he is held to abstain from it, unless nevertheless after the fact it is established certainly that it had not yet been midnight. On the contrary, he who has drunk in good faith, thinking nothing about the hour, and in the morning doubts whether he is fasting, is not held to observe the law and will be able to communicate.

4. In the direction of one's own life, for each one (unless someone were a Probabiliorist) it is of itself licit, in the same matter, now to follow one solidly probable opinion, now another solidly probable opinion opposed to the former, successively or in diverse cases or acts; because each is sufficiently safe and secure. For example, in one case he can accept the inheritance of an informal testament because, before the judge's sentence concerning nullity, it is probably valid, and, in another case, pursue the annulment of another informal testament to be declared by a judge, because it is null.

Nevertheless per accidens it is illicit, by reason of scandal, or by reason of simultaneity, namely if someone uses opposite opinions at the same time, in the same case and act, or in the same individual thing and action, so that from this a certain obligation or the right of a third party is certainly violated. Thus, for example, someone cannot accept an inheritance from an informal testament because it is valid, and refuse the burdens to be fulfilled under the pretext that the same testament is null; for it is certain that he who takes the inheritance must also take upon himself the annexed burdens.

Likewise it is illicit to reason thus: it is probable that it is not yet midnight of the feast of Pentecost; therefore it is probable that I can take a collation and communicate in the morning. But it is also probable that it is midnight; therefore I can eat meat, and from the prior opinion communicate in the morning. For in no way can it be probable that I can eat meat and communicate in the morning, because for this it would be required that it be probable that it is midnight and at the same time that it is not.

Likewise, supposing two probable opinions, of which one says that today one must fast, the other that today one need not fast but tomorrow, it would not be licit today to embrace the second opinion and not fast, and tomorrow to embrace the first opinion and again not fast, because certainly the same numerically one law is violated. The same would hold for one who on Thursday, having heard twelve at night on one clock, omitted compline because he was no longer held to recite, and wished to eat meat because he had not yet heard the twelfth hour on another clock.

3. Almost thus Lehmkuhl, *Th. M.*, I, n. 205; Noldin, *Th. M.*, I, n. 243; Vermeersch, *Th. M.*, I, n. 374; *Th. Mechl. M. gen.*, ed. 5, n. 20, II. In the same way a priest could not consume a doubtfully consecrated host before the consumption of the most Precious Blood, lest he voluntarily induce a state of doubt concerning the natural fast with danger of violating the law.

1. Do not say: even in the first case, where there are two testaments, some right is certainly violated. - That indeed would be true if one testament were held valid of itself, and another invalid of itself; but not if one, before the sentence of the judge, is judged probably to retain validity, and another after the sentence is altogether invalid, because by the intervention of the judge the invalidating law obtains its full force.

104. Observation. - The rules indicated above generally are accustomed to be handed down by the more recent theologians,[16] even Probabilists; but not all always sufficiently regard them in practice, nor apply them constantly, by which it happens that even laxer opinions are sometimes judged probable.

[16] Thus, for example, Lehmkuhl, Ballerini, Aertnijs, Genicot, Noldin.

Specifically, a) by saying of certain opinions that "they perhaps are probable," or that "they do not dare to confess that they are altogether improbable," they implicitly suggest to readers that those who follow them are not to be condemned, whereas on the contrary according to what has been explained they ought to conclude that the opinions are little and doubtfully probable, and consequently not sufficiently and practically probable, nor generally able to found a rule of acting prudently.

b) In the past century, a certain theologian of a sufficiently great name, while the stricter opinion seemed certainly more probable, strove with all his strength through rational arguments to show that the more benign one was nevertheless intrinsically probable; and, on the contrary, while that one did not seem to rest on valid arguments, he tried to heap up a long series of authors for the extrinsic probability nevertheless to be preserved for it against everything. This is not sincerely to seek the truth.

c) Similarly, what service does it render if a theologian of the best reputation shows well that a certain too benign opinion has no probability for itself, indeed is false; and nevertheless he does not cease to acknowledge some extrinsic probability for it in practice, because some five or six authors said it was probable? But some authors do not make serious extrinsic probability, unless they are truly distinguished, have carefully examined the matter, and do not pronounce from the authority of others alone. But if it is established that the opinion is not founded, by that very fact the probability of the opinion vanishes.

Such a procedure hinders every progress of moral science, which would be reduced to reciting the opinions of authors, without their probability ever being able to cease, unless by the intervening

judgment of the Church.

Question Three: On the Practical Formation of a Certain Conscience

105. Process to be followed in the formation of one's own certain conscience. - In order that man may act prudently and safely from a sufficiently certain conscience, he must follow the following process in forming his own conscience, namely:

1. to judge, or to be conscious, that he is practically certain concerning the honesty of the action here and now to be placed;

2. when he practically doubts, he must examine diligently according to the gravity of the matter and of the doubt and of the other conditions;

3. if, sufficient diligence having been employed, the reasons for doubting appear slight and the doubt is negative, by despising it he can lay it aside according to the principle: *The condition of the possessor is better*, and act freely if the doubt was concerning the existence of an obligation; on the contrary, he must follow the law if the doubt was concerning excuse from the law;

4. if the doubt appears serious, founded on grave reasons, he must, by attentively comparing the reasons and opposite opinions, by his own investigation if he can, or at least from consultation with the more learned, arrive at direct certitude - for which a most probable opinion, or one much and notably more probable, suffices;

5. if he cannot here and now arrive at direct certitude, that is:

a) either because he is unwilling to examine, or because from defect of means or time he cannot, and then he is held to act more safely, in order to remove the danger of sinning;

b) or the matter carefully examined is truly uncertain, and indeed so that the doubt concerns the validity of an act, because there is question of an end absolutely to be obtained or of harm absolutely to be avoided, for which the action must certainly be valid and perhaps does not suffice; and then from a certain higher law one must also act more safely;

c) or the matter carefully examined is truly uncertain so that the doubt concerns mere honesty, and then he can act freely and apply the principle: "An uncertain law does not oblige": always according to the Probabilists; according to the Equiprobabilists with the restriction: unless the obligation appears certainly more probable or it is not more probable that it has ceased; according to the Probabiliorists: if liberty is more probable.

106. Case. - That the practice of the doctrine may be better understood, let us apply it to the following case: Peter, ignorant of the moral system concerning the formation of conscience, approaches Timothy the confessor, and manifests a threefold doubt:

a) whether he made a vow;

b) whether a vow certainly made perhaps is invalid;

c) whether he has paid a debt certainly contracted.

How can these doubts be resolved?

From the principles explained, the proposed doubts are easily resolved. Timothy is indeed held to institute a diligent examination concerning Peter's doubts, in order to arrive at direct certitude, if this is possible (n. 76); but how he will form Peter's conscience as indirectly certain, if after diligent examination the doubts persist, is what must be investigated in the present place.

a) One doubting whether he made a vow is not held to fulfill it. For if the doubt is negative, i.e., if there is no reason or only a slight reason for thinking that the vow was made, the principle can be applied: *The condition of the possessor is better*, i.e., of liberty, which before the doubt arose was certain. Therefore in doubt the fact (i.e., the vow) is not presumed but must be proved, and in a doubt of a fact founding an obligation, liberty remains (n. 86). But if the doubt is positive, i.e., if there is a grave but uncertain reason for thinking that the vow was made, the principle can be applied: *A doubtful obligation is practically none* (n. 92). Therefore Peter is held to nothing.

b) One doubting whether a vow certainly made perhaps is invalid, if the doubt is negative, i.e., if there is no reason or only a slight reason for thinking that the vow is invalid, is held to fulfill the vow, because the condition of the possessor is better, i.e., of the vow or obligation which before the doubt arose was certain, since the vow was certainly made. A slight reason does not impede practical certitude; whence one must stand for the value of the act, and the fact (namely, the vow) is presumed to have been rightly done (n. 86). But if the doubt is positive, i.e., if there is a grave reason for thinking that the vow was not valid, he is not held to fulfill it; for a grave reason renders the validity of the vow and the obligation truly doubtful, whence the principle can be applied: *A doubtful obligation is no obligation* (n. 92). Therefore in a negative doubt Peter is held to the fulfillment of the vow; in a positive doubt he is not held.

c) One doubting whether he has paid a debt certainly contracted:

1. If the doubt is negative, i.e., if there is no reason or only a slight reason for thinking that the debt was paid, he is held to pay it, because the condition of the possessor is better, i.e., of the debt or obligation which before the doubt arose was certain, since the debt was certainly contracted. For a slight reason does not impede practical certitude; whence the fact (i.e., payment) is not presumed but must be proved, and in a doubt of a fact supposing an obligation and exempting from it, the obligation remains (n. 86).

2. But if the doubt concerning the fulfillment of the obligation is positive, i.e., if there is a grave reason for thinking that it has been fulfilled, according to St. Alphonsus and the Equiprobabilists the one doubting is still held to fulfill, because a certain obligation is not satisfied by a doubtful payment. Yet this does not seem founded, because in the case the obligation itself now becomes truly uncertain, whence satisfaction need not be made to it (n. 93). Therefore it would be better to say that, in a case of positively doubtful fulfillment, generally he is not held: for a grave reason renders the obligation truly doubtful, whence this can be applied: *An uncertain obligation is practically none* - unless nevertheless some higher law were present which would nevertheless urge the fulfillment of the obligation. But since there is question of the payment of a debt, i.e., of a matter of justice, and justice sometimes obliges in doubts to choose what is safer (n. 91), it must be inquired whether it does not require the payment of a debt which was not certainly paid.

3. Several affirm this, invoking the principle: *The condition of the possessor is better*, which properly regards the matter of justice: namely, the debt certainly contracted possesses, until it has certainly been paid. - But that principle cannot be invoked in the case; for by the very fact that there is a grave reason for thinking that the debt was paid, it is now doubtful whether the debt still exists, and consequently whether it possesses force of obliging and obliges, and whether the creditor possesses a right to payment. Therefore the possession itself of the right becomes doubtful. But if speech is made of possession of fact, no one ought to be deprived of his own good, and consequently he can retain it until it is certainly proved not to be his.

4. They also invoke the principle: *It is the duty of the debtor to attend and watch that he certainly pay the debt*, whence the doubt that has arisen must be imputed to his negligence, from which the creditor ought not to suffer harm.[1] This principle is valid, but only in the case of culpable negligence; this case in practice will rather be rare. The reason of the principle is that justice strictly obliges that our action or omission not be, for another, the cause of even probable or doubtful harm (n. 91); but from the negligence of the debtor the creditor will perhaps lose the payment of the debt, or will be exposed to this danger or to uncertainty of payment: this uncertainty or danger is already harm. Whence if someone foresees that this will arise from his negligence, he sins and is held to make restitution, not indeed because a doubtful debt obliges, but because he has brought about certain harm by exposing the creditor to the danger of uncertain payment; and therefore he is not held to pay the whole debt, but only according to the ratio of doubt and uncertainty.[2]

[1] Thus also St. Alphonsus, *Th. M.*, book I, n. 34 and book III, n. 700, q. 2, and Suarez, Vasquez, Sanchez, Lacroix, etc.

[2] Several add that the debtor is held to pay the entire debt if he is notably negligent in paying debts, because there is a presumption that the debt was not paid. This indeed is true; but in the case there will be no serious and grave reason for supposing that the debt was paid, and the doubt will now become negative.

5. Others say that equality in strict justice must be preserved as far as can be done, whence they judge that an obligation is present of paying according to the ratio of doubt, just as also a judge decrees that uncertain goods are to be divided.[3] This principle also is true, provided that it is certainly established that an obligation of justice is present: then satisfaction is not made by doubtful fulfillment, because it is only doubtfully equal to the debt. But in a case in which the obligation is not established, the principle cannot be invoked without this absurdity: if the debtor pays half, either he defrauds if he truly owes, or loses half of his own good if he owes nothing. Whence the obligation of paying according to the ratio of doubt is not proved, except in the case of culpable negligence, as we said above; or also unless the judge establishes it so: for a superior commanding must be obeyed until it is certainly established that he commands unjustly (n. 91).

[3] Thus Laymann, Tamburini, Lehmkuhl, Ballerini, Marres, Vermeersch; Diana, Reuter and Sporer say this is probable.

And so, outside the aforesaid case of negligence, it is not proved that there is a higher law obliging one to pay a debt concerning which it is positively doubted whether it has already been paid, whence Peter is held to nothing, by force of the principle: *A truly uncertain obligation is practically none*;[4] nevertheless, it should be counseled that for the sake of equity he pay something. But in the case of a negative doubt Peter is held to pay.

[4] Thus Tannerus, Waffelaert, Genicot, Salsmans, Noldin, Bucceroni, the Mechlin authors in *Th. m. gen.*, etc.

107. In the formation of conscience and the direction of others, a varied process is to be employed. - One can consider:

A. Counselors, such as theologians or pastors often are. Now, if one is asked concerning a question about a moral matter: a) if he is asked what he thinks in his own mind, he is held to declare this according to the opinion more probable to him; otherwise he would be lying; b) if he is asked about what is licit, he can respond according to the less founded opinion, which nevertheless is not his own, provided that it is solidly probable; c) if he is asked about what is expedient, he must first prudently consider all the circumstances and counsel what seems to be expedient for the greater good.

B. Superiors. These, however, from various reasons of charity, justice, the common good, and right order to be preserved, are often held to propose or follow the safer part, because they must lead the faithful to salvation by certain or safer means. Thus a pastor, as such, because by office he watches over ecclesiastical discipline and the morals of the faithful, is more solicitously held to investigate practical truth, to warn concerning it, and to instruct by public preaching; and because many goods or evils, which by office he must procure or avert, depend on his mode of conducting himself, he will rather often be held to follow the safer part.

C. The simple confessor: 1) since, as such, he is not a legislator but an interpreter of law and a physician, he must not first inquire what is strict or benign, but what is prescribed, or what is expedient.[5]

[5] "As I do not approve those confessors who, adhering to excessive austerity, easily condemn the use of several opinions which rest on a grave foundation, so on the contrary I cannot approve those who easily proclaim as probable opinions without a certain foundation. A confessor, before he embraces some opinion, is certainly held to weigh the intrinsic reasons; and when some convincing reason occurs to him for the safer opinion, to which he does not see an adequate response supplied, then he cannot embrace the opposite less safe opinion, although the authority of very many doctors favors it, provided the authority is not of such weight that it seems to him that it should be deferred to more than the apparent reason... but this case is very rare." St. Alphonsus, *Th. M.*, book I, n. 82.

2. This having been supposed, if there is question of an obligation to be imposed, generally among probable opinions he ought rather to embrace the benign than the strict, because ordinarily they remove sufficiently from the danger of formal sin.[6] For he can only persuade to the strict opinions, if he judges them more salutary for the penitent, for example, because they suit him better, or more powerfully induce him to avoid sin or to make progress in virtue. Whence generally the stricter opinions fit better when there is question of obtaining perfection;[7] with moderation, however, otherwise the yoke would become unbearable.

[6] Let them attend to the word of Ven. Humbert, O.P., in the gloss on the prologue of the Constitutions, 1, 1: "Men are terrified from this (namely, excessive austerity of opinions) so much that they neglect salvation; for that reason austerity is to be relaxed as much as can be done, and one must act benignly, because thus they are better drawn to salvation, when the milder opinions are held."

[7] "If a Christian man in the service of God did nothing other than what strictly the law postulates from the principles of Probabilism, he would certainly lead a life little worthy of one of Christ's faithful; but the practice of the Probabilists is this: where there is question of imposing obligation and judging sins, they are benign in order to avoid dangers of sinning formally; but where there is question of attaining perfection and of the exercise of virtues, they strive for the highest things,

measuring the service due to God not from the obligation of law, but from love and gratitude toward the divine majesty." Thus the Probabilist Noldin, S.J., *Th. M.*, I, n. 216. - Cf. St. Alphonsus, *Diss.*, a. 1755, n. 107; and *Th. M.*, book VI, n. 605.

3. Sometimes he must impose the stricter opinions, if they are necessary for avoiding the proximate danger of sin;[8] in other cases he cannot impose them unless they are sufficiently certain.

[8] "Where benign opinions render proximate the danger of formal sin, as are some opinions of authors, for example, concerning avoiding proximate occasions, and others of this kind, then it is always expedient that the confessor use, indeed I say that as a physician of souls he is held to use, the safer opinions, which conduce to preserving penitents in the state of grace." St. Alphonsus, *Th. M.*, book I, n. 83. For there are benign opinions which, although speculatively they seem probable, nevertheless in practice are very dangerous: as in the matter of the sixth precept there are some concerning touches, kisses, dances, comedies, restraining the movements of sensuality, and similar things. Likewise in the matter of simony and usury, where several things seem to be excused by reason of liberal gratitude, but in practice involve great danger. Likewise when there is question of compensation to be made, or of an accusation to be pursued against offenders, where there is easily danger of injustice or vengeance. St. Alphonsus, *Th. M.*, book VI, n. 605.

4. If an opinion which is held probable by others appears to him certainly false or improbable, or is only lightly or doubtfully probable, he is held to respond according to his own opinion. Nevertheless, if he foresees that the penitent will not accept it, he will be able, from charity, to add that others teach otherwise; yet he will never be able to persuade to or call probable an improbable or doubtfully or lightly probable opinion.

5. Finally, if the penitent chooses a solidly probable opinion against the confessor, nevertheless the latter is held under grave obligation to absolve the penitent who is rightly disposed; for he is not the judge of opinions (unless they are openly false), but of the dispositions of the penitent[9] (Council of Trent, sess. 14, c. 5). On the contrary, if there is question a) of an opinion which regards the valid administration of the sacrament itself, because in these matters he is judge, and otherwise he would sin against his own conscience; b) or of an opinion which involves danger of formal sin, as was said under 3; c) or of an opinion which is openly false or lightly probable: in which case the confessor must warn the penitent, and not absolve him if he resists. Sometimes, however, if the penitent is in good faith and does not ask, he could be left in good faith when greater evils are feared and no fruit is hoped for (n. 69).

[9] St. Alphonsus, *Th. M.*, book VI, n. 604; *H. A.* XVI, 11.

108. Observation. - The penitent of himself can licitly go to various confessors to seek the more benign opinion, not indeed so that he may thus withdraw himself from obligation, but lest the obligation be incautiously imposed upon him. Whence it is required: 1) that he not use deceit; 2) that he act from a right intention; 3) that he not choose an opinion lightly or doubtfully probable. Yet those who act thus easily sin against one of these conditions, and therefore per accidens in practice it will easily be illicit.

Question Four: On the Sin of One Acting Against Conscience

St. Th. I-II, q. 19, a. 3, ad 3; Q. D. *de Ver.* 17, a. 4, ad 9; II Sent. d. 39, q. 3, a. 3, ad 2 and 6.

109. Various modes of sinning against conscience. - He sins against conscience both who directly acts against a conscience prescribing or prohibiting, and who indirectly exposes himself to this

danger by acting without a conscience adorned with the due qualities. Of itself and ordinarily it is not a special sin but is a condition of every sin; for the precept of acting according to conscience, or prudent reason, is general, just as the precept of observing the law, nor does it differ from it, because conscience, since it is not a new law, does not make the law but applies it and, as it were, promulgates it in second act; whence it need not be declared in confession. Nevertheless per accidens and rarely it can be a special sin, if someone expressly and directly through this intends to extinguish conscience; in which case it is formal and direct imprudence, which contemns and rejects the judgment of practical reason, and formal disobedience, which refuses to be subject to the rule of conscience and thus contemns the rule of every good operation, and exposes itself to the danger of every sin.

It is committed in three ways: 1) by acting directly against conscience, whether true or erroneous; 2) by acting according to a conscience erroneous vincibly; 3) by acting without a conscience sufficiently certain, but with a doubtful or merely opinative conscience.

110. Principles. The species and gravity of the sin of one acting against conscience.

I. To act directly against conscience, even erroneous conscience, prescribing or prohibiting:

1. Is a sin of the same species and gravity as conscience dictates; for species and gravity are taken from the object, not as it is in itself, but as it is proposed by the intellect and as the will tends toward it. For example, if someone kills another whom he erroneously thinks to be his own father or a priest, he will be guilty of parricide or sacrilege; on the contrary, if he kills his father or a priest whom he invincibly thinks to be a simple man.

2. If conscience in no way dictates the species of the sin, but only says that it is evil, it is a sin of simple disobedience toward the rule of reason; in the same way, to do a thing indifferent of itself, which is prohibited from the sole motive of obedience, is simple disobedience.

3. If conscience does not indicate the gravity of the sin, but only says that it is evil in general, and the one acting is actually so disposed that he would act even if he knew it to be mortally evil, or if he has in some way adverted or suspected this, or at least the obligation of examining it, it is a mortal sin, because he exposes himself to the danger of sinning mortally.

4. If conscience only says that it is evil and does not indicate the gravity, and he in no way, not even confusedly, adverts to it, it is only a venial sin. Yet authors disagree in assigning the reason. For some say that the sin is venial because evil in general, which alone conscience suspects, contains only minimal malice and consequently slight malice. Yet this seems false: for evil in general equally, or even rather, expresses grave malice, which alone is perfect and full malice, just as being in general rather expresses substance than accident. Whence it is better said that there is only venial sin because, since the one acting did not attend even confusedly to grave malice, sufficient advertence for mortal sin is lacking.

II. In a similar way one must speak of him who acts indirectly against conscience, i.e., with an uncertain conscience, or according to a conscience erroneous vincibly: it is a sin of the same genus or species, and gravity, as that concerning which the one acting doubts, or which he rashly from voluntary error judges licit, and to the danger of committing which he exposes himself. For he who

doubts whether something is a sin of such a genus, species, or gravity - or rashly from voluntary error judges that it is not - and nevertheless does it, wills it even if it is of such a genus, species, and gravity, and consequently intends this genus, this species, and this gravity. Thus he who doubts whether an action is gravely harmful to his neighbor and nevertheless places it, wills to do it even if it is gravely unjust, and therefore he is guilty of grave injustice.

III. Observations. - 1. Ordinarily, other things being equal, it is graver to act against a conscience erroneous vincibly than to act according to it, because it is graver to sin from knowledge than from culpable ignorance, unless this latter was chosen or affected in order to sin more freely.

2. Ordinarily in confession it need not be declared whether one acted against a true or erroneous conscience, or with an uncertain conscience, because the object of the sin is the same - unless per accidens, if otherwise the declaration of the sin would be false, for example, "I did not hear Mass on Wednesday," if someone thought it had to be heard.

3. The aforesaid sins, although they can arise from diverse other sins, and by name from precipitation, formally pertain to inconsideration, which implies a defect of practical judgment.

[Section 111 is skipped in the original numbering.]

Chapter III: On the Formation of a Right and Certain Conscience

In the Case of Uncertainty and Error Together.

It can happen that conscience labors under a double defect and, on the part both of object and of subject, lacks the required qualities, namely, if it is erroneous and at the same time uncertain. And therefore it must especially be seen how in this case the principles already explained are to be applied, so that in practice a conscience at once right and certain can be formed. Here there occurs to be treated:

Single Question: On the Species of Conscience — On the Part of the Object and at the Same Time of the Subject

112. State of the question. - On the part of the object and at the same time of the subject, various species of defective conscience are distinguished, according as on one side it is not certain because assent is not firm, and on the other side it is not right because the object is not true. All these are easily reduced to three genera: narrow and scrupulous consciences, laxior and lax consciences, and perplexed consciences, according as it hesitantly and erroneously judges either by increasing the evil, or by diminishing it, or by suspecting it on each side.

To these is opposed a prudent and well-formed conscience, which, certain conditions being given, on account of its perfection is called God-fearing (*godvreezend geweten*) if it reasonably and with tranquillity fears sin, from filial fear toward God whom it would wish to offend in nothing; or tender (*teeder, fijn, nauwkeurig geweten*) and delicate if it solicitously notices and judges the smallest defects, but prudently and according to the norm of truth.

We shall speak: 1) of perplexed conscience;

2. of lax conscience;

3. of scrupulous conscience.

Article I: On Perplexed Conscience

St. Th. I-II, q. 19, a. 6, ad 3; Q. D. *de Ver.* 17, a. 4, ad 8.

113. A simply perplexed conscience (*radeloos geweten*) is that by which someone, placed in the midst of two precepts, fears or suspects or probably thinks, invincibly, that he necessarily sins here and now, whether he places the act or omits it, whether he chooses this or that, and yet he must now choose one of them; for example, one serving a dying man who thinks he will sin whether he deserts him or omits Mass; one sworn to the killing of an enemy who thinks he will sin whether he does not keep the oath or kills. - It is said:

a) *fears, suspects, or probably thinks*, and thus it is distinguished from an erroneous conscience which judges with certitude; for it does not seem that anyone can judge certainly that he necessarily sins;

b) *invincibly*, and thus it is distinguished from a vincibly erroneous conscience, which is perplexed in a qualified sense: for with this someone sins whether by acting against it or according to it, yet he can also lay it aside; but because he voluntarily neglects this, therefore he sins;

c) *that he necessarily sins*: this is the object by which it is distinguished from every other doubtful and opinative conscience;

d) *and yet he must choose one*: for if someone could defer the action, it would not be a truly perplexed conscience, because he could consult the wise and lay aside the conscience; but if he did not do this, he would sin in the same way as was said concerning a vincibly erroneous conscience.

114. Thesis. He who has a simply perplexed conscience must choose what appears to him the lesser evil. - Each one must avoid voluntary or formal sin as far as is possible for him.

In the case, therefore, 1) he must rather transgress positive law than natural law, and human law than divine law; rather commit a venial sin than a mortal one (also generally if this is doubtful, because then it is presumed certainly venial), a doubtful sin than a certain sin, etc.; and he must form for himself a practically true and certain judgment that it will not be imputed to him. Otherwise in either case he would be guilty of the excess of the malice of the greater evil over the malice of the lesser evil.

2. But if he cannot discern which is the lesser evil, whichever part he chooses, he does not sin, even if he does not form a practically true and certain conscience, because in such a case the liberty necessary for sinning is lacking. Thus the confessor who equally fears lest, by absolving one doubtfully disposed, he concede the sacrament to the unworthy, and, by denying, remove the penitent altogether from the use of the sacrament.

115. Formation of a certain conscience in the case of a perplexed judgment. - He who labors under a perplexed conscience can easily form for himself an indirectly certain conscience, from the principle obvious to all: *No one is held to the impossible*; for example, in this way:

"No one is held to the impossible; - or: God does not oblige to the impossible.

"But in this case to do and to omit appear to me equally evil, and it is impossible at the same time to do and to omit.

"Therefore in this case I am not held to avoiding evil; - or: in the case God does not oblige me to avoid evil."

Or thus: "Between two evils, which it is impossible for me to avoid together, the lesser must be chosen.

"But in this case to do and to omit (to do this and to do that) appear to me evil, but that seems the lesser evil.

"Therefore in this case that must be chosen by me."

In this way he now has a practically true and right conscience.

Article II: On Lax Conscience

116. A lax conscience (*conscience relachee; ruim of los geweten*) properly is one which doubts, suspects, or probably thinks, on account of slight and contemptible reasons, that an act here and now to be placed, being evil, is not evil, or is less evil than it is, for example, venial when it is mortal. Whence it is as it were a moral anesthesia. - It is said:

a) *properly*: for lax conscience is often taken improperly for a habitual disposition which inclines one to laxer judgments and to having a lax conscience;

b) *doubts, suspects, or probably thinks*: for if it judges with certainty, then it now becomes a conscience simply erroneous, although this could have arisen from preceding laxity;

c) *on account of slight reasons, that an evil act is not evil...*: this is its proper object, by which it is distinguished from every other positively doubtful and probable conscience, and even from scrupulous conscience;

d) *an act here and now to be placed*: thus it is distinguished from a consequent lax conscience, which judges an act already placed.

117. Division of lax conscience. - Lax conscience is threefold:

a) *Simply such*, which rests upon an opinion thinly or doubtfully probable, or applies the more benign reflex principles too frequently and wrongly; it proceeds from a defect of attention, more often voluntary, and from levity of mind.

b) *Cauterized* (I Tim. IV, 2: *conscience emoussee, cauterisee; verstokt of verstompt geweten*), which makes even grave sins as nothing and accounts evil as good without any remorse (Is. V, 20), and proceeds from crass ignorance and a long-standing habit of sinning: for in this way, from perverse morals, the moral sense can be so clouded that a man does not abhor even grave sins, but, as it were, drinks iniquity like water (Job XV, 16). This conscience is opposed at once to the God-fearing and to the scrupulous conscience, so that the God-fearing conscience holds the mean between the cauterized and the scrupulous.

c) *Pharisaic*, which is so called from the Pharisees straining out the gnat but swallowing the camel: it makes great things (for example, duties of state, internal things, prescriptions of the natural law) little, and little things (for example, works of supererogation, external things, prescriptions of positive law) great (Mt. XXIII, 24). It often arises from malice, and it is opposed at once to the tender

and to the narrow conscience, so that the tender conscience mediates between the Pharisaic and the narrow.

118. Conjectural signs of lax conscience. - The following signs are enumerated, by which it is recognized and distinguished from a scrupulous conscience:[1]

[1] Thus Lacroix, *Th. M.*, l. I, n. 256, from Stoz, *Tribunal Poenitentiae*, n. 223.

1. The lax man is one who despises and holds as nothing those things which others commonly think are sins; but he who fears what others hold as nothing is scrupulous.

2. He who generally does not believe preachers and confessors, but judges their rebukes to be immoderate exaggerations, is lax; but he who does not believe confessors or other learned and upright men when they excuse the fact is scrupulous.

3. He who, trusting in his own judgment, is accustomed to proceed without consulting anyone is lax; but he who, even in clear matters, or in matters about which at another time he has received a resolution, asks again and again, wishing by this to render himself more secure, is scrupulous.

4. He who in confessing is in no way solicitous about expressing the species or the number of sins is lax; but he who confesses all things doubtfully and hesitatingly, repeating the same thing more often, saying now this number, now that number, or a different circumstance, and never satisfying himself, is scrupulous.

5. He who acts in anything precipitately and without any consideration is lax; but he who proceeds in all things so suspended that he does not trust the common doctrine of theologians, but always seeks evidences and demonstrations, is scrupulous.

6. He who hurries through any prayers swiftly and vaguely, interrupts them without cause, looks around while praying, or chats, is lax in this; but he who prays anxiously, often stops in order to have attention, and repeats the same things, is scrupulous; and so concerning other matters.

From these it follows that even among the devout there is found a lax conscience, at least in light matter, for example, if they make certain light sins as nothing, or act in anything precipitately and without consideration, or, trusting in their own judgment, are accustomed to proceed without consulting anyone, etc., as was said under 1, 3, and 5.

Especially a penitent in confession is to be judged to be of lax conscience if there is discerned:

a) an accusation evidently insufficient, such as ordinarily exists among those who, on the occasion of annual confession, say that they have committed no evil, neither theft nor homicide, or confess only a few distractions in praying, or certain similar things;

b) absence of remorse of conscience and delay of confession until some external circumstance as it were compels one to confess;

c) lack of all sorrow for the sins declared, as among those who seem rather to defend their sins than to accuse them, who hear the exhortations of the confessor distracted and insensible, who try to

persuade themselves by certain little reasons that God is too good to damn to hell for omission of Mass or for eating meat.

But if by these or by other signs stated above the confessor recognizes a lax conscience: 1) he cannot simply trust such a lax penitent who recognizes himself guilty of no grave sin, but by apt questions, as far as possible, greater integrity of confession should be procured; - 2) where he accuses himself doubtfully concerning consent, he is to be presumed to have consented, otherwise he would not doubt, but would be certain that he had not consented, or would in no way remember; - 3) above all, contrition is to be inculcated upon him.

119. Causes and effects of lax conscience. - Several causes are enumerated, which on the part of the intellect are reduced to vincible ignorance, on the part of the appetite to perversity of will. For the most part they are:

1. a bad or neutral education, which is unequal to establishing the difference of good and evil and inculcating the true sense of obligation; and familiarity with the vicious, to whose morals we become accustomed and with whose sentiments we are joined;

2. defect of consideration and counsel in ordering the moral life, whence good works are done from usage, in an external and mechanical way, rather than from love of good and hatred of evil;

3. a soft life, which enervates the soul and causes levity of mind, or a defect of moral discipline in the will, which is acquired only through the practice of mortification and self-denial;

4. vehement inordinate passions, especially in youth, by which reason is clouded and easily judges licit what we desire too much, for example, anger, ambition, greed, empty glory, sensual pleasure, especially lust, by which it comes about that the animal man does not perceive the things that are of the Spirit of God. Thus, for example, movements of anger seem to be nothing other than pious indignation, unbridled ambition nothing other than noble emulation, avarice is held as legitimate providence, commercial frauds are thought to be a display of industry, pleasure an honest or necessary recreation, etc.;

5. excessive solicitude for temporal things, which makes us earthly, in mature age;

6. a life long immersed in vices, or the custom of sinning, and of deliberately neglecting remorse of conscience, which takes away horror of sin;

7. presumptuous trust in God, from which arises neglect of prayer, examination of conscience, and confession, which wholly casts down the soul and leaves it fasting from spiritual food;

8. tepidity of soul.

But the effects of lax conscience are:

a) in the intellect, blindness of mind, dullness of sense, foolishness or blind tranquility after sin;

b) in the will, hardness of heart or insensibility to pious admonitions, so that it can scarcely be moved by any means;

c) mockery of pious exercises;

d) hardening in evil and final impenitence (Rom. II, 5).

120. Thesis. Lax conscience is not the rule of acting prudently, but must be laid aside.

It is proved: For a) it is uncertain; - b) it proceeds from rashness or ignorance which is voluntary, or at least cannot remain involuntary when the doubt arisen from slight reasons is seriously examined; - c) moreover it is dangerous and is accustomed to have harmful effects, because it casts the soul upon the broad way which leads to perdition (Mt. VII, 13), whence ordinarily it increases the danger of sinning mortally or of persevering in sin; and therefore, other things being equal, even more than a scrupulous conscience, it must be guarded against and corrected.

But if it is not laid aside, the one acting sins with that species and gravity of sin to which he knows he commits himself, or to the danger of which he exposes himself, just as theologians teach concerning a vincibly erroneous conscience and concerning an uncertain conscience; and indeed he sins as often as, at least confusedly, he adverts to the insufficiency of the reasons on which he rests and voluntarily neglects to employ apt means for forming a right conscience, and thus exposes himself to the danger of sinning. - Indeed he can sin gravely even in a light matter, if his rashness, with any dictate omitted or contemned, impels him to acting, being actually so disposed that, if he adverted that the action was gravely evil, he would nevertheless place it.

121. Remedies for lax conscience. - Lax conscience must be laid aside from true faith and purification of heart, by the profession and exercise of true religion. Whence the remedies are the study of reflection or of greater consideration, and the combating of tepidity; in particular:

1. a spiritual retreat for some days, whereby the soul may be free for God and itself (Os. II, 14);

2. daily discussion of conscience concerning the acts of the present day (Is. XLVI, 8);

3. devout and assiduous prayer and meditation on the last things (Eccli. VII, 40), and frequent reading of pious books;

4. diligent confession after sin, lest the soul be hardened in sin, and inquiry of means from the confessor;

5. removal of the causes, for example, flight from the wicked and conversation with the good (Prov. XIII, 20).

Especially: a) habitually, let the lax man beware of his first estimation concerning the morality of his acts, so that he may strive against his laxity and learn to rectify his conscience;

b) when a doubt, even a light one, has arisen concerning the liceity or gravity of an action to be placed, let him not despise it as empty, but examine diligently;

c) while doubt concerning the gravity of an action placed remains, let him not approach Holy Communion unless he has confessed.

But if he seriously tries to amend his conscience, he is to be encouraged with great patience and meekness to confidence and perseverance; and if then nevertheless he relapses, he will sometimes be

excused from grave fault on account of precipitation in acting, in which case he will have to be exhorted to greater vigilance, so that he may proceed more cautiously and may learn to avoid this also.

122. Warning. - According to the principles explained above (n. 69), the confessor must warn and instruct the penitent who labors under a lax conscience: 1) if such a conscience, as often happens, is vincible and gravely culpable; 2) even outside grave fault, if fruit of the warning is hoped for; 3) even if fruit is not hoped for, when it is harmful either to the penitent, who, with laxity growing worse, could suffer total extinction of the moral sense, or to others, because it would cause notable scandal of neighbor or public evil.

Article III: On Narrow and Scrupulous Conscience

123. A narrow conscience (*conscience etroite; eng of nauw geweten*) is one which, from a slighter cause, fears or increases the character of sin; to which pertains the scrupulous conscience, which anxiously fears and too greatly increases the character of sin (*conscience anxieuse et scrupuleuse; angstig of beschroomd geweten*): and so this differs from the former by a simple degree, and therefore the same principles hold for each according to a certain proportion.

Scruple is said metaphorically from *scrupus*, which is a rough little stone lying hidden in the shoe of one walking, yet bringing annoyance and impediment in walking; and therefore in morals it is a spiritual stumbling-block, which impedes a man from proceeding with unoffending foot and free step in the way of truth and Christian practice. Whence an empty apprehension is so called, and the fear and anxiety arising from it, that somewhere there is sin where there is not, or a greater sin than there is.

Whence scrupulous conscience in the proper sense is a dictate founded upon scruples; and it can be defined as one which, with anxiety, doubts, suspects, or probably thinks, and fears, on account of slight and contemptible reasons, that an act here and now to be placed is evil, though it is not, or is worse than it is, for example, that it is mortal when it is venial. - It is said:

a) *properly*, for by the name scrupulous conscience there is often called both scrupulosity, i.e., the habitual disposition by which we are inclined and prone to having a scrupulous conscience; - and also the actual anxiety caused thereby. For this can remain even with a sufficiently certain conscience by which someone judges that the act is licit, while at the same time, from light causes, he somewhat fears and is anxious lest it be illicit: mere scruple or apprehension, imagination, and anxiety of themselves are not conscience or a dictate of reason, but a shadow and likeness of conscience, and such a doubt, which is judged imprudent, does not impede the judgment of a practically certain conscience which despises scruples. Then the conscience itself is not formed from scruples or scrupulous, but well formed, although it is agitated, crucified, and vexed by scruples;

b) *doubts, suspects, or probably thinks, and fears*: thus it is distinguished from a conscience simply erroneous, which judges certainly; in which case the very judgment, i.e., the conscience, is no longer scrupulous, although it can have arisen from preceding scruples;

c) *on account of slight reasons, that an act is evil which is not...*: this is the proper object by which it is distinguished from every other positively doubtful and opinative conscience, and especially from lax

conscience; - indeed also from a God-fearing or tender conscience, which judges serenely with foundation or according to truth;

d) *here and now to be placed*, and thus it is distinguished from a consequent scrupulous conscience, which judges a past act.

124. The nature and signs of scruples.[1] - A scruple, as we have already noted, is an empty apprehension and the fear and anxiety thence arising that somewhere there is sin where there is not, or that it is greater than it is. A certain mental obsession (*obsession de l'esprit; kwelgedachte*) and hyperesthesia of sin are accustomed to accompany this apprehension; and thus a scruple is already a mental disease, and indeed of the moral order: a morbid anxiety of soul concerning an obligation to be fulfilled, or concerning sins committed or to be committed.

[1] On scruples cf. Pitres and Regis, *Les Obsessions et les Impulsions*; P. Janet, *Les Obsessions et la Psychasthenie*; *Les Nevroses*; Dr. Raymond, *Nevroses et Psychonevroses*; Eymieu, *Le Gouvernement de soi-meme* (2nd vol.); Grasset, *Demi-fous et demi-responsables*; *Le Psychisme inferieur*; Gemelli, *De Scrupulis*; d'Agnel and d'Espiney, *Psychotherapie des troubles nerveux*; *Le Scrupule*. Likewise Scaramelli, *Directorium asceticum*; Reuter, *Neo-confessarius*, n. 255-274; Billuart, *De Conscientia*; St. Alphonsus, *Th. M.*, I, n. 11-19; *Praxis conf.*, n. 95-98; Raphael a S. Joseph, *Institutiones fundamentales Theologiae moralis*, de Conscientia; Dubois, *L'Ange conducteur des ames scrupuleuses*; P. Raymond, *Le Guide des Nerveux et des scrupuleux*; Grimes, *Traite des Scrupules*; Beaudoin, *Tr. de Conscientia*; and other authors in this treatise, such as Ballerini, Lehmkuhl, *Theol. Mechliniensis*, Prummer, and Vermeersch; Leroux in the periodical *Revue Eccl. de Liege*, 1912; Legrand in the periodical *Coll. Brugenses*, 1922 and 1923.

Therefore a threefold element is required for it: 1st, of the intellectual order, a futile reason which besieges the mind and whose solution does not appear, arising without deliberation in the manner of a fixed idea, violently forcing itself in, stubbornly recurring; - 2nd, of the affective order, an empty dread of sinning arising thence, which holds the attention fixed and impedes the will from turning the mind away from it and determining it to firm assent; - 3rd, an effect proceeding from both, agitation, unrest, and disturbance of mind. It can concern the past, as if someone from a futile reason fears lest he omitted some sin or circumstance in confession, lest he examined himself insufficiently, lest he consented to temptation; or it can concern the present or future, as if someone from a similar reason fears lest that which he is doing or is about to do is a sin.

The signs and manifestations of a scrupulous conscience are:

1. pertinacity in the argumentation of one's arguments and in judgment, by which someone, from fear of sin, acquiesces in no one's opinion;

2. on the contrary, at the same time timidity in conclusions, and therefore frequent change in judgment from a light appearance, so that he cannot pronounce definitively; and distrust of self, by which someone suspects defects either of the intellect in grasping or interpreting responses, or of words in proposing difficulties, or of memory in retaining counsels given or positive precepts, or even in his own deeds, so that he doubts about the door closed by him, about the light extinguished, about the hours recited, about the Mass heard. From both of these arise:

3. the desire of consulting books or questioning new confessors;

4. impertinent, lengthy, or repeated reflections, accusations, or questions, concerning several circumstances which were present in the action or could have been present, or concerning the

response of the confessor;

5. disturbed and disordered ways and gestures in avoiding sins or treating affairs, and a manner, as it were compelled, of rushing into the action concerning which he was anxiously inquiring, and of proceeding as it were blindly in external works;

6. fear of sin in those things which are held by all as licit;

7. excessive unrest and anxiety concerning past actions (for example, concerning confession, the recitation of the breviary) done with moral diligence, and consequently the will of repeating them again and again;

8. inconstancy and defect of firmness in the purpose of preserving peace, of keeping silence concerning scruples, of omitting a new inquiry into the matter, or of simply obeying.

125. Causes and effects of scruples. - The causes of scruples are as many as weaken the nervous system and diminish the energy of the soul.

1st. Internal causes: a) mediate on the part of the body: a melancholic temperament, prone to suspecting evil and to sadness, which can also come from heredity or from a certain degeneracy;[2] - solitude or flight from all human conversation and recreation; - and weakness of the head, even proceeding from immoderation in abstinence, vigils, and studies; or from a weak and infirm constitution, insufficient nutrition and disturbance of the functions of nutrition, depressing emotions, a bodily illness gravely debilitating, or even psychasthenia, which scarcely permits the soul a more intense attention for forming an equitable judgment concerning practical matters;

[2] Melancholy is numbered among the causes because melancholic persons commonly are sharp in talent and suspicious by nature, and tenacious of the things which they apprehend: thus they are prone to every suspicion of evil, they wish to scrutinize even the smallest things, and with difficulty acquiesce in others; all of which predispose to scruples.

b) immediate causes on the part of the soul, whether in the intellect: subtlety of talent which easily finds reasons for doubting, or seeks mathematical certainty in all things; weakness of mind and defect of judgment (women are more often scrupulous than men); weakness and inconstancy of soul by which it follows vivid imaginations rather than mature judgment; - or in the affection: hidden pride clinging tenaciously to one's own judgment; pusillanimity, which does not know how to contemn fears and loses courage.

There is therefore a twofold kind of the scrupulous: some are rather intellectual, others too sensitive and timid from a certain phobia. In both cases there is present a defect, both 1) of practical judgment, or prudence in estimating particular circumstances; and 2) of energy, or fortitude, perseverance, or constancy, of the will which does not command the intellect to be content with practical and improperly so-called certitude, or does not moderate the imagination and sensitive appetite and thus does not move to a serene examination free from the influence of imagination and anxiety.[3]

[3] Some, such as Grasset and Leroux (in the periodical *Revue Eccl. de Liege*, 1911-12), reduce scruples to diseases of the will; nevertheless their principle seems to be a defect of practical judgment, which precedes the exercise of the will. Grasset himself admits: "The fixed idea takes over the will an unjust and undeserved, uncontrollable, irresistible, disproportionate, senseless dominion." Besides, there does not seem to be a disease of the will which does not depend on mental disease, since the act of the appetitive power follows cognition and is essentially proportioned to it (cf. Vermeersch, *Th. M.*, I, n. 94,

citing St. Thomas, I-II, q. 10, a. 1). But if a disease of practical judgment is called a disease of the will, the manner of speaking is not correct, but the question will be about the name.

2. External causes are: a) God - by not granting light or strength - permitting scruples as punishment of sin, for amendment of conscience, greater generosity of soul, exercise in virtue and confidence, horror of sin, increase of merit, mystical trial, etc., or also on account of the good of others, so that we may learn to direct the scrupulous;

b) the devil exciting scruples in the imagination and sensitive appetite for tormenting the devout (especially by nourishing sadness), so that they may become weary in virtue, seek external consolations until they are led to despair of salvation, by which they decline toward laxity, indeed toward all vices, or even bring death upon themselves;

c) education too constricted or harsh, or too soft, conversation with the scrupulous, and the reading of rigid books or books treating of moral matters by one who does not know how to judge them rightly.[4]

[4] On the discretion of scruples, whether they are from God, from the devil, or from corruption of nature, see Reuter, *Neo-confessarius*, n. 258-260.

But the harmful effects, and many and very great temporal and at the same time spiritual damages, can proceed from scruples to which consent is given, from whatever cause they arise. And indeed:

1. in bodily life, agitation and anxiety exhaust the powers, exasperate the nerves, weaken and disturb the nervous system, and prepare the way for neurasthenia, hysteria, and other diseases;

2. in intellectual life, they disturb the rectitude of practical judgment; indeed they lead to insanity if they are universal, to monomania if they are concerned with one object;

3. in social life, they diminish consideration of neighbor, take away aptitude for exercising social relations authoritatively or mercifully, and render one gravely troublesome to others;

4. especially in spiritual life, they cause loss of time in combating empty phantasms, negligence and unsuitability for the duties of state, dry up devotion and turn one away from prayer and reception of the sacraments, excite distrust toward God and pusillanimity of spirit, whence sadness arises, dejection of soul, despair, which sometimes leads to suicide or unbridled lust.

126. Remedies for scruples are:

1st. To remove or lessen their internal causes: melancholy and solitude by consolations and joyful recreations; weakness of the head by counsels of a wise physician; defect of practical judgment by instruction of conscience; pride by humility and submission of judgment; inconstancy and weakness of soul by exercise and strengthening of the will; timidity and pusillanimity by meditation on the goodness of God and confidence in God, etc.

In particular, the intellectually scrupulous should be persuaded that in moral matters mathematical certainty is not to be sought, that attention is not to be paid to all things which can happen, but only to those which will likely occur, and that the anxiety of the appetite is to be carefully distinguished from the judgment or state of the intellect.

On the contrary, let the timid learn to act firmly in every matter, to neglect bravely the anxiety which they experience in acting, trusting in the goodness of the divinity, and to retain in mind and often renew a firm purpose of vigorous battle against scruples.[5]

[5] Thus for strengthening the will. On this cf. Eymieu, who describes methodically the process of cure, according to which 1) sensations not only sad but merely passive and emotive must be avoided; 2) a physiological cure must be instituted from rest, sleep, distractions, peaceful tranquility, without fatigue, having been sought, and after leaving behind the environment in which ordinary life is moved; 3) activity must be exercised and the will educated, by various means by which the scrupulous person may learn to will, to consent, to attend to physical or intellectual work, to apply effort, to will strongly, firmly, and constantly under a uniform and, whatever things stand in the way, unconquered discipline, and by acts frequently repeated.

2nd. To avoid external causes, that is, scrupulous persons or writings which are the occasion of scruples, and excess of intellectual labor.

3rd. To flee idleness and apply oneself diligently to work, especially that which delights more, in order, that is, to avoid empty thoughts.

4th. With a great and mortified soul to act against scruples, repelling them as evil and harmful thoughts, especially indirectly, by contemning them and applying the soul to other things, and never consenting to them, not even once.

5th. To act as other pious and God-fearing men do.

6th. Especially: to obey a superior or confessor (who must be chosen not as scrupulous, but as prudent, even rather than holy) in a humble, blind, and perfect manner, and often to ask this obedience from God with great confidence; which is almost the only efficacious remedy.

127. Special principles to be used for directing the scrupulous are:

I. The scrupulous person cannot be ruled by his own judgment, because his reason is impotent for this; therefore nothing remains except that he be governed by the reason of another, for example, of a superior or confessor, who says: that he is scrupulous and in what matter,[6] and that in that matter he can and ought to follow the judgment of the superior and cannot sin by obeying, unless he is wholly certain both that sin is present and that the judgment of the superior cannot be applied here and now; - indeed even if he is certain, or if he says that everywhere he has evidence of obligation and sin, provided it is established that he is so scrupulous that his imagination forms for him the idea that he is certain. For, although by acting thus the scrupulous person may sometimes err, nevertheless he will not sin by reason of the obedience which he owes to the superior or confessor.

[6] For in other matters he is lax. "From pusillanimity it follows that someone is withdrawn from works of the virtues on account of fear of sinning. Indeed sometimes, in order to avoid light sins, he is carried toward graver ones. This happens especially to one laboring under a scrupulous conscience concerning a special matter, for example, concerning the recitation of the hours, celebration of Mass, etc. For often other things are accounted as nothing, and with a scrupulous conscience a lax conscience is nourished. Nothing strange, since they proceed from the same root, namely, from smallness and levity of soul; for example, it not rarely happens that one anxiously repeating the words of consecration does not care about the cleanness of the vessels or of the corporal, nor attend to other duties of his office." Thus Beaudoin, *Tr. de Conse.*, q. 4.

Namely, the presumption stands for the confessor as for the superior, who must be obeyed unless it is certainly established that he errs in prescribing the regimen, and that he cannot impose such a rule, and that the obedience is illicit. And the scrupulous person can follow such a universal rule, as being wholly necessary to him for a healthy moral life, even if from it in a particular case error could

follow, or material sin: that effect can be considered as accidental and legitimately permitted on account of a proportionate cause. For he has the right to employ efficacious means, and means honest in themselves, for being healed.

II. The scrupulous person easily exaggerates or fears sin; hence in him a grave doubt, which in others would be reasonable, "that in the case sin is present," is judged empty and to be despised; and a light doubt, "that in the case there is not sin," is judged founded.

Let him not examine such doubts carefully in order to arrive at certitude: for he cannot arrive at this, and no one is held to what is useless. Whence it must be said to him that he may act freely, unless he is wholly certain that sin is present; indeed if he is certain, provided it is established that he is so scrupulous in this or that matter that his imagination forms for him the idea that he is certain.

III. A positive obligation, namely of an affirmative precept, for example, of integrally confessing sins, examining conscience, saying the hours, making fraternal correction, does not oblige with great inconvenience, whence the scrupulous person can more easily be exempted from it.

128. Thesis. Scrupulous conscience is not the rule of acting prudently, but must be laid aside at least by a judgment formed from indirect principles handed down by a confessor.

It is proved: It is not a rule of acting because it is uncertain and vincibly erroneous.

But it can be laid aside from some reflex principle which has been indicated by the director of conscience or by the confessor; for example, in the following way:

"Whatever may be the case concerning the material liceity or illicitness of this action, it is certain to me that in such doubts the confessor must be obeyed; or: that I can and ought to act as the confessor has said; or: that I can neglect my doubt or judgment; or: that by obeying I cannot sin, etc.

"But, in the case, such a doubt or such an apprehension is present.

"Therefore, in the case, it is certain to me that I can and ought to act as the confessor has said, etc."

Hence, although it is not licit to act against a scrupulous conscience, nevertheless one can act against scruples; indeed, lest he incur grave damage, he is sometimes bound, even under grave obligation: not indeed if he remains in full doubt, for to act with a doubtful conscience is illicit; but provided he in some way lays aside the doubt and forms for himself a certain conscience, by judging, for example from the judgment of the confessor, that it is a scruple and by contemning it. For a scruple, because it is an empty apprehension of the imagination, does not render the doubt serious, and does not prevent the judgment of conscience previously formed from being practically certain. Lessius speaks to the point, *de Prud.*, c. 1, n. 2:

"Prudence is not always able totally to exclude a scruple. For this often perseveres with the judgment of prudence; nevertheless, in order that the judgment then be prudent, it must be accounted a scruple, and thus prudence also in some way excludes the scruple. For although the imagination of sin perseveres with a certain anxiety, nevertheless through prudence it is accounted a shadow, not truth."

But one must not always actually remember the principles and rules handed down above, and from them form for oneself an actual dictate concerning the honesty of the action, because this is often morally impossible for the scrupulous person. As St. Alphonsus says, *Th. M.*, l. I, n. 19:

"Nor is there need that in each particular act he form this judgment... for it is enough that he act against the scruple from the judgment once formed; because, on account of past experience, that judgment exists in his conscience virtually or habitually, although obscured by darkness. Moreover, while the scrupulous person acts in that confusion, he often does not act with a scruple or deliberate fear, for ordinarily he would not wish to omit what he knew to be pleasing to the divine will."

Hence for practice certain conclusions must be noted:[7]

[7] Vermeersch, *Th. M.*, I, n. 382.

1. After the scrupulous person has been warned concerning scruples, the consents which he says he has given are to be ascribed to the phantastic order, whether to a wicked interior suggestion, or to a purpose here and now of acting even if it is evil, or to a purpose of sinning. For the scrupulous person imagines himself to say: I will; or: thus I will do, whether it be good or evil; or: I will sin and then expiate the sin by confession. But the imagination represented to him an assent of this kind, so that he seemed to himself as it were to behold himself thus acting. Nevertheless, no otherwise than in a dream, he gave no free consent to those suggestions or purposes; but perhaps he made this use of foreseen confession, that thence he might become more courageous for acting against scruples. Therefore for the scrupulous person who, for example from the counsel of the confessor, knows habitually that his doubts are to be contemned, it is lawful to act while the scruple remains. For this knowledge gives him a certain conscience.

2. It can happen that in the process of his doubts and little reasons the scrupulous person labors for a long time, and is so wearied and disturbed from the struggle that he rushes blindly into the action: then he lacks the true liberty necessary, at least for sinning gravely.

3. Similarly, promises, vows, and blasphemies can be held as fictitious, which some persons dream they have often, indeed almost daily, made or said. The confessor should simply refuse to hear or weigh these things.

4. Although the obligation of acting against scruples can be grave, since from them grave damage can be feared in spiritual progress (abandonment of spiritual exercises, despair, suicide) or in nervous depression and the health of body or mind, nevertheless the scrupulous person scarcely incurs subjective fault, provided that with his infirm will he wishes to strive against scruples in general; indeed it is often not expedient to insist, lest a new disturbance and perplexity arise and the danger of despair, which is especially to be feared in sensitive persons.

129. A threefold class of the scrupulous is chiefly distinguished:

1. Some are distressed by wicked thoughts concerning faith, chastity, charity (for example, by a rash judgment or a feeling of aversion), or concerning future things to be done under condition, or by blasphemies internally uttered, to which they often fear they have assented.

It must wholly be imposed upon them a) that they not fight directly against those thoughts (for example, by eliciting an act of faith, etc.): for that would excite them more and would be a great inconvenience; but b) that they despise the scruples, because not wicked thoughts but only consents,

not fictitious consents but only voluntary ones, are sin; and c) that they not examine themselves concerning those thoughts or write them on paper; indeed d) it can fittingly be imposed that they abstain from confessing them, unless they knew so certainly that they had consented that they could swear it. For the very fear of consent is a sign of resistance or non-consent.

2. Others are anxious concerning duties A. already fulfilled:

a) Either on account of the integrity or contrition of past confessions; to these, if at some time they have made a general confession, or for a notable time have diligently made their confessions, it must be imposed that they no longer think at all about all those things nor say a word in confession, unless they continue to fear and can affirm these three things without any doubt, even with an oath: that the sin certainly was committed, that in their mind while they committed it it was mortal, and that certainly they had forgotten it. But if they do not at once affirm or swear, they are no longer to be heard; and even if they swear, they are not for that reason to be believed.

b) Or concerning the hearing of Mass, or the recitation of the hours; to these it must never be permitted to hear another Mass, or to repeat the hours, or a part.

c) Besides, those who suffer perpetual and grave anxieties concerning these things, on account of the great inconveniences of scruples, are excused from the material integrity of confession or of the hours, so that they are not bound to spend more time on the hours than upright persons are accustomed to spend, and they can omit the rest; indeed sometimes a part or the whole of the office could be prohibited to them, or a determinate space of time assigned, or the recitation suspended for a time.

B. Likewise the scrupulous are anxious concerning duties to be fulfilled:

a) Concerning the integrity or contrition of the confession to be made; upon these there must be imposed a moderate examination of conscience (or even the time of examination must be determined), an accusation concerning a few points or concerning exterior sins alone, and the simple recitation of the act of contrition.

b) Concerning fraternal correction; they must suppose themselves not bound to it unless they are wholly certain.

c) Concerning the intention of Mass, of the hours, of the sacrament, etc.; these cannot elicit any intention, but must begin absolutely and materially, and continue without hesitation and delay, without precipitation, strain of the head, or anxious solicitude: the very fear lest the intention has been lost or not renewed is a certain sign that the intention is present; - moreover, the intention of satisfying is not required, but of saying the office, hearing Mass, etc.; but it is as it were impossible that one using reason should not have such an intention.

d) Concerning Holy Communion; let them approach it with certitude that they would not sin, even if they were in the state of sin; indeed then per accidens they would likely obtain grace.

In all these matters a moderate diligence must be employed.

3. Others fear sinning in almost every action.

Upon these it must be imposed: a) that they act freely, without deliberation and according to the first glance, despise scruples and act against them, where evident sin does not appear, indeed even against evidence, if they were so scrupulous that their imagination formed for them the idea that they had such evidence; -

b) and it must be commanded that they conquer scruples, lest they become insane or wholly useless for acting; -

c) and that they abstain in confession from accusing themselves of such actions: for although they can sometimes err, nevertheless they do not sin, by reason of the obedience which they owe to the confessor.

But if they fear sin only in some particular genus, the same holds for this genus.

130. Warnings for the confessor. - 1. Before the confessor treats a penitent as scrupulous, let him inspect with great circumspection whether he truly is scrupulous: for there are some who are anxious about many things, but not without just and reasonable cause, for example, about restitution because they proceeded laxly; about past confessions because they approached without due preparation; about past sins which they more wish to expiate, as in new converts; about grave sins committed for the first time or by relapse and not yet confessed; about lighter sins in which, from tenderness of conscience, one now does not wish to offend God, etc.

2. When he has recognized the scrupulous person, let him require perfect obedience, asking the penitent whether he trusts him and steadfastly wishes to obey him; otherwise let him dismiss him.

3. Let him carefully examine in what matters the penitent is scrupulous: for ordinarily, on account of defect of judgment, in some matters he is scrupulous, in others rather lax; and therefore he must also be treated partially as lax. Whence let him tell him that he is scrupulous and in what matter: for the scrupulous person who persuaded himself that he was not scrupulous is incurable.

4. Let him try to know the cause of the scruples, in order to remove it, after the likeness of a physician, who first explores the disease and its cause before applying medicines.

5. That the scrupulous may obey more easily, let him try to win their confidence by paternal long-suffering; for which reason, with great goodness let him compassionate their miseries, act with them in much patience, and show that he has theological knowledge and competent acquaintance with scruples. Generally they must be treated with meekness and gentleness, especially if they are sensitive, but nevertheless with firmness; and they are to be rebuked only on account of disobedience, even, if necessary, strongly and with severity and rigor (for example, by depriving them of communion), yet not excessively. In this point, namely, they must be treated as though they were not scrupulous. But if they absolutely refuse to obey, let the confessor dismiss them and send them to another, saying that he can no longer procure their good.

6. Let him inculcate the reasons why one must act against scruples, for example, the dangers to which the scrupulous person exposes himself: of losing peace, of wasting time, of neglecting serious care for spiritual progress, of remaining destitute of all fortitude, of causing annoyance to others by his moroseness and becoming unfit for labors useful to neighbor; and the other things explained above.

7. Let him show the scrupulous firmness of countenance and speech, and respond without any hesitation, and hand down a few general rules, without many particular distinctions, for otherwise they will always doubt whether these hold for the occurring case. Let the response be clear, distinct, and brief. Let him not be lengthy in explaining counsels, lest among the motives alleged something less solid be found; let him always say the same thing; nor let him render reasons for the response, because they will inquire and doubt concerning their value, and thus they will be led not by another's judgment but by their own. Let him abstain from repeating the exposition which they have made of their difficulty, lest diversity be discovered; nor let him inquire much about the circumstances of the scruples, as if they had moment. Nor let him permit them often to recur to him, or to consult many others or books, or to commit to writing the declarations made to them.

8. Sometimes let him gently laugh at the penitent, when he proposes unfounded doubts; and let him command him to think what he himself would wish to answer if he were asked by another about such a thing, and let him tell him to do that very thing.

9. Let him gradually lead him to solving his own cases by himself, forbidding him to propose doubts more often, but only, for example, once in a week or in a month, nor to recite more than two or three, suggesting that he act in the way in which he would think others would act. Let the scrupulous person reject every way which others have as ridiculous.

Treatise: On the Cardinal Virtue of Justice and on the Annexed Virtues

Introduction.

131. Order of things to be said. - Besides prudence, which disposes reason itself so that it may rightly judge and command all human actions in particular, in order to the honorable good and to the last end, there are three other cardinal virtues with the virtues annexed to them, which order the other powers and place the good of reason in them, so that all the movements of our appetite may be conformed to right reason and prudence, and thus may tend to the honorable good and to the last end.

But movements of the appetite 1) some are those which of themselves imply an order only to ourselves, namely, the passions of the sensitive appetite, of which a) some impel toward delectable good against reason, which temperance moderates and restrains, which removes the impediments of rectitude in the concupiscible appetite; b) others decline from the good and withdraw from that which reason dictates, against which fortitude strengthens the soul, which removes the impediments of rectitude in the irascible appetite; - 2) other movements are those by which we are also ordered to others, namely, operations of the will, which justice rectifies.

Justice therefore also regards the good of another, so that man may have himself well toward another; fortitude and temperance regard only the good of the one operating, so that he may have himself well toward himself; whence justice is more universal. And because it immediately perfects the will, which is nearer to reason, it participates more in the order of reason, and therefore we begin to speak of the cardinal virtue of justice.

132. Division of the treatise.[1] - The treatise is divided into six parts: 1. on justice in general; 2. on legal justice; 3. on commutative justice; 4. on distributive justice; 5. on the virtues annexed to justice; 6. on the precepts of justice.

[1] Lest confusion arise, we indicate only the division according to the large lines, referring, for the subdivisions, to the several questions.

The 1st Part treats of justice in general: 1st, of justice according to itself; - 2nd, of right, which is the object of justice: a) of right in general; b) of the species of right; c) of the object of right and dominion; d) of the subject of right and dominion; e) of the acquisition of right and dominion; - 3rd, of injustice and injury in general; - 4th, of the division of justice, or of its integral, subjective, and potential parts.

The 2nd Part treats of legal justice: 1st, of pursuing the common good; - 2nd, of procuring the common good; - 3rd, of the defense of the common good.

The 3rd Part treats of commutative justice: 1st, of its proper act, namely, of restitution in general; - 2nd, of justice and injustice in involuntary commutations: a) in the internal goods of soul and body; b) in the goods of marriage; c) in external goods; d) in reputation and honor; - 3rd, of justice and injustice in voluntary commutations or contracts: a) of contracts in general; b) of unilateral contracts; c) of onerous bilateral commutative contracts; d) of gratuitous bilateral contracts; e) of aleatory contracts; f) of subsidiary contracts.

The 4th Part treats of distributive justice: 1st, of judgment, which primarily and formally is an act of distributive justice; - 2nd, of justice and injustice in distributing goods; - 3rd, of justice and injustice in distributing burdens; - 4th, of justice and injustice in public judgments.

The 5th Part treats of the virtues annexed to justice: 1st, of religion according to itself; - 2nd, of the acts of religion; - 3rd, of sins opposed to religion; - 4th, of piety and observance; - 5th, of truthfulness; - 6th, of the remaining habits annexed to justice: gratitude, vindication, liberality, affability, equity, and the gift of piety.

The 6th Part treats of the precepts of justice.

133. Importance of the treatise. - The treatise on justice excels among the others, both 1) in breadth, because it treats of the cardinal virtue which, among the purely moral virtues, is the more principal in ordering morals and upon which almost the whole moral and social life depends, since the precepts of the Decalogue, according to St. Thomas, II-II, q. 122, a. 1, all regard justice; and 2) in difficulty, because it considers questions very arduous and yet of the greatest moment, especially in our times, when the means of communicating among men have become more numerous and intricate and infinitely varied.

Bibliography. - For justice itself, the following can usefully be compared: St. Thomas, in V *Eth.*; in I-II, q. 59, a. 4; q. 60, a. 1-3; q. 64, a. 2; in II-II, q. 57 and following, with the commentaries of Cajetan, Victoria, Bannez, Sylvius, and Billuart. Likewise St. Raymond of Pennafort, in *Summa*; Dom. Soto, *De Iustitia et Iure*; St. Antoninus, in *Summa theologica*; Cajetan, in *Summula casuum*, and in the opuscula; Concina, *Theologia Christiana*, t. VII, De Iustitia et iure; Lumbreras, *De Iustitia*, 1938.

Outside the school of St. Thomas, among the theologians of the Society of Jesus: Molina, Lessius, and Lugo, each of whom wrote a work *de Iustitia et Iure*; and Vermeersch, *Quaestiones de Iustitia*; and *Theol. Mor.*, t. II; - Reiffenstuel, O. M., in *Theol. Mor.*; and St. Alphonsus, in *Theol. mor.*, l. III.

Among the more recent authors: Carriere, *De Iustitia*; *De Contractibus*; Marres, *De Iustitia*; *De Contractibus*; Waffelaert, *De Iustitia*, tom. 2; and *L'Obligation en conscience des lois civiles*; Sweens, *Institutiones theologicae de virtute cardinali iustitiae*. Besides Ballerini, *Opus theol. mor.*, vol. III; and the best-known manuals, such as Lehmkuhl, Genicot and Noldin; Marc and Aertnijs; Van der Velden; Haine, *Theologia Mechliniensis*, Mulier, Pruner, Tanquerey; Prummer, Goepfert, Mausbach, Schilling.

Likewise special works: Pottier, *De Iure et Iustitia*; Salsmans, *Gerechtelijke plichtenleer*; Van Roey, *De Obiectis et actibus ad iustitiam pertinentibus*; van Gestel: *De Iustitia et lege civili*; Van Egeren, *Notationes de selectis materiis moralibus*; E. Janssens, *Cinq lecons sur la Justice*; Michel, *La Question sociale et les principes theologiques: Justice legale et Charite*; M. St. Gillet, *Conscience chretienne et Justice sociale*; Rutten, *La Doctrine sociale de l'Eglise*; Lachance, *Le Concept de Droit selon Aristote et S. Thomas*; Faidherbe, *La Justice distributive*.

Among philosophical works: Goudin, Roselli, and Zigliara in the manuals; Taparelli, *Droit Naturel*; Meyer, *Institutiones Iuris naturalis*; Castelein, *Philosophie morale et sociale*; *Droit Naturel*; Cathrein, *Philosophia moralis*; Biederlack, *Die soziale Frage*; De Pascal, *Philosophie morale*; Schwalm, *Lecons de Philosophie sociale*; Lehu, *Philosophia moralis et socialis*; De Bie, *Philosophia Moralis*; Beysens, *Ethiek of Zedenleer*; Sertillanges, *La morale de S. Thomas d'Aquin*.

Among orators: Janvier, *Conf. de N.-D.: La Justice et le Droit*.

Finally, subsidiary works: Gousset, *Le code civil commente dans ses rapports avec la morale*; Allegre, *Le Code civil commente a l'egard du clerge*; Aubry and Rau, *Cours de Droit civil francais*; Beaudry Lacantinerie, *Precis de Droit civil*; Lehmkuhl, *Das Burgerliche Gesetzbuch*; W. Duynstee, *Burgerlijk Recht en Zielezorg*. Likewise Liberatore, *Principi di Economia politica*; Antoine, *Cours d'Economie sociale*; Brants, *Les grandes lignes de l'Economie politique*; Schrijvers, *Manuel d'Economie politique* with a preface by Father Rutten; Vliebergh, *Staathuishoudkunde*, and generally economists such as Paul Leroy Beaulieu, de Molinari, Cauwes, Gide, V. Fallon, etc.

First Part: On Justice in General

Chapter I: On Justice Itself According to Itself

Question One: On the Notion and Definition of Justice

St. Th. II-II, q. 57, a. 1; q. 58, a. 1 and 2.

134. Justice according to the name is a habit which inclines one to doing what is just (*recht-vaardigheid*). Etymologically it is from *just*;[1] what is adequate or commensurate and adjusted to another, and it imports a certain equality: for commonly those things which are made equal are said to be adjusted;[2] but equality is toward another, for nothing is equal to itself but to another, and therefore justice in the proper sense, by its own nature, signifies the special virtue which renders us equal to another, or which orders man, in those things which are toward another, as he ought, and inclines him to rendering to each one what is his, up to equality.

[1] In Greek, *dikaios*, as if divided in two, imports equality of thing to thing, according to Aristotle, V *Eth.*, c. 7.

[2] Thus they are said: just parts, a just measure, a just price, a just petition.

Nevertheless, according to a likeness, in one and the same man diverse principles of actions are considered as if they were diverse agents; and therefore metaphorically justice is said to be in one and the same man, insofar as reason commands the other faculties and these obey reason as they ought, according as to each part of man there is attributed what is suitable and due to it. Thus justice consists in the due ordering of the parts of the soul and in adequation or conformity to its rule (*gerechtigheid*), and thus it includes every virtue.

Hence in sacred usage justice is more often taken in a metaphorical and general sense, and signifies:

1. either holiness, or the complex of all virtues by which we are made adequate to the divine rule or law (Mt. V, 6; I, 19; "original justice"; S. Th. II-II, q. 79, a. 1);

2. or any act of virtue and all good works (Mt. VI, 1; V, 20; Prov. VIII, 20);

3. or the root of justice, namely, justification, in which grace making one pleasing and the virtues are infused (Rom. IV, 3; V, 17 and throughout); - but

4. also it is sometimes taken in the strict sense, as the special virtue of justice (Acts XVII, 31: "He will judge the world in equity," Greek *dikaiosyne* = in justice strictly so called).

135. Justice according to the thing, as a special virtue, is usually defined from Ulpian: *The perpetual and constant will of giving to each one his right*, where perpetual and constant will is not put for the power

of willing, or for a passing act, but for a habit inhering in the soul by which the will perpetually and constantly wills. For stable will is required for virtue, which immovably operates the good; and this cannot exist without habit. Whence, if someone wished to put the definition in due form, he could say with St. Thomas: *A habit according to which someone, with constant and perpetual will, gives his right to each one* (q. 58, a. 1), or with more recent authors: a virtue inclining the will to rendering to another his right unto equality. It is said:

1. *habit*, i.e., a firm and permanent disposition which inclines the power to operating either well or badly, and thus is distinguished from a power and from an act, because it mediates between each;

2. *by which with constant and perpetual will*: for he who would wish to render right only by turns, for a time, or only in some business, and only to certain persons, could by no means be called endowed with justice.[3] Whence will is required:

[3] Otherwise this can be without habit, from natural inclination alone.

a) perpetual, not on the part of the act, as if it were to endure perpetually, but on the part of the object, insofar as the just man has the purpose of preserving justice at every time and in every business;

b) moreover constant (which is not the same as perpetual) on the part of the subject, namely, of the will itself, insofar as it firmly perseveres in the said purpose, and someone has a firm and constant will of preserving justice perpetually and in all things;

3. *someone gives to each one his right*, not only positively by procuring that which is owed, but also negatively (through omission, by which the right of another is left intact), by abstaining from every violation of right. By these words there is indicated that by which justice is distinguished from all other virtues, namely, its own proper act, and its proper object: right owed to another, which namely a) belongs not to me the agent, but to another, b) is owed to each one not from mere fittingness or the honesty of virtue or charity (a moral debt), but by strict obligation (a legal or rigorous debt), and c) is rendered integrally unto equality; otherwise the whole due right would not be given, and under this respect the act would fall short of the perfection of justice. In which case there is present justice not strict and perfect, nor metaphorical, but imperfect and according to something, which "by an enlarged name" (i.e., by extension) is called justice (I-II, q. 60, a. 3, ad 1).

136. Three conditions are required for justice strictly so called:

1. that it be toward another: for since justice is concerned with establishing equality, it has from its nature that it tend toward another for giving right to another, because nothing is equal to itself but to another;[4]

[4] It pertains essentially to the just that it be commensurated according to equality to another to whom it ought to be equaled. Whence St. Thomas, in III *Sent.*, d. 33, q. 3, a. 4, qc. 1: the adequation of justice comprises three things: 1st, that it be ordered to another; 2nd, that it be owed to him, otherwise it would exceed; 3rd, that as much be rendered as is owed, otherwise it would fall short in less.

2. that right, and indeed right properly so called, or a true legal debt, be present to the other for that which is given to him, for example, if he has bought a thing or has merited it as the wage of labor. Thus almsgiving is not an act of justice, by defect of right in the poor person to whom it is given;

3. that it be given to another adequately, i.e., unto equality, so that as much is rendered as is owed. Thus if someone owes one hundred francs, he must render one hundred, neither more nor less: if less is rendered, justice is not preserved, because something owed remains; if more, the excess does not pertain to justice but to charity or liberality, or to vice.

By defect of the first condition, there is not justice of man toward himself;

by defect of the second condition, fidelity, gratitude, and liberality fall short of the character of strict justice, in which there is only a moral debt, though one obliging under sin;

by defect of the third condition, religion, piety, and observance do not pertain to strict justice, because we cannot render an equal thing to God, to parents, and to superiors.

Hence a) if the three conditions are present, there is justice in the proper, strict, and perfect sense;

b) if only the third is lacking, there is justice in the proper sense, but imperfect and according to something; - a fortiori, if the second is lacking, there is a greater recession from the character of justice, so that there can scarcely be speech of justice except in a very diminished sense;

c) if even the first is lacking, only metaphorical justice remains.

Therefore there is a threefold sense of the word "justice," but only the first is strictly so called.

137. Corollaries. - 1st. Justice, because it is toward another, supposes distinction of persons. For justice, because "it imports equality, by its own nature is toward another... And because it pertains to justice to rectify human acts, it is necessary that this equality which justice regards be of diverse persons capable of acting... But actions belong to persons and wholes, not, properly speaking, to parts and forms, or powers: for it is not properly said that the hand strikes, but that man strikes by the hand. Therefore justice properly so called requires diversity of persons, and therefore it exists only from one man to another" (q. 58, a. 2).

2nd. Therefore no one renders justice to himself, nor can he exercise justice or commit injustice toward himself, since he cannot be creditor to himself; and if this is sometimes said, it is a metaphorical locution. Nor does anyone, properly speaking, have rights toward himself; but rights and duties are so coordinated that to the right which inheres in someone, there corresponds a duty in another.[5] "It pertains to justice to render his right to each one, yet presupposing diversity of one from another: for if he gives to himself what is due to himself (for example, necessary food), this is not properly called just" (q. 57, a. 4, ad 1).

[5] Properly, there are not duties toward oneself, but toward God with respect to oneself.

3rd. Since justice supposes distinction of one from another, therefore a debt of justice strictly so called cannot intervene between son and father (servant and master, wife and husband), if they are considered as such: for thus the son is something of the father; but justice strictly so called can exist

between them if they are regarded as men, as to those things which are common to all men, because thus each is something subsisting according to itself, distinct from others (q. 57, a. 4, ad 2).

4th. Justice renders right to each one, i.e., to another of whatever condition, whether he be superior, inferior, or equal.

5th. Justice differs from charity toward neighbor. Justice rests on the distinction of one man from another; charity, on the conjunction of men in God, or on the union between the lover and the beloved, whom the lover loves as another self. Namely, charity gives to the beloved other, not because it is owed, but because it is the good of the beloved. Whence man can also have charity toward himself, not justice.

6th. In God, justice properly so called cannot be given, because He is the absolute Lord of all, namely, who owes nothing to creatures, and consequently these can have no right properly so called in respect to God. Nevertheless, supposing that God wishes to act as if we had a right to our end and to the means necessary for this end, He owes it to Himself to preserve the mode of justice in His works, and in this sense a certain justice, and rather distributive than commutative, can be said to be in Him.

But strict justice toward God cannot be in us under the respect by which we are something of God (for example, servants or adoptive sons) (q. 57, a. 1, ad 3); but insofar as God leaves ourselves and those things which pertain to us under our own proper dominion, justice can exist in some way, yet not positively and according to the complete character, because we do not render to God as much as we owe, but partially and negatively, insofar as we do not violate but preserve the right of God; whence those who violate and injure it are guilty of injustice strictly so called.

138. Observation. - The definition handed down is verified both of the natural acquired virtue and of the supernatural infused virtue; but in the first case man renders to each one his right on account of the sole motive of natural honesty or conformity to right reason; in the other case he also acts from the supernatural motive of faith in order to a supernatural end.

Question Two: On the Object of Justice and on Its Distinction from the Other Virtues

St. Th. II-II, q. 57, a. 1; q. 58, a. 4, 5, 8, 9, 10, 11; I-II, q. 60, a. 2 and 3; q. 64, a. 2.

139. The proper object of justice is the special good which consists in rendering a debt to another unto equality. - But in this one object three things can be distinguished:

1. The material object, or that which justice intends and does (the matter about which it is concerned), is external things and actions which can be owed to another. Many distinguish this into a remote and a proximate object: they say that the remote object is the things which are owed, exchanged, and distributed; and the proximate object is the actions by which things come into use, are exchanged, or are distributed, namely, the actions which must be furnished to another or omitted, by which something can be rendered to another and satisfaction made to his right.

2. The primary material object (others call it: the formal *which*) which justice principally, through itself and by reason of itself, intends and does in actions and things (the aspect under which

the material object is considered), is the just, or the equal owed to another (passive right); in other words, it is the perfect due equality to be placed between the debt from one and the exigency of right in another, by which equality our actions are proportioned to the right which is owed to another.

3. The formal object *by which*, or the immediate and proximate motive on account of which we render the debt and establish equality, is the special honesty of the said equality, which is found in the fact that to each one his own is furnished: for we wish to render to another the debt and to preserve equality between ourselves and him, because this is good and owed and just.

Therefore the object of justice is the character of debt; the rendering of debt insofar as and because it is owed.

The other, insofar as there inheres in him an exigitive title to our debt, is not the object *which* justice immediately attains, but only the end to which that which is just is rendered; - and the exigitive faculty or title of right in another (active right) is not the proximate motive, but only the remote foundation why rendering the debt is good and obligatory.[1]

[1] Against Billuart and Haine, who hold active right as the formal object. Yet this is not the proximate motive, for the reason why we render the equal thing to another is because it is owed to him; but it is owed because he himself has active right. Billuart himself, where he treats of the virtues annexed to justice, for example, of religion, speaks otherwise.

140. The proper matter about which justice is exercised through itself and immediately is external operations and things, insofar as according to these one is coordinated to another; but not the interior passions of the soul.

It is proved: For justice differs from the other moral virtues in this, that these primarily and through themselves rectify man in himself, justice in order to another. But the ordering of one to another is immediately made according to acts which are terminated at another, namely, according to exterior actions and things by which men can communicate with one another; but not according to interior affections or passions by which man is immediately well disposed in himself. Therefore.

Yet per accidens and through the mediation of other virtues it also regards passions, if its end requires this, namely, the equality to be established between exterior things, which passions can impede. In this case it commands the other virtues to moderate the passions lest they harm another (q. 58, a. 8 and 9).

141. The principal object of justice, namely, the just or equal owed to another, is the mean of the thing, while the other moral virtues have only the mean of reason.

It is explained: A moral virtue is said to be in a mean because as object it has the mean between excess and defect in its proper matter, which mean right reason dictates (for example, virtue chooses passions neither more nor less than reason dictates), and therefore it is called the mean of reason and is conformity to the measure of right reason. But in justice the mean of reason is the mean of the thing (conformity with the thing), insofar as right reason dictates to justice to give a thing equal to the person or to his thing, namely, dictates what precisely must be rendered to another, so that neither a greater nor a lesser thing is rendered than is owed.

It is proved: Justice differs from the other virtues in this, that these are principally concerned with passions, that one with exterior actions and things. But the right ordering of passions is not attended according to equality of one thing to another, but according to comparison to the very man acting in such conditions and circumstances. Therefore the mean of such virtues is only the mean of reason with respect to us, and therefore it varies according to persons, qualities, and circumstances: for example, food is different according to the disposition, capacity, and conditions of the subject; excess in food for the sick is not excess for the healthy; one brave action exceeds the powers of one person, not of another.

On the contrary, justice is concerned with things and actions according as they have a due proportion to another person. Therefore the mean of justice consists in equality of things, namely, in equality of proportion of an exterior thing to an exterior person, and therefore it is the mean of the thing.[2] This consequently is established independently of the conditions and circumstances of the acting persons: thus, for example, if I owe someone one hundred francs, in order that satisfaction be made to the other, I am bound to pay him, whether he himself be rich or poor, or whether I am.

[2] Not in this sense, says Billuart, diss. 5, a. 4, that it is not according to reason: nothing is more consonant with reason. But in this sense, that it is not established by reason according to the conditions of the subject, but reason depends on the nature of things: therefore to pay a debt is conformed to reason because it is equality of things, not conversely. - Therefore in the other virtues there is a psychological mean; in justice, an objective mean.

In summary: Justice therefore through itself immediately considers only the thing owed, and not the condition of persons, unless this redounds into the quantity and equality or inequality of the thing: thus, for example, an injury inflicted implies a proportion to the dignity of the person offended, and therefore has one proportion to a prince and another to a private person (q. 58, a. 10, ad 3).

142. The formal object or special honorable good of the virtue of justice is taken by comparison to another; in the other virtues, by comparison to the agent.

It is proved: For justice is essentially toward another, but the other virtues perfect man only in those things which are suitable to him according to himself. Therefore a) the good of justice is not taken by comparison to the agent alone, for example, from the suitability of the work with him, but also, beyond comparison to the agent, it is constituted by comparison to another, namely, from the comparison and equality of thing to thing or to an exterior person, for example, recompense of the wage owed for service rendered. Indeed b) even the work itself is just, without considering how (i.e., with what intention, disposition, motive, manner, etc.) it is done by the agent. Namely, the right is had not only according to the mean of reason, but according to the mean of the thing independently of the agent, provided what is rendered is equal to what must be rendered, for example, he who owes one hundred francs, and renders it, does what is right, although he suffers poverty from it or although he does it unwillingly[3] (q. 57, a. 1).

[3] Cf. Billuart, l. c.

On the contrary, there is not a work of temperance or fortitude except by comparison to the powers of the agent.

143. The proper act of justice is to render to each one his own. - It is proved:

That is the proper act which is concerned with the proper matter of the virtue. But the matter of justice is an exterior operation according as it itself, or the thing which we use through it, is

proportioned to another person. But that is said to be one's own which is owed to him according to equality of proportion. Therefore the proper act of justice is to render to each one his own.

144. Justice is in the will, for its act is in the will, because as object it has a rational good. For we are not just from the fact that we rightly know something, but from the fact that we rightly act. Therefore justice is not in the intellect or in the cognitive faculty, but in the appetite. But not in the sensitive appetite, for the object of justice, namely, the proportion of one to another, exceeds the sensitive faculty, because it is not a sensible object but a rational one. Therefore it is in the rational appetite or will.

145. Corollaries. - From the foregoing it is easily concluded that justice is distinguished:

1st, from the theological virtues, which have God Himself as object, whereas justice has the honorable thing which consists in rendering to each one what is owed. Whence those are directly concerned with the last end itself; this with the means to the end, namely, our actions to be rectified so that what is owed may be given to each one, which is necessary for attaining the last end;

2nd, especially from charity, which a) by reason of its object is more excellent, as being theological; b) likewise more universal, insofar as it extends to more things; c) has as object the very person of God and of neighbor, whom it loves, while the object of justice is right owed to another. Nevertheless, justice obliges more strictly in many circumstances, because the positive obligations of charity, outside extreme spiritual necessity, admit a certain latitude;

3rd, from the other cardinal virtues, both by object and by subject:

a) by object, which in prudence is the practical true in all our actions: for it dictates in any business what seems true, i.e., truly suitable to reason and to be done, so that man may be well ordered to himself and to another; - in fortitude and temperance it is the rational good to be placed in the passions, which are to be moderated in those things which are suitable to man according to himself; - in justice it is the good and just thing owed to another in external operations;

b) by subject: prudence is in the practical intellect, which it inclines to discerning, judging, and dictating what is to be done; - fortitude is in the irascible appetite, which it moderates, strengthens, and impels according to the prescriptions of reason; - temperance in the concupiscible appetite, which it moderates, restrains, and draws back; - justice in the will, which it inclines to rendering to another his own;

4th, from the moral virtues which do not pertain to justice:

a) justice is toward another; the others, toward ourselves;

b) justice is immediately concerned with exterior actions and things; the others, with interior passions;

c) the mean of justice is the mean of the thing, or equality between a thing and a thing or the person of another; the mean of the others is only the mean of reason, or that which reason determines with respect to the one operating and the circumstances;

d) in the work of justice, the honorable and the right exist even by mere commensuration to another: that which is suitable to another; in the works of the other virtues, the right exists by mere commensuration to the agent himself: that which is suitable to the one operating.

Question Three: On the Excellence of Justice

St. Th. II-II, q. 58, a. 3, 5, 6, 7, 12; I-II, q. 61, a. 2, 3, 4; q. 66, a. 4.

146. Justice is a virtue simply so called, or a moral virtue. - For moral virtue renders the man having it simply good, and makes his work honorable. But justice does this. For the good of man is to operate according to reason. But nothing is more consonant with reason than to render to each one his own. Therefore.

Nor is it an obstacle that justice does that which is necessary, and consequently acts from necessity. For it does not act from the physical necessity of coercion, but from obligation or moral necessity of the end. And with prompt and spontaneous will it does that which it ought, and thus it does a work of virtue.

Justice is a special virtue, because it has a special object: the ordering of man to another, so that it renders to him what is owed.

Nevertheless, it is not one virtue in the ultimate species, but comprises several species, according to the diversity of the object: for someone can be ordered to another in common, namely, to the whole community, to which especially a debt, even strict, must be rendered; and he can be ordered to another in the singular, or to a private person to whom he renders the debt. This last is done by particular justice, which in turn is distinguished into two species: commutative and distributive, according as it directs men in commutations or in distributions. The first is done by the first species of justice, which renders what is required for the common good, and is called legal justice, because it pertains to law to order to the common good; - it is also called general justice, not by reason of essence, as if it were every virtue or the complex of all virtues, but by reason of its proper object, because it immediately orders to the general good, and by reason of its effect, because it orders and directs the acts of all virtues, at least exterior acts, to the common good.

147. Justice is a cardinal virtue, because it is concerned with that which is principal and more difficult in its proper matter, namely, in external operations toward another. For the just or the good owed is found perfectly and completely in the operations by which we render an equal thing to another, and therefore it has principality relative to other things; and the chief and more difficult thing is to render the debt so that an entirely strict equality is preserved, by which we do not decline from it even in the least, or without the least deviation. Whence justice, because it perfectly pays to another a perfect debt, is the foundation of the other virtues, insofar as it disposes to that in which the same is less perfectly verified: for he who in all circumstances preserves strict equality in rendering a strict debt toward equals, by this very fact becomes prompt or at least capable of rendering whatever non-strict debts, and is disposed to rendering to superiors those things which cannot be rendered up to strict equality.

148. Justice is a virtue more excellent than the other moral virtues. - Among the various genera of virtues, justice excels the other moral virtues which are concerned with passions, and thus is called first among the moral virtues. For:

1st, the first species of justice, namely, legal justice, has the more excellent object, the common good;

2nd, all justice is in the nobler part of the soul, the will, and is ordered not only to the good of man himself but also to the good of another.

Nevertheless it is not the greatest of virtues: for the theological virtues excel because they pertain to divine good; - likewise prudence, because it regards the good of all virtues and acts; - indeed, among the virtues annexed to justice, religion (likewise penance) is more excellent, because it approaches more nearly to God, since it operates those things which are directly and immediately ordered to the divine honor. Whence although justice is more perfect than religion in the character of justice, because it renders the debt more perfectly, it is less perfect in the character of virtue.

Chapter II: On Right

Question One: On Right in General

St. Th. II-II, q. 57, a. 1; I-II, q. 60, a. 2.

149. Various acceptations of right. - A. In the more received sense, *right* designates:

1st. Properly, and indeed in its primary signification, *that which is just* (the just thing itself), and thus it is the object of justice: that which is owed to another and to be rendered unto equality. In this sense one says: to give someone his right, *a chacun son droit*, *wat recht is*.[1] It is objective right, which is also called passive, since it must be given to each one.

[1] "In modern languages *right* is designated by a metaphorical word from geometry (straight line, *droit, recht*), because just as a straight line of itself and independently of our choice is the shorter line between two points, so right constitutes rectitude in the relations of men among themselves." Lehu, *Phil. Mor.*, I, n. 353.

2nd. Secondarily, the foundation of the just, namely, the legitimate power or faculty of demanding something as owed; in which sense someone is said to use his right or to have the right of property or of election: it is the power of right[2] (*pouvoir du droit, rechtsbevoegdheid, rechtsvermogen*). This right is subjective, or also active, which each one can exercise.

[2] Thus more recent authors; the ancients are not accustomed to call this right, but faculty, power, or even dominion. Indeed it was said that in this sense the word *ius* never occurs in St. Thomas. But this is said too boldly, for it seems to be used somewhat in this sense, though very rarely, for example, I-II, q. 58, a. 2; II-II, q. 66, a. 5, ad 2; Suppl., q. 64, a. 1, ad 3; *de Virt.*, q. 1, a. 4; in IV, d. 25, q. 3, a. 2, qc. 3, ad 2.

3rd. Finally, by a signification not proper but metaphorical, yet proximately derived, the cause of each, namely, law (and by extension: the complex of laws), which is the rule both of the faculty of demanding a debt of this kind and of the just thing itself, because it determines the rights of men: thus natural, divine, ecclesiastical, and civil right are spoken of. It is normative right.[3] Law is not right essentially, but causatively, because it is the reason of right, namely, the reason by which there is in another the faculty of demanding something, and consequently this is owed to him and must be rendered: for these are correlatives which correspond to one another.

[3] Modern authors more often call law objective right.

The aforesaid order is according to the signification of the name; but the real order is inverse.[4] For the first, namely, right in the first signification, according to the thing depends upon the second, and the second upon the third: nothing is owed to another without the faculty of demanding it in the other, and that the other has this faculty is given to him by natural or positive law. Thus the faculty of demanding something (active right) mediates between the reason of right (law) and the just thing (objective or passive right), and although it is not the object of justice, nevertheless it is something

on which the object of justice depends, and to which it has an intrinsic order as to something which it supposes.

[4] Let it be noted that the matter is thus proposed independently of etymology, but in order to the doctrine on justice, conformably to St. Thomas. There is doubt about the etymology. Formerly several said that the word *ius* was derived from *iustum*, signified the same as *just*, and was so called by apocope, i.e., amputation. Today this is abandoned by many. Others said it is the same as *iussum*, which indicates law. Others hold the word as primitive: *ios* or *ious*, i.e., good, holy, that which pertains to divinity; or *iu, iug*, which signifies a bond, a tie which joins men or to which they are subjected. But whatever may be the case concerning the first signification or etymology of the word, in the doctrine on justice the primary signification is the just or objective right, because the others do not pertain to justice except insofar as they have relation to its object, which is the just or objective right. Terminology is not wholly fixed and determined. The ancients especially understand right in the objective sense; subjective right they are not accustomed to call so. Modern authors, on the contrary, rarely speak of objective or passive right, and especially take right in the sense of faculty, or even of law. One must attend to this in reading authors.

B. By a signification more remotely derived and wholly improper, right designates:

1. the science by which what is just is known (the science of right, a jurist, to study law), or the code in which laws are found; 2) further, the place in which right is rendered (to appear in court, to be called into court, to have recourse to court); 3) finally, the sentence of a judge, to whom it belongs to make justice, even if what he decrees is unjust (to render right).

150. Definition of right. - Right cannot strictly be defined, but is a simple and primary notion;[5] nevertheless it can be described somewhat, so that it may be more fully understood.

[5] Pottier, *De Iure et Iustitia*, diss. I, sect. I, n. 3.

A. Right considered objectively or passively is that which is rigorously owed to another unto equality, so that the other can demand it as due to himself and exclusively his own, even legally or judicially; in other words, it is a strict debt to be rendered unto equality. Whence formally it is a true relation, namely, of equality toward another. It is the adequation, the adjustment, of one to another; consequently it is a relation constituting an objective order between them, and thus a due ordering of one to another: a relation by which they are adjusted or made adequate to one another, or a relation of adequation between two or more whom it renders equal and by which they are equal.

This relation is not immediate between persons, but is made by means of the object which specifies the right: something must be given to one which is owed to him by another. The object of right is not always a thing; it can be an action to be furnished, such as honor and service, or the omission of that which would impede the action of another. But the subject of right is he to whom it is owed, to whom right is his to something.[6]

[6] It can be asked whether the object of justice is the just operation itself, the rendering of the debt, or rather the object of the operation. Fr. de Victoria responds in this place: The rendering of the debt can be called the object of justice, or the equality which arises from the fact that the debt is rendered. The just operation is for the one owing one hundred to render those to the creditor. If he renders them, a just operation is done and equality is made. The object of justice is each in some way: that giving, and the equality resulting thence. Yet more properly the resulting effect, namely, the equality following the just operation, is called the object of justice; because the operation tends to that, and the object of justice and of the just operation must be the same, just as the object of the habit and of the operation is the same.

B. But right considered actively or subjectively imports a relation of a rational being to something as to his own; yet formally it is power, and is usually defined as a legitimate and inviolable moral faculty

of having, doing, or demanding something, as exclusively one's own, for one's proper advantage. It is said:

1st, *moral faculty*, i.e., not a mere fact, but a power, not indeed merely physical, which can be opposed to right,[7] but moral and legitimate, which is obtained by force of law and is conformed to right reason. Whence the subject of right is a rational being;

[7] Cf. Syll. prop. 59 and 61.

2nd, *inviolable*, i.e., which cannot licitly be prohibited by others, for right in one brings with it in others the obligation of not impeding the exercise of this right. Whence of itself it also includes coercive power by force of warding off those who try to injure the right; yet this faculty must be exercised not arbitrarily but according to law;

3rd, *of having, doing, or demanding something*, by which the object of right is indicated, which is threefold: possession of external things, exercise of one's own faculties (under which name also comes non-exercise: not paying, not serving as a soldier), the furnishing to be made by another (or omitted), or the action of another;

4th, *as exclusively one's own for one's proper advantage*: namely, it is founded on the connection of the thing with the possessor of the right, considered independently of other men, by which it comes about that the thing must serve his utility exclusively. - And thus right properly and simply so called is distinguished from right accepted in a broader sense and according to something, or the power of jurisdiction which someone has for ruling others, not for his own advantage but for the utility of subjects.

151. What is essential to right.[8] - Therefore in right, considered both subjectively and objectively, there is essentially imported a moral preference by which someone is preferred, all others being excluded, in the use of some thing on account of the peculiar connection which the thing has with him; whence it is owed to him. That connection is a moral bond: namely, it is a connection conformed to right reason, by which it comes about that the thing about which there is question must now be judged as exclusively destined to the utility and advantage of him who has obtained this connection. Therefore the essential or constitutive foundation of right is that connection, namely, the ordering of something to something as to an end; if this exists, right exists; but if it does not exist or if it is removed, right does not exist.

[8] On the notion and foundation of right, cf. Meyer, Zigliara, Lehu, Beysens, De Pascal, De Bie in the cited work; likewise Weiss, *Apologie des Christenthums*; Nolens, *De Leer van den H. Thomas over het Recht*; De Baets, *Les Bases de la Morale et du Droit*; Kuhlmann, *Der Gesetzesbegriff des H. Thomas von Aquin*; De la Barre, *La morale d'apres S. Thomas d'Aquin et les anciens scolastiques*; Lachance, *Le Concept de droit selon Aristote et S. Thomas*.

This connection can arise by various titles from the nature of the thing or from positive law; for example, he who from his own material, by his own instruments, has made some manufactured thing, for this reason has a connection with the work which no one has with it; and, this being posited, right reason dictates that he be preferred to all others in the faculty of disposing of that thing for his own utility. And he who has received the thing from him is rightly judged to succeed in the connection of dominion, and therefore to be preferred to all.

152. The proximate foundation of right. - The aforesaid titles provide the foundation of this or that right in the concrete, but there must also be a foundation of right itself, as such, in the abstract,

or of every right: this is the dignity and inviolability of the person himself. A person essentially is an intellectual being, incommunicable, existing for himself: on the one hand he is master of his acts on account of freedom; on the other hand, because, existing incommunicably for himself, he is of his own right, and of himself in being and acting; whence he does not exist merely or chiefly on account of the good of others, but on account of his own good and proper end. Therefore he cannot be considered by others as a means subordinated to them, but they must revere him as a being existing alongside them and of the same dignity, who cannot be deprived of his own order to his proper good. Therefore every person is inviolable insofar as he tends to his end (S. Th., c. Gent. III, 112).

This being posited, we argue thus: A person enjoys the inviolable faculty of ordering himself to his end. But he cannot efficaciously attain the end without several means, even external ones: exterior things - the use of faculties - a prestation made by others, such as honor, help, the rule of superiors, etc. Therefore he also has the inviolable power of effecting or obtaining that those means are truly ordered to his proper end. But this is the right of disposing exclusively of these things.

153. The ultimate foundation of right. - The inviolability of the created person is the proximate and secondary foundation; but the primary foundation or ultimate source of right is God Himself. For:

1st. He who imposes an end upon us and wills that we attain it, must also give us the means necessary for this and order that by an inviolable power we can tend to the end through them (against Kant).

2nd. Moreover, right in one and duty in another are correlatives;[9] but every obligation and duty is ultimately derived from the eternal law of God, as was proved in the treatise on Laws, I, n. 241; therefore God is the ultimate source of every right.

[9] Against this assertion some object at times that there is an obligation, for example, of almsgiving, in one, without right in another; or, if it is not without right, that by this very fact almsgiving is owed in justice. - Resp. 1st. There is an obligation in one without right in another, I concede; there is a duty or obligation of justice in one without right in another, I deny. Or 2nd. There is an obligation without right in him to whom the obligation procures an advantage, I concede; without right in another who obliges us, for example, in God, I deny.

154. Errors concerning the nature and foundation of right are various, just as concerning the nature and foundation of morality and moral obligation.

A. *Materialism*, such as natural monism, acknowledges nothing except the law of brute matter, or the dominion of the stronger force; whence right is natural force or physical power. Cf. Syll., prop. 59 and 61.

B. *Juridical positivism*, which is akin to moral positivism. It arose among the sophists. Callicles, Thrasymachus, and Aristippus admitted some right of nature (individual right), namely, the physical force of the stronger, whose measure is the necessity of nature and the utility of man; but since society is necessary at least for the weak, so that they may be able to exercise that right and live securely, it must be transferred and communicated to the community, so that they may have right collectively and so that it may be determined from common power and will. Thus right becomes collective and positive, and the distinction of just and unjust is from external human authority, so that the whole of right is positive and of human origin.

Spinoza (1632-1677) taught almost the same thing; likewise Hobbes (1588-1679), deriving right from the power of command and civil authority; thereafter J. J. Rousseau (1712-1778), explaining the origin from the social contract, or from an express or tacit pact with society through the abdication of individual rights. Bentham, Wundt, Lasson, Schopenhauer, v. Hartmann, v. Kirschmann, v. Ihering, and afterward, in some sense, the promoters of the historical school, approached more or less to this.

C. *Transcendental rationalism.* Thomasius (1653-1728) was the first of all adequately to distinguish right from morality, so that right is torn away from morality: morality regards internal peace, right external peace.[10] What he rather insinuated for practical reasons, Kant (1724-1804) attempted to establish from philosophical principles. Just as the internal liberty of a rational being, which is an end in itself, is the foundation of moral obligation, so also external liberty is the foundation of right. Morality regards the internal obligation of conscience or of practical reason essentially autonomous (namely, from every external law); right regards external law or external coercion. Hence the juridical order is independent of the moral order. Yet external liberty is the necessary complement of internal liberty; and thus right is the condition, or complex of conditions, of individual liberty. For the liberty of one must be harmonized with the liberty of another; whence the liberty of each must be restrained in favor of the liberty of all. Some positive common recognition of this is required; and therefore it is postulated that civil society be constituted by a social pact, by which rights are determined.

[10] Thus against Wicleff and Luther, who, namely, acknowledge internal right, but no positive right.

Fichte (1762-1814), in his subjective idealism, followed Kantian doctrine rather closely: according to him the liberty of each one is to be restricted insofar as the possibility of the same liberty of others demands it. This restriction is to be made by common consent; and therefore every juridical relation exists really and determinately insofar as it is founded on common recognition. Hence the necessity of society, and in it of a coercive power, by which alone the liberty of all can be obtained and preserved, and which determines the rights of individuals. Thus subjective individualism of right was born.

To this there succeeded, by reaction, an absolute objectivism of right in objective transcendental idealism and ideal pantheism, which Schelling (1785-1854), and especially Hegel (1770-1831), defended, and to whom Schleiermacher (1768-1834) in some measure approached.

In place of the pact-like union of wills there was substituted the absolute universal will, and an absolute moral organism with absolute morality, which does not descend from the eternal law of God, but is realized and expressed by the political State, which State is the supreme deity of human affairs. Hence there arises the omnipotence of the State, which leads to full socialism.

Thus the State is the source of all right, whose immediate foundation is the universal will.

In more recent times many remain imbued with Kantian principles and profess pure rationalism or formalism, such as Stammler, Loening, Kelsen, Merke.

D. *The historical school.* From a certain reaction against Kant and individualism, and at the same time against absolute transcendental objectivism, there arose the school of historical right, according to which in fact and in the concrete there exists no valid right except positive right, whose source is the history of laws and customs: thus for the absolute will there is now substituted the union of wills; nor is the State the origin of right, but rather the State has arisen from the evolution of right.

Thus de Maistre, de Bonald and the traditionalists, Burke, likewise Lud. de Haller and Adam Miller; afterward, more scientifically, the strictly historical school represented by v. Savigny, Hugo, Puchta, v. Stahl, Schwind; the strictly empirical school with v. Ihering[11] and Levy-Bruhl, to which the sociological school with Durkheim in some measure approaches.

[11] Yet he holds the State to be the source of right, which he says is an advantage that is juridically protected.

Right properly so called, which is to be distinguished from morality, is nothing except positive right, nor has it any other source except a historical one, namely, historical custom and the statutes of laws. The science of right is the evolution of written law and legal custom; the subject of right is the people, and all right is human.

Several things can be opposed to these systems. Generally:

a) It is false that right is adequately distinguished from morality: for it is an objective part of the moral order, or part of the natural law, since man by his nature is social.

And indeed: objective or passive right is the object of justice, which is a moral virtue; subjective or active right is a moral faculty; normative right or law is of the moral order, for it depends upon the natural moral law.

b) It is false that there is nothing except positive right. For 1) we have demonstrated that the natural law exists (I, n. 244) and that there is intrinsic morality (I, n. 122); but the precepts of justice pertain to it. - 2) Positive law is necessarily founded upon natural law (I, n. 270); thus positive right is necessarily founded upon natural right.

c) It is false that materialism, positivism, idealism, or pantheism is founded, or renders an account of right; since force, utility, or liberty do not suffice to explain or found right.

In particular. 1. Against Materialism: there is a distinction between the spiritual and moral order, and the material and physical order; therefore right, which is of the moral order, is not reduced to physical force.

2. Against moral Positivism: a) natural right is demonstrated from the same arguments as natural morality;

b) all rights do not arise from society or positive law: thus the right to life, or the right of fulfilling a natural office, for example, the father has the office and the right of educating his son;

c) natural right is the necessary foundation of positive right: for civil law obliges only from natural right;

d) absurd consequences follow from positivism: for this being granted, no law or custom would now be unjust, and laws could permit that men be treated as beasts.

3. Against Kant: a) the foundations of the system are false, namely, that man is a person autonomous through himself, - that liberty is an end in itself, - that man is his own legislator, and, as a rational being, is the principle of morality, while as a social being, the principle of right; on the contrary, a created being is essentially subject and dependent;

b) it is false that human law does not oblige in conscience but has only coercive force; and that the law of God is excluded from external legislation just as from the internal legislation of conscience; - on the contrary, there is no law which is not derived from the eternal law;

c) it is false that external legislation can be contrary to the ethical order, since no obligation to what is dishonorable can be given.

4. Against the historical school, besides the points already noted against moral positivism: a) right does not arise from a free fact alone, but principally and priorly from an imposed office, or from a natural event, as from the generation of a son;

b) natural inequality is intrinsic to men: for although according to nature itself they are equal, under many other respects they are naturally unequal; therefore the diverse rights of men do not arise only from liberty or from a free fact.

155. Corollaries. - A. For right three conditions are required:

1st. a thing which can serve the utility of the one having it;

2nd. a moral bond by which it is connected with the one having it, so that he can licitly use it;

3rd. this bond, referred to others, constitutes in them the duty by which they are to avoid impeding in the possessor the faculty of using that thing.

B. Likewise, in order that something can be the object of right, three conditions also are required: 1) that the thing be subject to human power, for example, there is no right over the substance of the heavenly bodies;

2. that it can be for some advantage or utility: thus there is no right over harmful and useless things precisely as they are useless, but only over goods;

3. that it can be appropriated, i.e., be for one's own and exclusive advantage, and not of itself remain for the common utility of all: thus there is no right over the air or the wind, which, while serving one man, are not of less advantage to all the rest.

C. There are five elements of right: 1) the subject, or person to whom the faculty belongs and the thing is owed; 2) the species, from which various rights differ, for example, of an owner or of a lessee; 3) the object or matter; 4) the term, or person who is obligated from the right of another; 5) the title, or source or cause of the right.[12]

[12] Lehu, o. c., n. 355.

D. To one asking which is prior, right or duty, the answer is that the supreme right of God, who is the source of all rights and duties, precedes all things; but in man, a) if rights and duties are compared in relation to God, duty toward God, the last end, precedes, and from it there flows the right of moving oneself to the end; b) if the rights and duties of men among themselves are compared, they are correlative, yet logically right precedes, so that from right in one there is derived duty in another.

E. Since all rights and also duties ultimately flow from one source, God, no collision or contradiction properly is given between various rights, or between rights and duties; but there is a subordination of

rights, insofar as the inferior must yield to the superior, with the order of necessity and of end considered.

F. The whole treatise on justice is reduced to two things: namely, to determining 1st. whether there is a right for someone, namely, whether the connection required for right is present in the concrete case; 2nd. whether the human act is just or unjust, i.e., whether it is terminated at this connection or against the same connection.[13]

[13] E. Van Roey, *De Obiectis et Actibus ad Justitiam pertinentibus*, p. 10.

Question Two: On the Species of Right

S. Th. II-II, q. 57, a. 2 and 4.

156. Division of right by reason of origin. - Right, in the three more received significations, is divided, by reason of origin, into natural right, which arises from the very nature of things, and positive right, which is from the positive free will of God or of men (private or public); and this is subdivided into divine and human, and human into civil and ecclesiastical, which is called canonical.

This division belongs primarily to right taken in the sense of law, secondarily to the other significations, because law is the origin of subjective and objective right.

But natural right differs from positive right because 1st. it is founded in the nature of the thing, and therefore the things which it commands and prohibits are commanded or prohibited as good or evil in themselves, and are not good or evil only because commanded or prohibited; 2nd. it is from God as author of nature; 3rd. it obliges all; 4th. it is formally immutable as to principles, and also as to conclusions, the same circumstances in nature being supposed.

157. Division of objective right. - Right taken in the first signification for the just thing, or objective and passive right, is divided by reason of the term which it regards:

A. into right simply so called and right according to something. Right simply so called is toward another simply and perfectly distinct, and therefore is called the political just (*burgerrecht*), because it is among fellow citizens. Right according to something (the imperfect ratio of right) is toward another not simply and fully, but only under some respect distinct; and this is the just, either a) paternal (*vaderlijk recht*) between father and son as such, who is something of the father; - or b) dominative (*meestersrecht*) between master and servant as such, who in this way is something of the master; - or c) economic (*mannenrecht, huiselijk recht*) between husband and wife as such, who is something of the husband.[1]

[1] Do not conclude from this that sins committed against right according to something are lesser, for as Cajetan notes, on II-II, q. 57, a. 3: "Between father and son there is not the just nor the unjust simply, but just as between them there is more than right, because there is unity, so also there is more than the unjust, because there is a violation of unity, which is worse than a violation of right. Whence, just as to kill oneself is supremely contrary to nature, and worse than other homicides, because identity is violated, which is more than equality, in which right consists, so when a son kills his father, or conversely, because he rises up as it were against himself, he commits something worse than the unjust, which is constituted by inequality." These sins are lesser in the aspect of injustice, but not in the aspect of sin.

Hence 1st. a father, master, or husband who has not supported son, servant, or wife does not owe restitution of support, but must support for the future. And a wife, son, or servant who has not

obeyed or has not furnished assistance to him in need is not bound to make restitution to him; for they have not sinned against justice strictly so called;

2nd. on the contrary, a father, master, or husband who detracts from the reputation of son, servant, or wife has sinned against justice and is bound to restitution; and conversely: for this genus of goods belongs to them insofar as they are distinct human beings, and therefore in this genus of goods they retain their right against those persons no less than against strangers;

3rd. a son, servant, or wife who secretly takes from the goods of father, master, or husband goods not owed to himself or herself sins against justice and (unless condonation is presumed or restitution is impossible) is bound to make restitution; likewise the father, master, or husband, if he steals from goods proper to the son, servant, or wife;

4th. a son who attacks his father with contumelies or strikes him sins against justice and piety at the same time: against justice because the father, as a man, has a right against all men, even against his son; against piety because, as father, the love and service owed to him require that he not suffer injury from him over whom he has special power.

B. Right simply so called, by reason of the object, is distinguished into strict or rigorous right and non-strict right. Strict right is that which both in itself and as to things, and as to persons, is so determined that it can be demanded by force of coercion for one's own advantage: thus a field or horse legitimately acquired is owed. Non-strict right is that which is not sufficiently determined as to thing or person, so that it cannot be demanded by force of coercion: thus the right of individuals to alms destined by a testator for the poor in general; the right which the worthy have to obtain offices or duties of the community, or honorary distinctions. This is the object of distributive justice; that of commutative justice.

158. Division of subjective right. - Right, taken in the second signification for faculty, or subjective and active right, insofar as it is referred to passive right strictly so called, is divided by reason of object and effect into right in a thing or real right, and right to a thing or personal right. Right in a thing (*sur la chose, op de zaak, zakelijk recht, eigendomsrecht*) is that which someone has in a thing already his and obtained; whence it gives a real action upon the thing itself, and the legitimate faculty of disposing of the thing itself, and of vindicating it to himself wherever it may be and by whomever it may be held. Right to a thing (*a la chose, om de zaak, persoonlijk recht, vorderingsrecht*) is that which someone has so that some thing may become his; whence it does not give an action upon the thing itself, nor the faculty of disposing immediately of the thing, but only an action against the person of the debtor in order to obtain the thing. Whence right to a thing is the right of obtaining right in a thing, or the way to right in a thing.

For right in a thing three conditions are required:

1. that the thing truly exists, otherwise it cannot here and now be bound to one's own advantage;

2. that it be owed in the individual, otherwise no determinate bond with it can exist;

3. that it be bound to someone by a legitimate title, by force of which he can say here and now: this thing is mine; for example, a sold thing, received salary.

But if any one of these is lacking, there will be right to a thing; for this one condition suffices, namely, a legitimate just title by which the thing is strictly owed from justice, without here and now being attached to someone as his own, for example, a promise of selling a thing, salary to be received after work furnished, the right of a legatee to a legacy not accepted, reparation of damage inflicted, fulfillment of a contract, etc.

Right in a thing is also called dominion of property, which differs from dominion of jurisdiction, or the power of ruling subjects: for this is not true dominion over things, because the superior cannot use his power for his own advantage, but for the common good of subjects, even by disposing of their things when the public good requires this, yet only insofar as necessity demands it. But dominion is subdivided into full and half-full, according as it is a right over the property or substance and over the utility or advantages of the thing, namely, of disposing and enjoying the thing itself; - or only over one of the two, i.e., either only the right of disposing of the thing, or over the property and substance, not over the advantages and fruits (direct dominion or bare ownership), - or the right of enjoying or using, namely, over the fruits and advantages (indirect or useful dominion, as happens in usufruct, use, servitude, etc.) (C.C., a. 543). For full dominion can be restricted, because there is lacking either the power of enjoying (as in bare dominion), or the power of disposing (as in usufruct and use), or the power of perfectly excluding (as in servitude).

159. Full dominion (*pleine propriete; volle eigendom*) is defined as the real right of perfectly disposing (i.e., of enjoying and disposing) of some thing as one's own for one's own advantage, unto any use not prohibited by law (C.C., a. 544[2]). It is said:

[2] In the notions handed down here we indicate the articles of the French Civil Code, which also has force in Belgium. But similar things are found in almost all modern legal systems.

1st. *right in a thing* or real right, attached to the thing itself, so that it may be distinguished from a mere right to a thing;

2nd. *of perfectly disposing*, i.e., both of using the emoluments and fruits of the thing, and of disposing of the thing itself as to substance; in one word, it is the right of destining it to all uses, or of alienating, selling, donating, exchanging, using, enjoying, destroying one's thing, or, as the ancients said, of using it up, i.e., of destining it to a use which cannot be renewed, or of using it even to destruction;

3rd. *of a thing*, namely, of any thing whatever, whether corporeal (field, house) or incorporeal (right, office, benefice, servitude, mortgage), whether movable or immovable, from which an advantage of stipend or honor is perceived;

4th. *as one's own, all others being excluded*, i.e., in one's own name and authority, and thus it is distinguished from the power of him who holds a thing without ownership, such as a depositary, procurator, curator, usufructuary, or user, who dispose of the thing but not as their own;

5th. *for one's own advantage*, even if it were nothing other than the exercise of one's own liberty, for example, in a thing to be given gratuitously, and thus it is distinguished from dominion of jurisdiction, which a superior cannot exercise for his own utility but for the common utility;

6th. *unto any use not prohibited by law*, i.e., by civil law, whose part it is to circumscribe the exercise of right for the common good, and a fortiori by natural or divine law, and similarly by ecclesiastical law,

because right cannot be given against a just law; - indeed, neither unto acting against any law or virtue. And yet dominion remains full, because the restrictions of law do not remove one part of dominion, but only impede its exercise; whence he who uses his own thing unjustly against another sins against justice because he injures the right of another, but not because he uses his own thing badly.

160. Corollary. - From the nature of dominion there follow four principles of right which govern dominion:

1. *The thing cries out to its owner*, or toward its owner.

For a thing legitimately pertaining to an owner is so connected with him that, if it has been separated from him, it always strives to return to him, and thus as it were cries out to its owner. Therefore the owner can reclaim his thing wherever he finds it; and for that reason the possessor is bound to return it as soon as morally possible, unless he proves that he holds it by a just title.

2. *The thing fructifies for its owner*, because the fruits are an accessory of the thing; but the accessory follows the principal.

Therefore if the thing pertains to the owner, the fruits, insofar as they belong to the thing as cause, pertain to the owner of the thing; but the fruits of the possessing person, or of mere industry, insofar and to the extent that they proceed from the industry of another, pertain to the possessor, not to the owner: for then the thing was only the occasion or condition of the fruit, not its cause.

3. *The thing perishes for its owner.*

For if the thing pertains to the owner, if it fructifies for the owner, it is also equitable that it perish for the owner, unless it perishes through the fault of another. For when the thing is taken away, and consequently the bond to it which was the foundation of dominion, by that very fact the right in that thing perishes. Yet if the thing subsists virtually or in an equivalent, the foundation of dominion and the right remains, for example, if the possessor has received the price of the thing, or by using it has spared his own goods, or preserves its fruits.

4. No one ought to be enriched from another's thing, as from a cause, with the injury or loss of another; otherwise the thing would not fructify for the owner.

For it is repugnant to natural right that someone become rich from an injury inflicted upon another. Yet it is not repugnant that someone become richer on the occasion of another's thing, if, by using that thing, he produces something by his own industry alone: for this is truly the fruit of his own labor, in no way of the thing which then was not the cause of the fruit but a mere condition.

161. Usufruct (*usufruit; vruchtgebruik of -genot, vruchtverbruikingsrecht*) is the real right of using and enjoying another's thing like its proper owner, its substance being preserved[3] (C.C., a. 578). It is said:

[3] The Italian Code treats of usufruct, a. 477 sq.; Spanish, a. 467 sq.; Dutch, a. 803 sq.; Austrian, a. 509 sq.; German, a. 1030 sq.

a) *real*, i.e., attached to the thing itself, so that it may be distinguished from the right of a tenant or farmer, which is personal, insofar as the lessor is personally bound toward the tenant, while in

usufruct the obligation is bound to the estate itself or to the thing. Hence 1) the usufructuary can renounce his right, the tenant cannot; 2) the usufructuary has against the owner a right in the thing, that he not be impeded; the tenant has a right to the thing, that enjoyment of the thing be procured for him;

b) *of enjoying*, i.e., not only of using but also of receiving its fruits, just as if the usufructuary were owner;

c) *its substance being preserved*: for since the right of disposing remains with the owner, the usufructuary cannot alienate or consume the thing, or transmute it into another form, even a better one, but must preserve it whole for the owner.

A. Usufruct arises either from law (which is diverse for diverse peoples), and then it is called legal, such as the usufruct of a father or mother in the goods of children, of a husband in certain goods of the wife, of a beneficiary in ecclesiastical goods; - or from the will of man, whether by testament, or by act among the living, as by donation or sale, or even by prescription, and then it is called constitutional (a. 579). But it can be constituted in three ways: either purely, or for a day, or under condition (a. 580); and indeed in all things, whether movable or immovable (a. 581).

B. The usufructuary has the rights of an owner, the substance of the thing being preserved; hence:

1st. He can, without any recompense, receive all the fruits of the thing, whether natural, which are produced without special industry, or industrial, which are acquired especially by labor, or civil, which are owed by force of a contract or some obligation, such as the price of leasing, rent, interest for money lent, servitudes, and other rights which the owner can enjoy.[4] And indeed natural or industrial fruits are acquired by perception or separation, but civil fruits are judged to be acquired from day to day. Whence a) at the beginning the usufructuary makes his own all natural and industrial fruits still pending, and civil fruits which are owed from the day the usufruct began; but he has no right to fruits already separated from the land or thing, nor to civil fruits already owed but not yet received. On the contrary b) when the usufruct is completed, he or his heir can take fruits already mature and separated, but not immature fruits and those collected too soon, nor mature fruits still pending; but civil fruits owed up to this day, even if not yet paid (a. 582 sq. and 597).[5]

[4] In German law, natural and industrial fruits are called fruits of the thing, but civil fruits, fruits of right.

[5] In Spanish law (a. 452) and Portuguese law (a. 495), the owner can take all fruits still pending; otherwise he is bound to pay expenses made for cultivation and to divide with the possessor both the production and the remaining burdens, according to the proportion of the time of possession.

Yet by our law a) in a usufruct comprising things which are consumed by first use, while he consumes them, he is bound, when the usufruct has ended, to restore their entire value (a. 587); b) under the name of fruits there do not come treasures found in the land, nor new mines or mines to be opened which, at the time when the usufruct began, were not yet being worked (a. 598), but only those things which are drawn from already existing mines or which grow and are received at certain times (a. 598 and 591).

2nd. He can also sell, lease, or donate his right to another, provided nothing is changed in the condition of the owner, whether as to the perception of fruits, or as to the extinction of the usufruct: for he can enjoy either by himself or through another (a. 595).

C. As to the duties or obligations of the usufructuary, he must not abuse, but use the thing and enjoy it as a good father of a family, and take care that it does not perish, become changed for the worse, or be burdened with undue servitudes by his own deed or that of others, and this under penalty of repairing the damage inflicted upon the owner; hence:

1. When the usufruct begins, he must, in the presence of the owner or at least after the owner has been summoned, duly make an inventory in which are described all the goods of which he has the use and fruit; moreover, he is bound to provide surety, unless dispensation is made by law or by him who grants the use and fruit (a. 600-601).

2. During the usufruct, he must a) watch lest the thing be usurped or become worse; yet if it becomes worse by legitimate use, he returns it in the state in which it is found: the thing deteriorates for the owner (a. 589); b) make moderate repairs and conserving expenses, but not major repairs (a. 605-606); c) pay annual charges or periodically imposed charges which touch the enjoyment itself, such as taxes, real rent, wages of servants, expenses of litigation in which the usufruct is at issue (a. 608 and 613).

3. When the usufruct ceases, he must restore the thing in the state in which it ought to be found after good administration, and indeed with the fruits not yet collected (a. 585 and 590), with no compensation to be demanded from the proprietor, even if the land has become better from the usufruct (a. 599).

D. On the contrary, the duties of the owner are:

a) He *suffers enjoyment*, i.e., he must do nothing by which the enjoyment of the usufructuary is diminished or extinguished. To him indeed belongs the care of major repairs (a. 605), but he cannot be compelled to make them (a. 607). He pays the expenses of litigation when the dominion of the thing is at issue.

b) He *does not furnish enjoyment*, i.e., he is not personally obligated toward the usufructuary; he must leave the thing in the state in which it is found, but he is not bound to make it better.

E. Usufruct ceases: 1st. by the death of the usufructuary (a. 617), unless it was constituted until a third person should reach a determinate age; in which case it endures until the appointed time, even if the third person has died before then (a. 620);

2nd. when the appointed time has elapsed (a. 617), and when thirty years have elapsed if it was constituted in favor of a community (a. 619);

3rd. by consolidation, by which the usufructuary at the same time becomes owner of the thing, or conversely (a. 617);

4th. by prescription, i.e., by non-use of the thing for 30 years (a. 617);

5th. by the total destruction of the thing subject to usufruct (a. 617 and 623);

6th. by abuse of the thing, yet with the sentence of a judge intervening (a. 618);

7th. by the legitimate renunciation of the usufructuary, provided it is not done in fraud of creditors (a. 622);

8th. also by the dissolution of the right of him who constituted the usufruct, since, the right of the giver being resolved, the right of the receiver is resolved; unless, however, the law has determined otherwise (a. 132-133).

162. Use (*usage; gebruik, gebruikrecht*) is the real right of using some thing of another for one's own utility alone, like the owner of the thing, its substance being preserved. When the right of using is applied to a house, it is called habitation (*bewoning*).

The principal difference from usufruct is that the usufructuary can receive from the thing of another any use and any fruits whatever, whether for his own utility or not, while the user cannot receive them except insofar as they serve the use of himself and his own. He can use the thing for his own daily necessity, so that he cannot lease, sell, or gratuitously cede to another either the superfluous fruits or the right which he has, while he who has the use and fruit can do all these things. Whence the user has a right to use without being able to alienate the fruits.

Use is acquired and lost in the same way as usufruct, and gives rise to similar obligations (C.C., a. 625-631).[6]

[6] The Italian Code treats of use, a. 476 and 521 sq.; Spanish, a. 523 sq.; Dutch, a. 865 sq.; Austrian, a. 504 sq.; German, a. 1090 sq.

163. Real servitude, passively considered (*servitude; erfdienstbaarheid*), is a burden imposed upon a thing in favor of another thing (a. 637), for example, passage through another's land, the right of drawing water from another's spring. Actively considered (*erfdienstrecht*) it is a real right which the owner of one estate has, on the occasion of the estate itself (the dominant estate), of receiving some advantage from the estate of another (the servient estate).

Whence servitude is real in two ways: because it falls upon an immovable thing, and not upon a person; and because it yields directly to the advantage of another thing, and only indirectly to the utility of him who possesses this thing.[7]

[7] All species of useful dominion can be called servitudes, because the thing, while remaining to the direct owner, as it were serves another; and thus personal servitudes can be distinguished, when a thing serves another person, and real servitudes, when it serves him as owner. But the French legislators, from love of liberty and horror of merely personal servitude (*servage*), designated real servitude alone by the name *servitude*, calling the remaining species by the name *droits de jouissance*. Thus Waffelaert, o. c., n. 62.

By reason of mode it is either continuous, if it can endure without the act of man, for example, the servitude of aqueduct, of dripping; or non-continuous, if it cannot be exercised without such an act, for example, the right of passing through fields, of drawing water, of pasturing cattle (a. 688). Likewise it is apparent if it is manifested by an exterior sign, for example, by a door, aqueduct, window; or non-apparent if it shows itself by no exterior sign, for example, the prohibition of building in a certain place, or of raising a house or wall higher (a. 689).

By reason of origin, servitude is (a. 639) either 1st. natural, which is founded in the natural situation of places, for example, the lower land must receive waters which naturally flow down from the higher land; - or 2nd. legal, which arises from the disposition of law, whether for the public good (for example, the obligation of leaving a way for the drawing of ships on the banks of rivers, of constructing or repairing a public road), or for the private good (for example, obligations by which proprietors are legally bound to one another and which especially pertain to a common wall or ditch,

the distance to be observed for certain constructions, windows and openings onto the property of a neighbor, dripping from roofs, the right of passage); - 3rd. conventional, which can be acquired by legitimate title from mere convention, e.g., donation, sale, testament; indeed also by prescription of 30 years without title, provided it is a servitude that is continuous and at the same time apparent, for example, the servitude of an aqueduct which runs through another's land (a. 690). Such servitudes are similarly extinguished (a. 703 sq.).

As to rights and obligations, let it be noted:

a) The possessor of the servient estate who suffers the servitude is bound to abstain from all things by which the right of another would be impeded, diminished, or taken away (a. 701); but if by the title of servitude he is bound to something further, he can always free himself from that burden by abandoning the servient estate (a. 699).

b) The possessor of the dominant estate who enjoys the servitude can do at his own expense, even on another's land, whatever is necessary for the use of his right; but he must take care lest he render the condition of the servient estate worse or more burdensome (a. 697-698; 702), otherwise he is bound to furnish indemnity.

It is useful to note here:[8] "1. Those things which concerning ... servitudes have been wisely established by the legislator for the mutual concord of citizens are to be observed in conscience.

[8] Waffelaert, o. c., n. 86; cf. Marres, *De Iustitia*, n. 447-460. - Of servitude there is treatment in the Italian Code, a. 531 sq.; Spanish, a. 530 sq.; Dutch, a. 721 sq.; Austrian, a. 472 sq.; German, a. 1018 sq.

2. Since lawsuits which are usually brought about these matters, being generally intricate, easily furnish cause for hatred among citizens, and for the ruin of families, let the parish priest and confessor attempt either to forestall them or to remove them before they wound the litigant; and therefore let him himself know legal principles and examine the matter, and at the same time exhort others, especially litigants, to observe the laws, so that in a matter so uncertain they may rather yield somewhat in right than expose fortune and concord to danger."

164. Observations. - 1st. In the aforesaid definitions the discussion is about the substance of a thing. Here this is taken juridically for that form and figure by which the thing has a certain utility and name; for example, it is a meadow rather than a field or vineyard, or it is a house of such an external form or of such an internal order of parts. Whence the usufructuary cannot change the external form of a house, or the general internal order of its parts.

2nd. Other real rights are acknowledged in law, namely, privilege (*voorrecht*), mortgage (*grondpand*), and pledge (*pandrecht*). Moreover, emphyteusis and the right of superficies approach the nature of usufruct, which they extend.

These two in Belgium are governed by the law of Jan. 10, 1824. Emphyteusis (*erfpacht*) is a real and temporary right of having the full enjoyment of another's immovable thing on this condition, that an annual payment be paid to the owner in recognition of dominion.

Therefore it is never granted by gratuitous title, while usufruct can be given gratuitously; but it can pass to heirs, while usufruct is extinguished by the death of the usufructuary.[9]

[9] Emphyteusis is acknowledged by Austrian law (a. 1122), Italian (a. 1556), German in certain States, Dutch (a. 767); also by French law, but from the law of June 25, 1902. In France it can be granted at minimum for 18 years, at maximum for 99 years; by Dutch law for a time of 75 or 100 years, even in perpetuity; likewise by Italian law it can be established in perpetuity, but then it is redeemable. In Belgium: at minimum for 27, at maximum for 99 years.

The right of superficies (*recht van opstal*) is the real temporary right of having buildings, works, or plantations on another's land.[10]

[10] In Belgium it can be granted for 50 years. It is also acknowledged by German law (a. 1012-1027), and Dutch law (a. 758 sq.); French or Italian law has nothing explicit.

3rd. To the aforesaid things possession itself is not to be added, which is not right and dominion, but as it were a sign of dominion. It is the detention of a thing not prohibited to be possessed, with the intention of having it as one's own. Formerly there was distinguished: possession of right, i.e., the real right of possessing or detaining a thing not prohibited; and possession of fact, or the act of possessing, namely, detention of a thing by the help of intention (the will of possessing), body (the external act), and right (the law permitting possession). But in modern law, possession is not a right but the mere fact of detaining a thing under one's power, whether justly or unjustly; whence by itself alone it is not a mode or title of acquiring right.

4th. For determining the rights of men, and consequently in treating the whole matter of justice, one must attend both to natural and divine law, and also to positive human law, and by name to the Civil Code. The power of the civil legislator to make laws which determine or explain the right of property, enjoyment, or use is certain. For just as the natural law which indeterminately commands that God must be worshiped ought to be determined by the Church, which prescribes the mode, place, and time of divine worship and other circumstances to be observed; so the natural law which indeterminately establishes that right is to be attributed to each one and that justice is to be observed in operations toward another, needs the determination of civil law, which defines what in fact are the rights of each one and how justice is to be observed in concrete circumstances (I, n. 263).

But such civil law obliges also in conscience, provided a) it is just, and repugnant neither to natural law, nor also, in matters subject to the Church, to ecclesiastical law; b) it is not merely penal but preceptive, which is established either from the nature of the thing or from necessity (as is generally verified for laws which determine the mutual rights of citizens, or directly procure the common good), or from the tenor of the law or of the attached penalty, or from the common interpretation of good and God-fearing citizens (cf. tr. de Legibus, I, n. 287).

In France and Belgium one must stand by the Code which, established by Napoleon I, is commonly called French law, yet with attention to the special laws by which that code was afterward very much corrected or even increased.[11]

[11] Hence the articles of law cited, unless otherwise noted, are those of the French Civil Code.

165. Corollary. - From the definition given it follows that usufruct and use properly do not belong to things consumable by the first act, such as bread, wine, oil, money, etc.; hence:

1st. In these things use properly so called, independent and irrevocable (*usus iuris*), cannot be separated from dominion: for he who has such complete use, for example, of drinking from a barrel of wine until it is emptied, seems to have nothing less than he who has dominion over it.

2nd. Yet dependent and revocable use (*usus facti*) can be separated, such use as these are judged to have:

a) those invited to a banquet, respectively to the foods proposed; for they cannot use those things which are placed on the table for any use whatever, but only for eating, and thus dependently upon the will of the one inviting, so that he would commit no injury if he removed the things that had been set out;

b) religious solemnly professed, in particular, as to food and clothing, dominion remaining with the community; - and the Friars Minor or Capuchin Friars Minor, both in common and in particular, as to all temporal things whose use is licit for them, so that the Order itself professes that it has dominion of no temporal things, but only simple use of fact, revocable at will, dominion remaining either with the donors or with the Apostolic See. Nevertheless he who took away their things would commit injustice by depriving them of the use of fact.

Question Three: On the Object of Right and Dominion

166. The object of right and dominion is all things, not considered in themselves, but insofar as they bring utility and can be appropriated, and thus yield to man's own advantage, and therefore are called goods. These, comparatively to man, are divided into three species, according to the diverse mode in which they are referred to our utility:

1st. man's internal goods: of the body, such as life, health, members; and of the soul, whether natural, such as faculties and their exercise, sciences and arts, or supernatural, which have been infused by God through the mediation of human operation;

2nd. external goods of fortune, whether movable or immovable;

3rd. intermediate goods (or mixed goods) of reputation and honor, which radically are internal, founded in the excellence of man and in his faculties; formally they are external, in others who honor us and think and speak well of us.

Concerning each it is asked whether man can have right and dominion over them, namely, whether there can exist between them and man a connection or bond, which is founded either in the exigency of the person, or in the common necessity of men.

167. Principle I. Concerning internal goods it must be said:

1. Over those goods which pertain to the integrity of man and are not distinct from him, such as life and the members of the body, and the faculties of the soul, man has right by the very fact that he is man, for by that very fact there is had a bond between him and these goods; yet he does not have direct and full dominion, which belongs to God, but only useful dominion, so that he is their guardian and administrator and user.

For no one can possess himself or be lord of himself, for dominion is something essentially relative, by which one has right in something other (the foundation of dominion does not fall under dominion); but God, as the first principle and last end, is the supreme lord of us, of life and death, and therefore he commits injustice against God who deprives himself of such a good, just as also

each one has the duty and right of preserving those things, because they are means given him by God so that he may reach the end.

Yet man can use those goods, for this is required that he may attain the end, so that by acting well he may have eternal life; and therefore he can make their fruits his own (namely, operations and the things which are obtained by operations) for his own utility.

2. Over goods distinct from man, such as the operations of faculties and the things which are acquired through the mediation of human operations or are given by God, man has direct and full dominion: for they are distinct from his entity and therefore can be possessed by him; but they are possessed because they have been acquired by his industry or obtained by his cooperation.

Hence he is lord a) of natural and supernatural virtues, and therefore in these he is not injured unjustly by others, unless it is done in some way against his will by employing some unjust means, such as deceiving or threatening;

b) of intellectual and bodily acts, to which therefore no other can have a title of connection or a right before a contract or some legitimate fact;

c) of bodily or intellectual labor and its fruits, provided he acts in his own name and in his own thing, not in the name of another and in another's thing.

168. Principle II. Concerning external goods it must be said:

1. Man has right to terrestrial goods according as, with attention to the laws of nature and positive laws, he has acquired them for himself by a legitimate fact: for they are destined for his use, as imperfect things for a perfect being, and can be appropriated by him (Gen. I, 26, 28; Ps. CXIII, 16; VIII, 8). And indeed he has not only useful dominion and by a transient use, because they are necessary for him for the preservation of life and thus for the due end, but also full and permanent dominion, by which in a stable and perpetual way he may possess not only fruits but also immovable things, indeed the earth itself. This is fitting to the nature of the thing and necessary from a threefold bond; for:

a) The individual man, since he is a rational being, has before brute animals this, that he himself provides for his necessities and progress and enjoys aptitude for possessing those things which serve his necessity; therefore, since he foresees necessities perpetually recurring, for relieving which terrestrial things are apt, it is conformable to natural ordination that he possess in a stable way not only those things which are consumed by use, but also immovable goods and the earth itself, which are necessary for providing for future necessities (in time of sickness, old age, want, and poverty).

b) Indeed, as a father of a family, he must provide not only for the things necessary for his own preservation, but also for those necessary for the preservation of the species, namely, for his wife, and for his children, who are something of the father, and in whom his personality is prolonged, and who expect from the father food and cultivation by which they may become men sufficient to themselves. Whence a fortiori to man, as father of a family, there belongs the right of possessing, who must acquire for his own and transmit to them goods even immovable, especially fruitful possessions, from

which he may be able to sustain the family in time of poverty, or of broken strength, or even after death.

c) Finally, man has full dominion in that which he has produced and in which he has prolonged his own personality: for it is just that the thing made should follow the cause from which it was made. Therefore, if by his own labor he has made a thing or the earth itself fruitful, or even has improved it and has as it were sealed it with the seal of his own personality, it is conformable to reason that he possess the thing itself and the earth (as being now inseparable from the labor); otherwise the fruits of labor would not come to the laborer himself, or even others would have the right of enjoying them.[1]

[1] Cf. Leo XIII, *Rerum novarum,* and Pottier, *De Iure et Iustitia*.

2. Over the heavenly bodies according to their substance he does not have dominion, because, although they were founded for our utility, they are nevertheless not so subject that we can dispose of them; but according to certain effects, he has indirect dominion, which he can use for his own advantage, for example, light, from which consequently he cannot prohibit others who have a right to it.

3. Over the person of one's neighbor as such (insofar as he can bring utility) man does not have perfect dominion, since all men by nature are peers, and the human person is inviolable, which cannot be ordered to the good and end of other persons (the foundation of dominion does not fall under dominion); yet he can have useful dominion as to his works.

Whence personal servitude, or a state of subjection by which someone, in exchange for sustenance, is bound to furnish all his works to another in perpetuity, of itself (abstracting from excess of oppression and tyranny) is not repugnant to natural right, although nevertheless it is less fitting to human dignity.[2]

[2] The Scriptures do not hold servitude as illicit: for Moses did not absolutely prohibit it but moderated it (cf. Ex. XX, 17; XXI, 2; Lev. XXV, 45-46; 54-55); and in the New Law they admonish masters to treat servants kindly, indeed they exhort them to free them, but do not command this (I Cor. VII, 20-24; Eph. VI, 9; Col. IV, 1; to Philem.). Yet Christian doctrine and the Church do not favor servitude, but always tend toward expelling servitude; and under their influence it happened that among cultivated nations servitude was abolished and now by positive law is illicit.

The Scholastics admitted four titles by which servitude could be constituted not unjustly: 1) purchase-sale or donation, both that by which someone freely reduces himself into servitude, for since man can transfer dominion of his own work for a time, he can also do this in perpetuity; and that by which someone already legitimately a servant is handed over by the master to another; 2) right of war, provided the war was just, which now contradicts the modern law of nations; 3) servile birth, by force of which those who were born from servants were held as servants; nevertheless this can seem less equitable if the servitude is perpetual; 4) penalty from a delict: for if someone has deserved death, this penalty can be commuted into servitude. Moreover, forced labor to which some guilty persons are condemned seems to be a certain servitude. - Cf. Billuart, diss. 3, art. 2; and Tanquerey, *Th. M.*, t. III, de *Virtute Iustitiae*, n. 133-141.

169. Principle III. Concerning the intermediate goods of reputation and honor it must be said:

Man has strict and full dominion over these goods, because he acquires and increases honor and reputation for himself, like external goods, by his own acts and by manifestation of his moral and natural qualities; - and moreover because reputation is necessary for cultivating virtue and preserving peace in society with others.

Hence, just as man can reclaim in judgment an injury of reputation and honor, so he can also condone it; - indeed the very defamation of oneself of itself is not against justice, since man has full right over his reputation; although, if it is done without sufficient reason, it can be prodigality against charity toward oneself, or scandal against charity toward one's neighbor.

Yet per accidens it can be against justice, not indeed insofar as it is defamation of oneself, but by reason of others insofar as it harms one's neighbor, namely: if the reputation of one's neighbor depends upon one's own reputation, and from one's own infamy there follows the infamy of another (for example, of a father, monk, accomplice), or if reputation is necessary to oneself for fulfilling an office of justice, as the reputation of a bishop or pastor. Whence Augustine: Our life is necessary to us, our reputation to others.

170. Division of goods and various genera. - The various species of goods are divided variously:

A. Into corporeal and incorporeal goods (*biens corporels et incorporels; stoffelijke en onstoffelijke goederen*). The former are those which fall under the senses, such as a house, field, clothing, furniture, money; the latter are said to be those which are not presented to the senses but are perceived by the human intellect, namely, rights of fishing, hunting, receiving fruits, inheritance, etc.: for right is held after the manner of a good about which an owner can dispose.

B. Into movable and immovable goods (*biens meubles et immeubles; roerende en onroerende goederen*). The former are all things which are not immovable; the latter are those which either altogether, or at least in the state in which they are, cannot physically be transferred or transfer themselves while preserving their substance (C.C., a. 516 sq.).

The distinction of itself and from the nature of the thing falls upon external corporeal things, but by civil law it is also applied to incorporeal things, which by their nature are neither movable nor immovable, yet are judged so by reason of the object to which they are applied.

Therefore, by French law,[3] 1st. immovable goods are held to be: a) by their nature, such as lands, buildings, forests, or crops as long as they adhere to the soil; b) by destination, such as animals, machines, and other objects assigned to cultivating fields (*objets d'exploitation*) or applied in perpetuity; c) by reason of the immovable object about which they are concerned, such as the real rights of usufruct, use, servitude, and mortgage from immovable things, and every real action upon an immovable thing (a. 517 sq.).

[3] On this matter the Italian Code, a. 714 sq.; Spanish, a. 333 sq.; Dutch, a. 562 sq.; Austrian, a. 291 sq.; German, a. 90 sq.

2nd. Likewise movable goods can be: a) by their nature, such as ships, wagons, animals, furniture (a. 528); b) by determination of law, such as rights concerning movable things, or of receiving rents, shares in an anonymous society, etc. (a. 529 sq.).

C. Movables according to nature are 1) consumable (*verbruikbare*), which are consumed by first use, either physically through destruction or loss of form and properties (as happens in paper, food, and drink), or morally when the thing is alienated and by first use is drawn away (for example, money) or

changed (cloths turned into clothing); - and 2) non-consumable (*onverbruikbare*), which are by no means destroyed or changed by first use, such as houses, furniture, clothes, a horse, etc.

D. Movables according to relative and accidental quality are fungible and non-fungible (*vervangbare of onvervangbare*). The former, in payment of a debt, according to common estimation, can supply other things of the same species and stand in their place, such as generally those things which are usually counted, measured, or weighed, for example, coined money, oil, wheat, sugar, wood for burning, etc. Non-fungible things cannot be substituted for another thing, but the same identical thing must be handed over, for example, this horse which I have carefully selected, this statue, this painting, etc.

Fungible things generally are at the same time consumable, and conversely. Yet there are exceptions: thus the last barrel of wine of such a year which is promised, or gold coins which are lent as a pledge, are consumable but not fungible; - on the opposite side, if one hundred acres of fields are promised to settlers, or if a bookseller asks for a copy of a book for selling, these are fungible but not consumable.

Question Four: On the Subject of Right and Dominion

171. God alone has universal, absolute, independent, and principal dominion over all created things, insofar as He is their first principle of creation and conservation (Ps. XXIII, 1; Wis. XII, 16).

He cannot abdicate this dominion, nor communicate it to any creature, nor exempt any creature from it, because He cannot communicate its title, nor can anyone be exempted from Him. But to the intellectual creature, created to His image, He communicates a particular and relative dominion, subordinated to His universal dominion, just as also He communicates the power of acting under the supreme cause. Hence the dominion which belongs to man has been conferred on him in order to other men; but not in order to God Himself, who alone is always and remains the essential and absolute lord of all things, to whom all will render an account of their dominion.

On earth every man and only man is of himself capable of dominion.

172. Only a being of intellectual nature is capable of right and dominion. - And thus not only the individual is understood, but also a collection of men, which makes a moral person. - It is proved:

He alone is capable of dominion who can morally dispose of some thing as his own, and suffer injustice. But:

1. intellectual nature alone can morally dispose of some thing as its own, because to every intellectual nature and to it alone there belongs the foundation of dominion, namely, intellect and will, through which it has the power of disposing at will of its own acts, and consequently of external things;

2. likewise it alone can suffer injustice: for no one suffers injury unless he is reasonably unwilling; but he who lacks intellect and will cannot be unwilling in this way: for he is unwilling who by will wishes to retain his right concerning the thing, or to obligate others not to take it away.

Therefore intellectual nature alone is capable of dominion.

Brute animals are incapable of this will, as also of the use of dominion, for which it is required to refer one thing to another, which belongs to reason; and therefore properly they do not have rights. Moreover, they are subjected to rational beings as to their end, and consequently as to all things which serve them as means to this end. Whence they can be injured or killed without injury properly so called. Yet man owes it to himself and to the natural order not to injure or destroy animals without a reasonable cause or sufficient reason.

173. For radical dominion and strict right the use of reason is not required, but rational nature suffices. - For although for the actual use or formal exercise of right and dominion the use of reason is required, nevertheless it is not required for habitual dominion, which is immediately founded not in act, but in rational powers ordered to act.

Hence children and the insane possess internal goods; moreover, the common good demands that external goods at once be bound to them (for example, on account of their necessities), so that they may remain proper to them; - on the contrary, a right for which the use of reason is necessarily required cannot belong to them, for example, the right of contracting. And therefore civil law acknowledges their right, but establishes that the administration of goods is to be exercised by curators or tutors.

174. Matter To Be Treated. - The right of dominion is circumscribed by positive law, and therefore it can happen that someone becomes incapable of right in several matters, or that power in him is restricted. Hence we shall speak of those who are not fully capable of dominion, namely: 1. of children under paternal power; 2. of wives; 3. of authors and inventors; 4. of secular clerics; 5. of religious; 6. of moral persons.

Article I: On the Dominion of Children Under Parental Power

175. Notions. - Children under family power are called children of either sex, legitimate or legitimated, who are still constituted under parental power. They are:

a) legitimate, namely, those who were born from a marriage contracted according to the laws;[1]

[1] According to canon law, which in this matter is specially competent, "legitimate are children conceived or born from a valid or putative marriage, unless to the parents, on account of solemn religious profession or received sacred order, the use of the marriage previously contracted was prohibited at the time of conception," can. 1114.

b) or legitimated, those who were not born from a legitimate marriage, but afterward acquired the rights of legitimate children through a subsequent marriage, and are judged legitimately born (C.C., a. 331-333);

c) those who are constituted under parental power, not that which belongs to parents by force of the natural law for demanding due reverence and obedience (a. 371), but that which by force of civil law is acknowledged to them over the persons and goods of children (a. 372), who are neither emancipated nor of full age.

Hence from parental power there are exempted:

1. natural children not legitimated, especially spurious children, because by law power over them is not conceded to parents,[2] since no one ought to obtain an advantage from his own delict,

just as neither ought the children themselves, except for the right to support, harm the rights of legitimate children;

[2] It is established for French law from a. 384, which supposes marriage.

2. those of full age: in modern law the determined age of majority is generally the completed 21st year;[3]

[3] Thus also in canon law, c. 88, § 1. - In Switzerland, however, it is the 20th year.

3. those previously emancipated, either by the law itself, for example, through marriage, or by a special juridical act. Emancipation through marriage is not acknowledged by German, Austrian, or Italian law; it is acknowledged by French and Belgian law (a. 476), Spanish, Dutch, English, and Swiss law; - emancipation by juridical act can be granted to a son after the completed 18th year according to German, Swiss, Italian, and Spanish law; also according to Dutch law, but imperfectly, and perfectly after the 20th year; by French and Belgian law by the father, and if he is lacking by the mother, before a judge after the completed 15th year (a. 477), and if they are deceased only after the completed 18th year by deliberation of the family council under the presidency of the judge (a. 478).

176. Principles. - Children under family power are capable of dominion, and, after the use of reason, also of its exercise. But they are judged not mature enough to manage their own things well and prudently, and certain burdens toward parents are incumbent upon them. Whence in them the right of dominion is deservedly restricted by various limits to be determined by law. Hence three principles:

I. Children under family power have direct dominion in goods which justly come to them.

II. They do not have the administration of goods, which is in the power of the father or tutor until the children's majority or emancipation.

III. Useful dominion or usufruct of itself belongs to the parents, by way of compensation for the support and education of the children, or also for the administration of goods;[4] yet it belongs to the children a) for goods which come to them under the condition that the usufruct not come to the parents; b) for those goods which they have acquired by labor undertaken in their own name or by separate industry, unless otherwise established in civil law for compensation of education, as in Spanish law (a. 140) and American law, but for minors alone who remain at home. But French and Belgian law (a. 387), Italian (a. 229), Dutch (a. 366), German (a. 1649-1651), Austrian (a. 149), and Swiss (a. 296) leave the fruits of labor exercised in one's own name or of separate industry to the children.

[4] The Austrian Code adjudges usufruct away from parents and concedes only administration (a. 149). Usufruct belongs to the children, after the expenses of education have nevertheless been deducted.

In particular, by French and Belgian law, minor children do not have usufruct before the 18th year of age, or before they are emancipated (a. 384),[5] unless there is question of goods acquired by separate labor or industry (a. 387); - or donated under the express condition that neither father nor mother enjoy them[6] (ibid.); - or coming from a succession for which the parents have been declared unworthy (a. 730).

[5] The reason why this article was established is that parents, where possible, may in some way be made indemnified for the expenses which the education of children demands. But the law did not will these expenses to be mathematically computed in order to make compensation; rather it attributed to parents usufruct in the goods of children, lest they be held by the children as hired mandataries, from whom an account could have been demanded to the detriment of filial piety.

[6] In Italian law, moreover, those things which were given to the son for learning an art or profession (a. 228-229); in Spanish law, those things which were given for education (a. 160-162).

Outside these cases, usufruct belongs to the father alone (a. 384 and 389) as if compensation for the labor of administration; it does not belong to the mother, if the father renounces, but only when she takes the place of an impeded father. When the marriage is dissolved, it belongs to the surviving spouse (a. 384); but if the mother enters a new marriage, she loses the usufruct,[7] because a new family is constituted, the woman passing under the power of another (a. 386). The spouse against whom divorce has been pronounced is also excluded (ibid.); likewise the spouse who has neglected to make an inventory of the goods of the community (a. 1442). But the administration of all goods is in the power of the father or tutor (a. 389 sq.), until the children become of full age, who have administration in every respect[8] (a. 488); or emancipated, who have restricted administration (a. 481-484), but full administration in matters of commerce (a. 487).

[7] Italian law so establishes concerning either spouse who, after the death of the consort, passes to new nuptials.

[8] According to the German Code (a. 1618), those of full age are of their own right; nevertheless, if they remain in the paternal home, until they demand compensation of fruits from their own proper goods, they are presumed to concede them to the parents.

177. Question: Whether children under family power have full dominion over gains which come from their own labor?

R. The separate and non-separate industry of the child is distinguished; and when there is question of non-separate industry, it is distinguished whether the child acts as a partner of the father (for example, if he conducts commerce together with the father), or as his mandatary (for example, as a servant or minister). Industry is called non-separate when the child labors and gains, whether in the paternal home from the father's things and about the father's things, or outside the paternal home among strangers but nevertheless in the father's name. Industry is called separate or proper when the child labors and gains either among strangers in his own name, or in the paternal home itself but not about the father's things nor from the father's things.

These things being noted:

1st. If the child makes gains by separate labor and industry, he has dominion and usufruct of that gain (C.C., a. 387); yet administration during the time of minority remains with the father; wherefore if the child, against the parents' will, retains and dissipates these goods, he sins against other virtues, not against justice. Moreover:

a) the child from justice must compensate the expenses of food and clothing: for parents are not bound to support a child who can provide for himself from his own gains;

b) from piety he must assist the grave necessity of his parents and family, namely, brothers and sisters.

Hence it happens that younger workers (to whom a high wage is not accustomed to come), even when laboring outside the paternal home and by separate industry, often must hand over the whole

wage to the parents and cannot reserve a part for themselves except in extraordinary cases, for example, by reason of extraordinary labor or diligence, or if the parents freely consent, which nevertheless is not easily to be supposed among poor parents.[9]

[9] In two cases children would not be accused of sin because they subtracted something of the salary received from the parents and from the father's administration: a) if the parents do not reserve for the children those things which exceed support, but spend them on superfluous uses; b) if the parents, being too sparing, deny the children those things which are suitable for honorable recreations. Yet, as is clear, these are not easily to be admitted.

2nd. If the child makes gains as a partner of the father, with the father's consent obtained and a true contract of partnership entered, he has full right to the part of the gains coming from the partnership. Therefore one must stand by that contract, provided it was entered justly, without injury to a third party, for example, other children. Such an agreement is generally not to be advised; at times, however, it is rightly concluded, for example, if the other children conduct their own affairs and one remains at home. But civil law (C.C., a. 854) deservedly requires that the partnership have been entered by an authentic act, lest frauds be committed and one child vindicate to himself from the goods of the family more than is equitable.

3rd. If the child, as happens more often and deservedly, acts as mandatary of the father, laboring in his name and at his risk, for example, if the father has hired out the labor of the child, the whole gain belongs to the father. There is excepted only gain from work wholly extraordinary and not owed, or from a business which the child establishes in his own name and at his own risk, whether with his own goods, or with paternal goods conceded to him or secretly taken. For although the child sins by taking the father's money, nevertheless he acquires the gain, provided he also assumes the risk of the principal and repairs to the father the damage arising from the surreptitious taking.

In this case it is further asked whether that child has a right to a stipend, or salary proportioned to his labor. R. Theoretically speaking, he probably has a right to so much stipend as would be owed to a stranger, after deducting those things which are owed to the father from justice and piety; although others deny this, because a father can always use the labor of minor children, at least by way of compensation for the education given, and impose it under the title of the debt of piety and obedience. Practically speaking, that right generally seems to be denied, because parents, who have made such great expenses for minors, can demand, as compensation for expenses made, that they labor for preserving and increasing the family estate, and be content with support received at home; moreover, the father, as superior, commanding is to be obeyed, until it is certain that he commands unjustly and exceeds the limits of his power. Especially, however, the child cannot urge anything:

a) if he has not explicitly asked for a stipend, or, on account of reverence for his father, at least implicitly: for then he is judged to labor gratuitously, as generally happens;

b) if all the children, either simultaneously or successively, labor in this way equally or almost equally; otherwise one would receive more than is equitable from the common inheritance;

c) if the father by himself or through others would have done the same without expense: for then the gain does not depend upon the labor of that child.

178. Practical conclusions. - From the principles established above the following conclusions follow:

1st. A child has dominion over goods conceded to him by his parents according to the explicit or implicit intention of the parents; namely:

a) over goods which were given absolutely, he has full dominion;

b) but not over goods given for a determinate use: thus, for example, he would act unjustly who spent money received for buying books or completing studies on another use, say, on immoderate recreations or pleasures;

c) if the express intention was not present, it can be discerned from the nature of the thing or the circumstances: thus consumable things are judged to be given absolutely, unless the contrary is established, namely, that they are given for a special end; on the contrary, non-consumable things (clothes, books, horse) are judged to be given only for use. Likewise, with children living outside the home for the sake of study or art or commerce, parents are to be presumed to indulge those things which are accustomed to be attributed to young persons of the same condition.

2nd. A child, with the father's consent, living outside the paternal home and laboring in his own name, is judged also to have disposition over those things which he acquires; this is not only conformed to French law (a. 387) and kindred legal systems, but is also explicitly stated by English, American, Austrian (a. 151), Spanish (a. 159), and Swiss law (a. 295).

3rd. The following sin against commutative justice and of themselves are bound to restitution:

a) parents, by taking the goods of the child, or by taking usufruct if according to civil law they would not have right to it, but the child would;

b) the minor child, by taking the goods of the parents, or by taking usufruct of his own goods to which he does not have right according to the prescriptions of the civil law of diverse nations.

179. Practical observations. - 1. Before the faithful, especially in preaching, the rights of children from the rigor of right are not to be explained minutely; nor generally are those agreements concerning dividing gain between parents and younger workers to be advised, by which it comes about that children become as it were boarders with their parents. Rather, by all means let mutual piety, paternal authority, and the unity of families be inculcated.

2. Yet let parents be admonished at an opportune time that they provide equally for their children, especially for those remaining at home, and also not deny them some money for honorable recreations.

3. If a confessor finds children very prone to occult compensation, then let him judge and act prudently: before the fact, let him rather set forth the stricter opinions and especially inculcate paternal authority; after the fact, let him incline toward the milder opinion for restitution and examine the causes which often excuse from it, nor impose it unless the obligation of making restitution is certain.

4. The things which have been said about a child under family power toward father and mother as to gains which he makes in the father's house are to be extended to a grandson, a granddaughter, and to any other blood relative who is found in a similar condition.

Article II: On the Dominion of Wives

180. Notions. - Husband and wife, by contracting marriage, form a certain society of which the man is the head, but the woman is subject, not as a servant or maidservant, but as associate and helper. Whence from the nature of the thing and divine law the woman becomes subject to the man, and therefore she does not retain the same liberty as to managing her goods and affairs. "For although the woman is equal to the man in the act of marriage," says St. Thomas, "nevertheless in those things which pertain to the ordering of the house, the man is the head of the woman, according to the Apostle, I Cor. XI" (II-II, q. 32, a. 8, ad 2). Indeed, by entering matrimonial society the wife retains natural rights, whence she remains capable of dominion and administration; but she has taken upon herself duties of assisting, according to a proportionate part, the burdens of marriage and common life, namely, the support of the offspring to be born, indeed even of the husband himself, in the case in which he should be deprived of his own goods. Hence, because the man generally is supposed to be more skilled in managing goods, and because he is the head, by natural law it is already fitting that the wife depend upon him, at least as to those goods which are destined for the burdens of marriage. This is to be determined by civil law, and it is done in various ways for various regions or diverse conventions.

181. Principles. - But in every matrimonial regime three genera of the wife's goods can be distinguished:

1. common goods, which by nuptial pact or by statute of law are placed into the community or are acquired for the community;

2. proper or dotal goods, which according to legal dispositions or special pact are brought for sustaining the burdens of marriage but do not become common; these therefore are entrusted to the husband in order to the burdens of marriage;

3. extradotal or paraphernal goods, which the wife has besides the dowry and which she has reserved wholly to herself; - to these there are reduced as quasi-paraphernal goods:

a) whatever the wife has acquired for herself by extraordinary industry and labor after due diligence has been given to domestic affairs;

b) whatever from frugality she subtracts from the things granted to her for food, clothing, recreation: for they are reckoned fruits of industry;

c) whatever she receives by personal title of donation, namely, under the condition that the husband have no right in the thing donated.

Hence three principles:

I. As to paraphernal goods, the wife has dominion, usufruct, and administration. Whence she can fully dispose of these goods, at least if they are movable; and even if they are immovable, unless civil law prohibits it: thus according to French and Belgian law, generally she cannot alienate immovable goods except with the husband's consent.

II. As to proper but dotal goods, the wife has direct dominion; therefore the husband cannot alienate them, at least without the wife's consent. But revenues and fruits during marriage belong, according

to the diverse convention, either to the husband, or to the family community, of which nevertheless the husband is administrator.

III. As to common goods, dominion is with the community, i.e., with the man and wife together; useful dominion and administration the man has as head of the family, so that generally he can dispose of them fully. Yet the wife has from common or dotal goods a right to honorable support according to the condition of the family; but when the community is dissolved, she has a right either to half the part, or to that part which was determined by convention.

But which goods in fact are common or dotal depends upon the convention entered and upon the statute of civil law of diverse regions.

182. Practical conclusions. - 1. A wife, from common goods and the fruits of dotal goods, has a strict right to honorable support, according to her present condition and the state of the family fortune, even if she has brought no goods, nor any pact has been explicitly entered: for it is one of the burdens of marriage. Whence also, if other goods are lacking, support is strictly owed to her from the goods of the husband; just as also to the husband, if he does not have goods, support is owed from the goods of the wife. - But honorable support includes not only food and clothing, but in our regions also the faculty of spending certain things for honorable recreations, small gifts, and moderate alms, according to her condition.

2. A wife who is bound to assist her parents, or children received from a prior marriage, because they are in grave necessity, must furnish this from goods proper to herself, if she has any; but if these are lacking, from common goods, or finally from the goods of the husband, even against his will, provided that she then abstains from other alms; and the same seems to be said for assisting gravely indigent brothers and sisters. The husband as administrator and head of the family must give those things to the wife by which she can satisfy her natural obligations. And she is not bound, after the husband has died, to restore those expenses, even if they much exceed the limits of customary alms.

3. A wife, because she is not a servant or maidservant but an associate, strictly is not bound explicitly to request from the husband those things which are necessary for her own support or for the necessities of the family, but can vindicate them to herself, indeed secretly take them if the man is irrationally unwilling; and similarly, if the husband is lacking or negligent, those things which are necessary for the support of the children. Likewise those things which the husband would easily concede if he were asked: such permission then can legitimately be presumed.

4. The wife, if the husband is lacking, is set over by her nature and by positive law for caring for family affairs. Whence, in the case, generally she could spend from common goods those things which are necessary for preventing grave damage to the family;[1] and if the husband is prodigal, she probably can hide certain goods and preserve them for future necessities.

[1] See, however, civil law; for example, art. 1427.

5. The wife sins against commutative justice and of herself is bound to restitution if, against the reasonably unwilling husband, she secretly takes his goods or usurps for herself from dotal or

common goods those things to which she has no right.

6. The husband also can sin against commutative justice, and is bound to restitution: by taking extradotal goods, against the wife's will (a. 1579); by taking or dissipating dotal goods or the wife's proper goods, or by caring for them negligently, or by alienating them without the wife's permission (a. 1428); by compelling her through unjust means (force, fear, fraud) to consent to the alienation or obligation of her goods; likewise by disposing of common or dotal goods against the prescription of law,[2] if thence he inflicts damage upon the wife; - but probably not if he has dissipated goods within the limits of the law, although he thus sins against liberality and piety.

[2] It is disputed whether the husband, by dissipating common goods but within the concession of law, is bound to restitution toward the wife. Many affirm: 1) because the wife has co-dominion (and therefore strict right) at least over half the part; 2) because the concession of law is not positive, but only negative, insofar as by the legal way nothing can be demanded from the husband on account of bad and prodigal administration; 3) because the concession of law ought to be for the advantage, not the detriment, of the family. - Others nevertheless deny, responding: a) the concession of law is absolute, since it says the husband has administration and usufruct of the goods, and only places certain small restrictions; b) the co-dominion of the wife expressed by law consists only in this, that, when the community has been dissolved, the wife has a right to a half part of the goods then existing; but the man's part in the common goods is stronger both by reason of the goods placed in common and by reason of administration; c) the concession of law is for the advantage of the family, yet not so that the man cannot dispose of the goods of the community except directly and immediately for the utility of the family, but according to general conventions; otherwise the concession of law would be vain and empty. Therefore, besides those things which have been established by law, the husband has perfect administration, nor is he bound to render an account concerning it.

By French and Belgian law, the husband has administration of the wife's proper or dotal goods, which nevertheless he must manage as a good father of a family, and if he is negligent, he is bound to restitution (a. 1428). But of the goods of the community he has administration such that he can sell, alienate, and pledge them without the wife's consent (a. 1421); nevertheless he cannot donate immovable goods (even secretly or under the appearance of sale), nor the totality or a determinate quota of movables except for settling children (a. 1422); yet he can donate movables by particular and gratuitous title, provided he does not reserve usufruct to himself (ibid.).

To guard against the dissipation of goods, the wife can petition for separation of goods (a. 1443), and when the community is dissolved she can vindicate her part provided by law, not only from the goods of the community, but also, if those do not sufficiently remain, from the goods of the husband (a. 1471-72). But if the wife, knowing of the dilapidation, does not reclaim her right (by petitioning separation), it is a sign that she does not dissent, nor can she demand restitution, except for the fruits which remain (a. 1539 and 1578).

7. Finally, spouses, whether husband or wife, sin against commutative justice by not bringing the part of goods or revenues owed according to law or contract.

183. Practical warning. - The rights of wives in common goods, which belong to them from usage and custom, are not to be publicly proposed in instructions, nor privately applied without discrimination, by indulgence everywhere to women, since they, from an innate desire of ruling, are very prone to extend their rights more than is equitable. Universally it must be cared for more that

the wife be subject and obedient to the husband in charity, as is fitting, than that she insist upon her rights.

Dispositions of Modern Civil Law.

We place here below the more principal dispositions of civil law of the chief nations, so that the reader may be able to form for himself some idea of the matter; nevertheless, the things noted ordinarily do not suffice for solving cases, because they are often very involved. And therefore without consulting a jurist they are not easily to be solved.

184. According to French and Belgian law: 1) Spouses before marriage can enter into every and all convention, provided it is not opposed to good morals, to marital and paternal authority, and to civil law[3] (a. 1387-1390). If a special convention is lacking, the marriage is judged to have been entered under the regime of legal community (a. 1400).

[3] Let the contract of marriage not be confused: *le mariage, l'association conjugale; de huwelijksverbintenis, de echt*; with the prior convention or matrimonial contract: *le contrat de mariage, la convention matrimoniale; de huwelijksche voorwaarden of overeenkomst*.

2. Conventions before marriage must be entered before a notary (a. 1394); once entered they can be changed in the same form, i.e., by a similar act before a notary, before, but not after, the celebration of marriage (a. 1395-1396).

3. Under whatever regime, the wife depends upon the husband - or upon the tribunal - as to the alienation of immovable goods (a. 217-219; 1449; 1538), and in order that she present herself in civil judgment (a. 215-216); but this dependence ceases when the matrimonial bond has been dissolved (a. 1576 and 1449).

But marriage can be contracted under a multiple regime: of legal community, - or conventional, - exclusive of community, - of separation, - and dotal.

A. The regime of community (*gemeenschap van goederen*) is had when certain goods of the husband and wife become common. It is introduced either by matrimonial contract, or, when a contract is lacking, by law of full right. Whence there can be a twofold community of goods: legal or conventional.

Legal community is had if the spouses make no special contract or declare that they wish to contract under the regime of community (a. 1400-1490). Under this regime:

1. The following become common: a) all movables both present and future, except those which are expressly donated so that they may be proper; b) all fruits and revenues of all immovables; c) all immovables also acquired from common goods while the marriage stands (a. 1401-1403).

2. The following remain proper or personal to each spouse: a) all immovables, whether possessed before marriage, or obtained after marriage, unless they were donated with the explicit condition that they become common, or acquired by onerous title from the price of a proper good sold (*remploi-wederbezetting*) (a. 1404-08; 1433); b) movables donated with the explicit condition that they be proper (a. 1401).

Therefore, a) while the community stands, the wife retains bare ownership of her goods; but not the administration, which passes to the husband, nor the usufruct, which passes to the community of which the husband is head and administrator. Whence she cannot alienate her goods without the husband's consent; nor can the husband alienate the wife's proper goods without her permission (a. 1428). As to common goods, the community possesses direct dominion; useful dominion and administration the husband has as head, on which account he has the right of selling, alienating, and burdening them with mortgages, without the wife's consent (a. 1421), except for a few cases determined by law, of which above, n. 182, 6; - but the wife has from these goods a right to honorable support according to her condition.

Hence she cannot alienate nor obligate the said goods without the husband's consent, even with the authority of the judge, unless she publicly exercises commerce in her own name, with the husband's consent, and contracts by reason of commerce (a. 1426; C. Com., a. 9 and 10); - nor can she obligate herself or burden common goods, even to free the husband from prison, or to settle the children while the husband is absent, except by the authority of the judge (a. 1427).

b) When the community has been dissolved, which happens by death, divorce, separation of bodies, or of goods (a. 1441-1445): 1. the wife recovers full dominion of all goods which are proper to her (a. 1449); 2. as to common goods and burdens, she can vindicate for herself half the part of the goods (a. 1474), if she wills to pay half the part of the debts (a. 1483); or repudiate the half (a. 1453) if she does not wish to be burdened with the common burdens, in which case she can demand nothing except clothing (a. 1492); 3. if she vindicates the half for herself, she must take care that an inventory be made in order to remove frauds more efficaciously, namely, lest she be burdened with common debts beyond the proportionate part of the advantage which she receives from the common goods (a. 1483); which she will obtain provided the inventory was made in good faith and sincerely.

In the case of separation of goods, marital authority remains, and therefore the wife cannot alienate immovables (a. 1449); in the case of separation of bodies, it is suspended, so that the wife now obtains the full exercise of juridical capacity and can alienate immovables, according to the Belgian law of March 20, 1927.

B. Conventional community is when spouses by a special pact extend or restrict the legal community, so that the common goods are more or fewer according to those things which are stipulated in the matrimonial contract (a. 1401): thus, for example, if they declare that all movables and immovables, present and future, are to be common, - or only those goods which during the marriage are acquired from the revenues of both (*communaute aux acquets, tot winsten of aankoopen beperkt*; in which case, however, debts do not become common, since they are not acquired), - or also that common goods are to be divided not equally, but according to a given proportion, etc. (a. 1497-1528).

C. The regime exclusive of community (*uitsluiting der gemeenschap van goederen*) is that which is declared to be entered without community of goods, or with the simple negation of community, so that legal and conventional community is excluded.

In this regime: a) the wife preserves direct dominion of her goods or at least of their value, so that, the goods being consumed, the husband is bound to return the value; - b) the husband has usufruct and administration of the wife's goods, except those which have been specially reserved to the wife (a. 1534), but with the burden of providing for the wife's honorable support; - c) when the regime is

dissolved, the wife recovers full dominion of her goods, but cannot reclaim the fruits already received by the husband (a. 1529-1535).

D. The regime of separation of goods (*scheiding van goederen*) is that which is declared to be entered with the positive affirmation of separation of goods. Thus a) each spouse retains not only dominion, but also usufruct and administration of his or her goods; - yet the wife cannot exercise the right of alienating immovables without the husband's consent (a. 1538); - b) each spouse must sustain the burdens of marriage according to the part established in the pact; and if such a pact is lacking, the wife must hand over to the husband for this purpose a third part of her revenues; - c) if either one falls into want, the other is bound to bear the burdens of the household (a. 1536-1539).

E. The dotal regime (*rechtsverhouding met betrekking tot den bruidschat; dotaal-stelsel*) essentially consists in this, that the wife's dotal goods cannot be alienated, but are specially protected. It does not consist, however, in the constitution of a dowry: for it can exist without a dowry being constituted, in which case a third part of the wife's revenues is determined for the burdens of marriage (a. 1575); and moreover in other regimes a dowry can be constituted; but it is so called because a legitimately constituted dowry enjoys certain special privileges which are denied to it in another regime. Whence the dotal regime does not exist unless the spouses expressly declare that they enter marriage under this regime (a. 1392).

In it the goods of the wife are of two genera:

1. dotal, which by nuptial pact are constituted as a dowry for sustaining the burdens of marriage (a. 1541), and which while the marriage stands cannot be constituted or increased (a. 1543); but the dowry can comprise either all the wife's present and future goods, or only present goods, or part of present and future goods, or one individual object (a. 1542);

2. paraphernal or extradotal, which are outside the dowry: all those things which in the nuptial pact are not constituted as dotal are such (a. 1574).

Now a) of dotal goods the wife retains direct dominion, and, if it has been so agreed, part of the fruits required for her personal necessities (a. 1594); but besides this, the husband has administration and usufruct, who nevertheless, when the marriage is dissolved, must restore to the heirs the value of the movables determined in the contract (a. 1551), but immovables in no way can be alienated or obligated, even with the wife's consent (a. 1554), - indeed neither prescribed (a. 1561), - except for certain cases excepted by law.

The cases are: 1st. by the permission of the husband, or if he is lacking by the permission of the judge, for giving dowries to the wife's children received from a prior marriage (a. 1555);

2nd. by the permission of the husband, for giving dowries to the children of both living spouses (a. 1556);

3rd. by stipulation of the matrimonial contract (a. 1557);

4th. by the permission of the judge in a public sale and after three public written notices (*affiches*, a. 1558);

5th. for redeeming the husband or wife detained in prison (a. 1558);

6th. for furnishing support to the family in cases determined in art. 203, 205, and 206 (a. 1558);

7th. for paying the debts of the wife or of those who furnished the dowry, if the debts preceded the marriage (a. 1558);

8th. for repairing grave damages which the dotal immovable goods have suffered (a. 1558);

9th. when dotal immovable goods are undivided and indivisible with others (a. 1558).

b) Of paraphernal goods the wife retains dominion, administration, and usufruct, although she cannot alienate immovables without the consent of the husband or of the tribunal (a. 1576).

185. Especially in the common regime of community, three genera of goods of the wife must be distinguished:

1st. paraphernal or extradotal goods, concerning which the Civil Code does not speak expressly (because it treats of the convention to be entered before marriage, not so much of those things which are acquired after marriage), but which it supposes when it permits freedom of convention: they are those which the wife has besides the dowry and which by special convention she has reserved to herself; - or quasi-paraphernal, obtained from extraordinary labor, frugality, or exclusively personal donation, as was said in n. 181;

2nd. proper or dotal goods, which the spouses, according to legal dispositions or a special pact, indeed bring for sustaining the burdens of marriage, but which do not become common: they are immovables;

3rd. common goods, which are brought for sustaining the burdens of marriage and which at the same time enter the community (*biens qui composent l'actif de la communaute legale*): they are movables.

These things being noted, it is asked what dominion belongs to the wife concerning each?

Resp. A. As to paraphernal or quasi-paraphernal goods the wife has dominion, usufruct, and administration. Whence she can fully dispose of these goods, at least if they are movable; she cannot alienate immovables without the consent of the husband.

B. As to proper goods, the wife has direct dominion; therefore the husband cannot alienate them without the wife's consent. When the community is dissolved, the wife recovers full dominion in those goods; but revenues and fruits during marriage belong not to the husband but to the family community, of which nevertheless the husband is administrator.

C. As to common goods, the man, as administrator and owner of half the part, has the right of fully disposing of them, even of alienating them without the wife's consent. Yet the wife has a right from them to honorable support according to the condition of the family. At the same time, however, the wife has direct dominion over those goods, but only radically and as bound (a. 1421), i.e., during the community that dominion cannot be exercised, yet there is had as it were a hope of dominion in half the part after dissolution of the community. Namely, when the community is dissolved, the wife can demand half the part (a. 1474); indeed the wife, whose condition while the community stood was worse, obtains various privileges, namely:

a) she can renounce the community (a. 1453 and 1457) within three months and 40 days after the death of the husband, if she does not wish to pay half the part of all common debts;

b) even if she accepts the community, she is not burdened by the debts of the community beyond the portion of the advantage received, provided that before the tribunal an entire inventory of all goods has been made (a. 1483);

c) whether she accepts or renounces, the wife can reclaim and take her personal rights, i.e., proper goods and whatever, besides fruits and revenues from those goods, were turned to the favor of the community, not only from the goods of the community but also from the husband's proper goods, if the former do not suffice (a. 1471-72).

186. Observation. - In Belgium, the right of the husband has suffered some restriction from the law of March 10, 1900 concerning the contract of labor, in which one reads, art. 33: "The instruments of labor necessary for the personal occupations of the wife and the movable goods acquired with the aid of the wage cannot, without her assistance, be alienated by the husband by onerous or gratuitous title, leased, or given on loan or in pledge.

Movable goods acquired with the aid of the wage of the married woman are not susceptible of seizure on the part of the husband's creditors, unless they prove that the debts whose payment they pursue were contracted for the needs of the household."

Yet this is valid concerning personal labor whose fruit does not exceed the value of 3,000 francs in a year (art. 39).

And from the law of July 20, 1932, goods acquired by the wife by the exercise of a separate profession, industry, or business - not, however, from things handed over by the husband - are reserved to her and are subject to her dominion and administration: the wife can, without the husband's permission, convert them into other movable and immovable goods, and subject those things thus acquired to obligation, alienate them by onerous title, indeed by gratuitous title for the utilities of the family and for settling common children. Yet these goods, when the community of goods is dissolved, are subject to common partition, unless they are at the same time the wife's proper goods.

Also by the French law of July 13, 1907 and June 8, 1923, the wife can freely manage the gains and goods which she obtained from a separate profession.

187. Italian, Spanish, and Dutch law. - These three come rather close to French law; as also Portuguese law and various codes of Latin America, but it is impossible for us to descend into the particularities of each.

A. Italian law agrees in many things with French law, and admits the dotal regime together with the regime of community, which can also coexist (a. 1425 and 1433). But there are also several differences:

1. As to dowry: after marriage has been entered, a dowry can no longer be constituted or increased (a. 1391). But in the contract, in favor of the surviving spouse, gain to be taken from the dowry can be stipulated; and this as a true credit which, if the children of the deceased spouse are lacking, passes into the property of the survivor, otherwise into usufruct: yet under the condition that it not harm reserved heirs (a. 1398).

2. As to community of goods, it does not admit another except the union of fruits (a. 1433), and this does not include credits and debts existing before the marriage (a. 1435). The husband has administration of the community, but without the wife's consent he cannot alienate or mortgage goods except by onerous title (a. 1438). When the community is dissolved, division is made according to the stipulation of the pact; and if this is lacking, proportionally to the goods of each (a. 1434 and 1440).

3. If a contract is lacking, since the law does not presume any regime, it seems that the goods of each remain separate. Likewise, if a contract is lacking, or is silent concerning the part to be brought for the burdens of marriage, the wife is bound to contribute proportionally to her goods, with the fruits of the dowry, if there is one, computed (a. 1426 and 138).

4. From the recent law of July 17, 1919, full right already belongs to the wife of disposing of her own goods, not dotal nor common, without the husband's consent.

B. Spanish law also admits the dotal regime. But it establishes that, unless there is a special antenuptial pact, it supposes a community of gain or acquisition, to which union all goods pertain unless the contrary is expressly proved (a. 1392-1431). From those common goods are to be paid all debts contracted by husband or wife during marriage, and expenses made for the education of legitimate children even of only one of the spouses; but not fines perhaps imposed upon either one. But when the community is dissolved, first the dowry and paraphernal goods must be restored, then the common debts paid.

C. Dutch law presumes community of goods, which nevertheless the spouses can limit or even totally exclude by a prior convention entered before a notary, and not to be changed after marriage has been contracted (a. 174). - The dotal regime does not obtain special mention in the law.

1. Legal community of goods is understood more strictly than in French law, and is perfect, namely, of all goods, immovable or movable, with their fruits and revenues, and of all debts, even those existing before marriage, so that they are the dominion of the community, i.e., of the man and wife together, and, when the community is dissolved, of themselves are to be divided equally or for a half part (a. 174-177); - nevertheless those goods are excepted which are given under the express restriction that they not pertain to the community (a. 175).

Full administration of the common goods belongs to the husband, who nevertheless, after the likeness of French law, cannot, without the wife's consent, donate immovables, nor the totality or quota of movables, except to donate by condition to the common offspring, nor a movable thing by reserving usufruct to himself (a. 179).

Nevertheless the wife can, without the husband's consent, place acts necessary a) for the exercise of a separate public business undertaken with the husband's consent (a. 168); b) for a contract of leasing work, but for the advantage of the family estate (a. 164), and likewise for the hiring out of her labor (a. 1637); c) for the handing over of money to a public bank (law of July 20, 1895). Likewise, when the husband is absent or not able to manifest his will, in the case of urgent necessity, by permission of the judge (a. 180).

2. Limited community. With great liberty the spouses can in the nuptial pact limit the community of goods (a. 194), and also restrict the husband's administration (a. 195). Thus there can be established only a community of gain and loss (*van winsten en verlies*, a. 210-212), namely, from the fruit of goods and from industry and labor; or also only a community of fruits and revenues (*van vruchten en inkomsten*, a. 219), namely, losses being excluded.

3. Exclusion of community can also be established. In which case, the part of the wife's revenues must be determined which must be handed over to the husband for the burdens of marriage; otherwise all fruits and revenues from the wife's proper goods are presumed to belong to the husband (a. 200-201).

The administration of the wife's proper goods, unless the contrary is expressly stipulated, belongs to the husband (a. 160 and 195), who then is liable for damages (a. 160).

188. Austrian, English, and American law. - To this threefold law it is proper that the law supposes separation of goods, unless it has been agreed otherwise.

A. Austrian law presumes separation of goods, unless the contrary has been established by authentic pact (a. 1237). But, unless the wife contradicts, the husband is presumed to have administration and usufruct of all the wife's goods (a. 1238); whence he can freely dispose of the fruits, but is bound to preserve the substance of the goods, otherwise he is obligated to restitution. In doubt, the gain is judged to have been made by the husband (a. 1237).

Before nuptials he can demand a dowry, but can also renounce this right; if a dowry is constituted, the husband has the usufruct of the dowry and its increase (a. 1227-1228), but is obligated to return the substance or an equivalent value, in the case of death, divorce, or cession of goods; whence the one constituting the dowry can from the beginning demand security for this (a. 1425).

If a special pact is entered, one must stand by it: thus community of goods can be established either before or after marriage (a. 1233); in which case dominion belongs to both, usufruct remains with the one to whom it pertained before the pact, but administration of the common goods belongs to the man alone; yet when the marriage is dissolved, half the part of them belongs to the surviving spouse.

The wife has a strict right to fitting support from the husband's goods according to the condition of his state (a. 91); but those things which she receives from the husband, such as ornaments, jewels, etc., pass into her full dominion, unless the contrary is expressly stipulated (a. 1247).

B. By English law, a twofold regime of marriage exists: legal and conventional.

1. The legal system. According to the law of Jan. 1, 1883, a woman who has married preserves her goods, which all are paraphernal, so that she can dispose of them fully, and as to possessing, acquiring, and administering goods she remains of full right, like an unmarried woman. Yet:

a) during marriage, the wife has a right to the fitting support of herself and of the children from the goods of the husband; and, if the husband is constituted in necessity, the wife is bound to support him insofar as possible;

b) when the husband is deceased, the wife has a right during her life to a third part.

2. The conventional system of goods can be entered with full liberty, before and after marriage, according to the spouses' decisions.

Yet from the law of Aug. 9, 1870, the wife can by full right, without the husband's consent, make her own the goods which she acquires by separate industry, so that the usufruct and administration belong to her alone.

C. Law in the United States of North America is not uniform, but diverse in the diverse States. Yet generally there exists a perfect separation of goods, so that all goods of the wife are paraphernal, and the wife has free administration and use of them. But common goods can be constituted with perfect liberty.

But as dotal there can be considered the third part of the immovable goods which the husband possessed during marriage, and which cannot be alienated without the wife's consent; whence concerning this third part neither can the husband make a valid testament. - In certain States a similar right belongs to the husband in the goods of the wife.

189. German law. - It distinguishes a twofold regime in marriage: legal and conventional (*gesetzliches- und vertragsmassiges Guterrecht*).

A. The legal regime is presumed, unless it is certainly established concerning a conventional regime. In it there are distinguished (a. 1363 sq.):

1. Reserved goods (*Vorbehaltsgut*), namely, a) things destined for the wife's use alone, such as clothes, instruments, ornaments of the woman (a. 1366); b) things acquired by the wife in a business wholly independent, for example, by exercising the office of midwife (a. 1367); c) things indicated in the conjugal pact, or accepted by inheritance or donation, with the express stipulation that they be reserved goods (a. 1368-69); d) and the fruits of all these reserved things (a. 1370). Concerning these the wife has free disposition, namely, dominion, usufruct, and administration; but if it is necessary, from these she must contribute to the family estate (a. 1360 and 1371).

2. Brought goods (*eingebrachtes Gut*), namely, all things which are not reserved. Concerning these the husband has usufruct and administration (a. 1373); but he cannot alienate or pledge them (at least immovables) without the wife's consent, and he must administer them diligently and expend the fruits first of all on the suitable support of the family.

But if the wife fears damage from the imprudent administration of the husband, there belongs to her the right of demanding security (a. 1319) or separation of goods (a. 1418).

B. A conventional regime can be constituted according to a fourfold pact; which the spouses can enter before a judge or notary concerning proper goods, and also after marriage they can in the same way dissolve or change it (a. 1432 sq.):

1. Universal community of goods (*allgemeine Gutergemeinschaft*, a. 1437-1518), by which from all the goods of the husband and wife, both those previously possessed and those to be acquired,

one common good (*Gesamtgut*) coalesces; yet each can exclude certain goods and reserve them to himself or herself. The husband has administration of the common good (a. 1443), but nevertheless in several cases he needs the wife's consent (a. 1444).

2. Community of gain or profit or acquisition (*Errungenschaftsgemeinschaft*, a. 1519-1557) is a certain composition of the legal regime and of universal community of goods: namely, movable or immovable goods previously possessed remain proper; - there become common both gains made by the spouses and the revenues of the brought goods, whence, when the union is dissolved, the fruits obtained are divided equally between man and woman[4] (a. 1476). The husband has administration and usufruct; but certain goods can be reserved to the wife, not to the husband, and those things are reserved which in the legal regime are reserved.

[4] The system can be recommended in second nuptials, lest the offspring of the prior marriage suffer damage.

3. Community of movables (*Fahrnisgemeinschaft*) is broader, and adds to the community of gain the community of movables possessed by each before marriage, whence almost the same system is present as legal community in French law. Hence the administration of common goods belongs to the husband, who nevertheless cannot dispose of immovables, nor of the universality of movables, nor of a quota of them, without the wife's consent.

4. Separation of goods (*Gutertrennung*) established before or after marriage according to legal form renders all the goods of the wife paraphernal, but the wife can according to her pleasure concede administration or use to the husband (a. 1430). He is bound to bear the burdens of marriage, but the wife also must contribute something from her own goods (a. 1427).

Let it be noted that universal community, when the man has died, of itself is not dissolved if common offspring are present, but is continued in it (a. 1483); but community of acquisition is dissolved by that very fact (a. 1544), likewise community of movables unless otherwise established in the pact (a. 1557).

190. Swiss law presumes the regime of legal union of goods, unless otherwise expressly stipulated (a. 178) by public act, before or even after marriage (a. 179), but then the permission of the tribunal is required (a. 181), and goods burdened by debts cannot be withdrawn from the payment of debts (a. 188).

1. In the legal union of goods there are distinguished: 1st. reserved goods (*Sondergut*), namely, a) those which pertain to personal use, such as clothes and ornaments (a. 191); b) the wife's revenues from independent labor, which nevertheless must be employed for the support of the family insofar as is necessary (a. 192); c) those things which are designated as such in the contract (a. 190); 2nd. brought goods, which are all non-reserved goods. These goods of both spouses are united into one whole, of which the husband has administration and usufruct, and also dominion (a. 194-214); but some administration of the family goods is conceded to the wife (a. 203).

The wife is bound to pay from reserved goods the debts which she contracted without the husband's consent (a. 208); but in the case of a collapse of fortune she can reclaim proper goods and demand

compensation for those consumed, which compensation, if she cannot recover half the part of the goods, is owed to her before the demands of other creditors are paid (a. 210 sq.).

These things are also valid in the following system.

2. Conventional community of goods, total or partial, is also permitted, which effects not only a union of goods, but also community, so that they become the common dominion of the man and wife (a. 215); whence, when the community is dissolved, common goods are divided into two equal parts (a. 225), unless otherwise established in the nuptial pact (a. 226). The administrator of the goods is the husband; sometimes also the wife, but only as acting in the husband's place (a. 216).

3. Separation of goods can also exist, so that both have full dominion and administration of their own goods (a. 242): the husband is bound to support the family, but can demand that the wife fittingly assist him from her own goods (a. 246). This system arises:

a) either from a nuptial pact;

b) or from law, and indeed by the fact itself of a collapse of fortune (a. 182) or of the death of either spouse;

c) or from the sentence of a judge, in several cases according to art. 183-185.

Article III: On the Dominion of Authors and Inventors

191. Notions. - Under the name of author comes everyone who by his own genius discovers something: of this kind is he who has written a book, who has composed a work of art, a musical rhythm, a painting, who has made an invention by which the industrial arts are advanced. Concerning him it is asked whether and how far he has dominion over his works or inventions.

192. Principles. - I. Each one has full dominion in the thing and fruits of his own genius, as long as he has not made them public, because he acquired them by his own labor; whence:

1. He who steals and publishes the manuscripts or inventions of another without the author's permission sins against justice and is bound to repair damages, because he injures the author's right in two ways, while he publishes his work against his will, and deprives him of the profit to be perceived from it.

2. Similarly, he injures justice and is bound to restitution who takes down in writing sermons or lectures which he has heard and makes them public and publishes them without the explicit or implicit permission of the preacher or professor, such as can be supposed from received custom, for example, for the reporting of sermons in newspapers.

3. Yet by the very fact that someone publicly teaches or preaches, the doctrine proposed becomes in some way public; therefore he cannot impede the hearers from making it their own, using it as occasion offers, or writing it down for their own private use and even lending the writing to others.

II. When the work has already been published or the invention made public, the author seems to preserve dominion and the right of receiving the fruits of the work.

For although some hold a published work as a common good, which can licitly be occupied by all, especially after the first edition or in a distant region or as to translations; nevertheless the author is judged to retain the right which from the nature of the thing he can retain, as it is equitable that he not be deprived of the fruit of his labor: by publishing he indeed concedes use to all paying the price, and beyond this he intends to preserve his own right, namely, dominion of the work, the right of receiving fruits, and the right of further publishing.

III. How far the author's right extends in place and time cannot be determined from the nature of things alone, but only from the estimation of prudent persons, especially from the intervention of national and international legislation.

In reality, civil authority - as is beyond all doubt and controversy - can and at times must establish concerning the rights of authors, both for delimiting and protecting the diverse rights of citizens, and by reason of the common good, which is much assisted by works of the sciences and arts and by inventions of industry.

193. Positive law. - Among cultivated nations everywhere the right of authors and inventors has been determined more precisely by law. Thus, certain conditions being fulfilled, the right of writers endures during their whole life. Moreover, in Belgium, for example, it is reserved to the heirs for 50 years after the death of the writer, or if the work is posthumous; but if the author is anonymous, the publisher is reputed as such in relation to others (law of March 22, 1886). In France likewise for 50 years after the death of the author; in Spain for 80 years; likewise in the Netherlands for 50 years after the death of the author, or if it is anonymous, after the edition; but after 10 years translations can be made into other languages, except those into which the author has conceded translation; in America, for 28 years, but then it can be prolonged; in Italy for 40 years after the first edition, so that for another 40 years following there is owed 5% of the price inscribed on copies; in Switzerland for 30 years after the death of the writer, and in Germany now for 50 years; in England 7 years after death or 42 years after the first edition. Moreover, an international pact is in force, namely, the Bern Convention of Sept. 9, 1886, which was completed at Berlin on Nov. 13, 1908, and at Rome on June 2, 1928, by which it happens that authors enjoy the same right outside their fatherland among other nations.

For inventions, the monopoly of the inventor in Belgium endures for 20 years (law of May 24, 1854); in the Netherlands for 15 years; likewise in France it can endure for 15 years. And there are international conventions concerning this matter, made at Paris on March 20, 1883, at Brussels on Dec. 14, 1900, in Washington on June 2, 1911, and at The Hague on Nov. 6, 1925; and at Bern the International Office was instituted, March 20, 1914.

Article IV: On the Dominion of Clerics

194. Notions. - Clerics can have goods of three genera:

1st. Patrimonial or profane and quasi-patrimonial goods, which come to them from parents or others by inheritance or donation, or which they acquire by their own profane labor or industry, by exercising an art distinct from the sacred ministry, for example, by writing books, making paintings,

teaching philosophy; to these can be equated those things which from frugality of life they subtract from the honorable support owed to them from ecclesiastical goods: for this is reckoned a fruit of industry.

2nd. Casual goods, which come to them by reason of personal ministry, and are handed over to them immediately by the faithful absolutely and without restriction: not as the price of a sacred thing, but as compensation of expenses or extraordinary labor or as a stipend of support, for example, stipends of Masses not connected with a benefice; offerings on the occasion of preaching or the administration of sacraments; also stole fees (c. 463, § 3), unless they partially constitute the dowry of a benefice, as the custom is not to consider them in our regions;[1] likewise choral distributions of canons, unless in the erection of the benefice they are assigned for the dowry according to can. 1410.

[1] This is also established for Belgium and France from the responses of the Sacred Penitentiary, Jan. 19, 1819 and Aug. 9, 1821; furthermore it is not demonstrated that those responses were revoked by more recent ordinances.

3rd. Ecclesiastical goods, or revenues which by reason of a benefice or ecclesiastical dignity are conceded to them from the goods of the Church itself and from the dowries of benefices; which consequently belong immediately to the church itself and only mediately to clerics by reason of the benefice.

195. Principles. - I. Clerics have full dominion over patrimonial and casual goods.

The reason is that they come to them by personal title and have been handed over directly to them.

II. Clerics have from ecclesiastical goods a right to honorable and suitable support according to that saying, I Cor. IX, 13: "Do you not know that those who work in the sanctuary eat the things which are of the sanctuary?"; but by ecclesiastical law they are obligated under grave obligation, a personal obligation, at least from religion and charity, to expend the superfluities of revenues on pious uses.

Thus can. 1473: "Even if a benefice-holder has other non-beneficial goods, he can freely use and enjoy beneficial fruits which are necessary for his honorable support; but he is held by the obligation of expending the superfluous for the poor or for pious causes, with the prescription of can. 239, § 1, n. 19 being saved," namely, the privilege of Cardinals, who enjoy the faculty "of freely disposing of beneficial revenues even by testament," but not of sacred furnishings (c. 1298). The obligation is derived from the intention of the Church, which is also affirmed by the Council of Trent, sess. 25, c. 1 de ref.; and from the intention of the donors who handed over money and other goods to the Church for pious uses, not for profane ones. But it is a personal obligation, which therefore does not pass to heirs or donees; the cleric making the fruits his own acquires true dominion of the revenues, but with the obligation of expending the superfluous, which presses at least from religion and from charity, for that it presses from justice is not proved, as we already learn from St. Thomas.[2] Whence no obligation of restitution is given.

[2] *Quodl.* VI, q. 7, a. 12, ad 3; II-II, q. 158, a. 7.

For grave fault there is required a quantity much greater than for theft. St. Alphonsus judges, *Th. M.*, l. 3, n. 490, and l. 4, n. 183, that a notable quantity is the twentieth part, or 5%, of superfluous revenues, if the superfluities are great.

196. Practical conclusions. - 1. A cleric, like any citizen, can fully dispose of goods which are not strictly ecclesiastical; yet by reason of his state he must use them without scandal and with clerical

modesty preserved, and he is more strictly bound to relieve the poor and sustain pious causes.

2. Unless necessity threatens of providing for the poor, a benefice-holder can reserve superfluities for pious uses in the future, provided nevertheless that he apply caution, lest, prevented by death, the revenues be plundered by blood relatives.

3. In several regions, ecclesiastical goods which formerly supplied revenues to benefice-holders have now almost totally been plundered by the government or private persons; but the pension which in Belgium, in many parts of the Netherlands, Germany, Austria, etc. (and formerly in France) is paid to bishops, pastors (even succursalists), and canons, according to the declarations of the Sacred Penitentiary (Jan. 19, 1819; Aug. 9, 1821; Jan. 9, 1823), assumes the character of a benefice, yet for the most part is so modest that by itself alone it scarcely suffices for the suitable support of a cleric. But this does not seem valid concerning supplements which are paid to pastors by municipalities or church fabrics, nor is it valid concerning pensions of old age or adverse health which come to them after the office has already been abdicated; nor concerning those things which are paid to vicar cooperators or other helpers, who do not have a benefice.

4. In other regions, as in the United States of America, contributions of the faithful imposed by way of tax for the support of benefice-holders take the place of ecclesiastical goods and revenues; just as those things which by force of statutes or custom are given to pastors by reason of title, as at the time of the Nativity or Easter is accustomed to happen in certain places.

Article V: On the Dominion of Religious

197. Principles. - Religious of themselves preserve entire rights in the internal goods of body and soul and in reputation, although they must satisfy special obligations of obedience. But as to external goods of fortune, they are bound by the vow of poverty; by reason of which:

1. The solemnly professed are incapable of private dominion, so that the goods which they possess they cannot keep, and other goods they cannot acquire (can. 579, 581, 582); yet they can possess in common, unless by their special constitutions they are prohibited from this, as the Friars Minor and Capuchins.

Yet by dispensation they can in certain regions, as in Belgium, acquire and retain goods in particular, but only in order to civil law (S. Poen., Dec. 1, 1820; and Leo XIII, July 31, 1878).

2. The simply professed remain capable of possessing goods (c. 580, § 1), but they cannot dispose of them without the express or tacit consent of the superior; consequently:

a) before profession, they must cede the administration of their goods to whom they wish, and, unless the constitutions provide otherwise, freely dispose of their use and usufruct (c. 569);

b) in a religious congregation, the novice must, before the profession of temporary vows, freely make a testament concerning present goods or goods perhaps to come (c. 569, § 3), which, when vows

have been emitted, he cannot licitly change without the permission either of the Holy See or, if a cause is urgent, of the Superior (c. 583);

c) the professed in a religious congregation cannot licitly abdicate dominion of their goods by gratuitous title through an act among the living (c. 583);

d) whatever any professed acquire by their own industry or in view of religion, they acquire for the religion (c. 580, § 2).

More particular matters pertain to canonical legislation concerning religious.

Article VI: On the Dominion of Moral Persons

198. Notions. - Here by a moral person is understood an aggregation of several into one moral body, by which it comes about that they are able collectively to possess goods in common, so that they now pertain to the body, not to the individual members.[1] But if it is acknowledged by the authority of the legislator, it civilly obtains juridical existence and diverse rights, and thus becomes a juridical person (*rechtspersoon*).

[1] The definition is also verified of foundations, as they say, direct foundations, or concerning goods given to a work or destined end: then all in whose favor the foundation is erected possess collectively, for example, all citizens of a city if there is question of a charitable foundation. Nor is it an obstacle that a collegial person can exist without any members, because that is a fiction of law: namely, it is feigned to continue so that it does not need a new erection if members arrive.

By reason of the end toward which they conspire, some moral persons are civil, which immediately pursue a temporal good; others ecclesiastical or religious, which pursue spiritual and eternal goods. Likewise they are public or private, according as the good to which they tend is common and public, or particular and private: thus the State, provinces, and municipalities are public societies; colleges of workers or industrial societies in the actual constitution of civil society are private.

199. Principles. - I. Public civil societies exist by natural right itself and have the right of possessing goods. For men need the assistance of public society, and permanent possession of goods is necessary to society for attaining its end.

The dominion of the republic, by reason of goods, is distinguished as twofold:

a) public dominion, consisting of those things which serve public use and cannot be the object of private dominion, such as public roads, rivers, seashores, fortified citadels, and other things of this kind (C.C., a. 538, 540);

b) private or national dominion of the State, consisting of private goods which the republic possesses and which can be alienated and come to private persons, such as places left by the sea, islands formed in navigable rivers, immovable goods which lack an owner, abandoned inheritances, suppressed roads, or other things which cease to be of public dominion, forests or public buildings which are in the power of the government. This distinction, proportion being observed, is valid concerning the dominion of provinces and municipalities.

II. Private societies can be formed from the free consent of citizens and can possess goods. For men have a natural right of association to a private end which is an honorable good; but if possession of goods is necessary for this end, these also they can possess collegially.

Therefore such societies do not have their being or their right of possessing from the State; nor can they be prohibited or restricted by the State, or subjected to various conditions, except by reason of the common good insofar as is necessary. Although there will more easily be reasons for intervening in these than in the dominions of private persons.

III. The Church, not only by right of nature but from divine right from her founder Christ, independently of the State, has the right of possessing temporal goods, because it is necessary for her end. This is proved in the treatise on the Church,[2] and is enunciated in can. 1495 and 1499.

[2] Cf. Wicleff prop. 10, 32, 33, 34, 35, 36 condemned; C. Trid. sess. 22 de ref. c. 11; Pius IX, in the bull *Apost. Sedis*; Syll. prop. 26 and 27.

But other lesser religious societies can exist dependently upon ecclesiastical power and enjoy the capacity of possessing (ibid.); of these some are collegial societies of persons, others non-collegial, such as benefices. Thus according to the norm of can. 100:

"§ 1. The Catholic Church and the Apostolic See have the character of a moral person from divine ordination itself; the remaining inferior moral persons in the Church obtain it either from the prescription of law itself (as Religious Institutes or religious houses), or from the special concession of a competent ecclesiastical Superior given by formal decree for a religious or charitable end.

§ 2. A collegial moral person cannot be constituted except from at least three physical persons.

§ 3. Moral persons, whether collegial or non-collegial, are equated to minors."

200. Conclusions. - 1. Therefore the Church's full right, independent of the State, of possessing temporal goods is certain. Yet this is not everywhere formally acknowledged by the State, although Catholics can rather often use general legislation concerning societies. In Belgium, the right of dominion is acknowledged to the cathedral church, to the fabrics of parochial churches, and to diocesan seminaries.

2. From moral philosophy it is established that public societies exist by natural right and possess goods; but by civil law that dominion ought to be confirmed, protected, and rightly ordered. Therefore it is no more licit to steal public goods than the goods of private persons; but as to common goods which citizens can enjoy, the conditions established by legitimate authority must be observed, so that in this way the rights of all may remain entire.

3. Private societies also are endowed by nature with the faculty of possessing goods, just as with the right of existing. Therefore the State cannot take away or restrict that right, except insofar as the common good demands it. For the State exists to promote the good of citizens, not to destroy private activity; for which reason by civil law private societies ought rather to be promoted than repressed, provided there is absent from them whatever openly disagrees with morality, with justice, and with the safety of the republic. Thus Leo XIII, enc. *Rerum novarum*.

In the Netherlands, Austria, Switzerland, England, and the United States of America, the laws are favorable for forming and acknowledging societies; likewise in Germany corporate law is highly evolved, but only the law can confer capacity upon religious societies. In Spain and Portugal, the authority of law must intervene so that a moral person may be constituted. In France, civil law is much more difficult for acknowledging moral persons, especially for religious.

In Belgium, societies instituted for the sake of profit are acknowledged (C.C., a. 1832-1834), especially commercial societies (C. Com. t. IX), professional unions (law of March 31, 1898), indeed from the recent law of June 27, 1921 also societies not instituted for profit.

Question Five: On the Acquisition of Right and Dominion

201. State of the question. - In the present question, as is clear, the matter treated is dominion over goods distinct from man himself, which are either the effects of his faculties and operations, or the external goods of fortune. But the mode of acquiring dominion is diverse according to the title. A title is a cause apt of itself to confer dominion: it consists in some fact furnished with the authority of law, by which a thing is acquired; for from law it has that it is a title of dominion, since every right arises from some law.

Some modes are primitive or original (*porspronkelijke*), by which, at the origin of the human race, the first dominions were acquired and according to which the first division of things was made, when as yet nothing was possessed: these are production (or labor), as to the fruits of human intellectual and bodily operations, and occupation, which includes some labor, as to external goods;[1] all other modes are derived (*afgeleide*) from these, which they suppose, whether they be legal, because they arise either from natural law and from the nature of things, as invention and often accession, or from positive law, as prescription; or whether they be conventional, from the free convention of men, as succession and contract.

[1] Thus also Pius XI, in the encyclical *Quadragesimo anno*, May 15, 1931, II, 1 at the end.

But in our times, because there is no longer question of the first acquisition of things, primitive or original modes are called those by which right and dominion are acquired simply, namely, a thing of no one which never had an owner or at least actually does not have one or has ceased to have one: these are principally occupation and labor, to which are connected, from the nature of the thing, invention and accession, and from civil law, prescription. But derivative modes are called those by which dominion is transferred, namely, a thing which is under some dominion and the right to it is transmitted to another, and the dominion of some thing is derived from one to another: these are succession and contract.

Concerning the mode of acquiring dominion in the effects and fruits of intellectual and bodily labor nothing special occurs to be said; hence we must treat only of the modes of acquiring dominion in external things. But the derivative modes are considered in the third section of the third part of the treatise, where contracts are treated; hence we shall speak only of the primitive modes, namely: 1) of occupation (*toeeigening*); 2) of invention (*pntdekking*); 3) of accession (*aanwas of natrekking*); 4) of prescription (*veraring*). But labor is reduced to one of the preceding: when it is occupied about one's own thing, to the right of accession; if about another's thing, it is referred to contract; if about a thing of no one, it presupposes occupation and is included in it.

202. Diverse things to be acquired are distinguished:

1. vacant things[2] (*onbeheerde goederen*), which have never had an owner, whether they are animate, as wild animals in the woods, or inanimate, as a jewel at the bottom of the sea;

[2] Thus Noldin, Van Roey, Prummer, etc. Entirely conformably to French law, art. 539 C.C., which distinguishes between vacant goods and things of no one - and abandoned successions or goods of the deceased without an heir. On the contrary,

others call only these latter goods vacant.

2. abandoned things (*verlaten goederen*), which have had an owner, but actually do not have one, because the owner in some way has abdicated actual detention of the thing from himself, as treasures formerly hidden, fruits which are left after the harvest has been completed, goods of a deceased man who did not institute an heir or which the heirs have renounced;

3. lost or mislaid things (*verloren goederen*), which even actually have an owner, but one unknown or uncertain, because, against the will of the owner, they have fallen out of his possession, as a gold ring found in the street.

Article I: On Occupation

203. Occupation is the real apprehension of a thing which belongs to no one, with the intention of making it one's own. Therefore four conditions are required so that occupation may be a legitimate mode of acquiring: two on the part of the object: a) that the thing be capable of private dominion, that is, not common (as air) nor belonging to public dominion (as the main roads); b) that the thing occupied belong to no one, whether vacant or abandoned: for if it has a legitimate owner, occupation of it, when the owner is reasonably unwilling, is unjust; and two on the part of the subject, namely, c) that by a voluntary and external act the thing be truly and really apprehended (the intention of taking is not sufficient); this apprehension, however, can be physical (concerning movable things) or moral (by manifesting the will externally), according to the nature of the thing, or custom, or the civil laws: a wild animal is occupied in one way, a wood in another, a meadow in another; d) that the one occupying have the intention of making the thing his own, and that this intention be externally manifested; otherwise it can neither be known nor proved, and therefore cannot oblige others. Therefore, in order that someone acquire dominion of a place, a house, or a garment, it is not sufficient that he have the intention of passing through the place, or spending the night in the house for a few days, or returning to the owner the garment which he takes; that apprehension may be made for stable possession, there is required a sign known to others and enduring, impressed upon the thing, as the cultivation of land, or a hedge drawn around it.

Since now there are entirely few things belonging to no one, and since for the most part it is determined by civil law whose vacant goods are, today the right of occupation is greatly limited; nevertheless there are still various occupations, of which the chief are: 1) occupation of animals by hunting, fowling, and fishing; 2) extraction of mines; 3) gathering wood and pasturing; 4) also, in some measure, seizure of booty during war.

204. I. Occupation of animals regards three diverse genera. They are distinguished:

a) wild or sylvan animals, which by their nature naturally shrink from human association and are accustomed to be constituted under no one's dominion, nor could they be brought into dominion by human industry, and therefore by natural force enjoy free wandering and have no owner, as lions, eagles, vultures, stags, hares, fish, etc.;

b) tamed or domesticated animals, which by nature flee from human association and live of themselves in liberty, but by human industry are deprived of liberty and have been reduced under the perfect dominion of man, such as doves returning to a dovecote, bees in a hive, rabbits in a warren, and wild animals or fish enclosed in places from which they cannot escape;

c) tame or domestic animals, which by their nature incline toward human association in domesticity, and have become so accustomed to the society of men that they are not accustomed to flee from the power of the owner, but to serve domestic uses, for example, sheep, cattle, horses, hens, dogs, etc.

205. Concerning the occupation of wild animals the principles to be attended to are:

1. Wild or sylvan animals which enjoy their native liberty become the property of the first occupier: for they are things of no one, and therefore they become the property of the first taker or occupier; but they are occupied when they are so constituted in the power of man that morally they cannot escape.

2. Those which have recovered their liberty are again no one's, because the sole bond by which they have connection with the owner is broken; but they are judged to have recovered liberty when they have escaped and the owner no longer follows them nor intends to recover them [misprint in original: *incendit*], or when there is not for him a probable hope of recovering them, because pursuit has become morally impossible.

3. Sylvan animals do not belong to the owner of the land, unless the land is so enclosed that morally they cannot escape, and at the same time is not so very extensive that they are taken with equal difficulty as in an unenclosed place: under these conditions they have already been morally taken by the owner.

Hence a) a wild animal so wounded or entangled in a snare that it cannot escape is already sufficiently occupied, and cannot justly be apprehended or retained by another;

b) a wild animal wounded or entangled which can escape, or which the hunter has ceased to pursue, enjoys its liberty and can be retained by the first taker;

c) nevertheless, a wounded wild animal which flees onto another's land, if by civil law the owner of the land can prohibit the hunter from taking the wild animal there,[1] can also probably be taken by the owner; if nevertheless it is taken there by the hunter, it is certainly his, unless somewhere civil law should invalidate the occupation;

[1] Thus, for example, French and Belgian law. - According to English law, sylvan animals belong to the owner of the land on which they were hunted and killed; if they were hunted on one field and killed on another, the first owner is preferred, if he claims the animals. By American law, sylvan animals belong to the owner of the field in which they are or are killed; hunted on one field and killed on another, they belong to the hunter, but he must satisfy both for usurpation of the field; but fugitive animals are held as abandoned, unless the owner at once pursues them. By Spanish law, from art. 37 of the law of May 18, 1902, on hunting, a hare killed in another's field belongs to the killer; from art. 38, however, it is divided if it is started up by one and killed by another.

d) he who hunts on perfectly enclosed land sins against commutative justice, because he steals animals rather than occupies them; and he is held to restitution at least according to the hope of capture and of profit ceasing, which the owner could have expected, or for the animals which the owner himself could otherwise have taken; and at the same time he must repair all damages brought upon the land from this. But he who hunts on open land is not held to restitution, unless sometimes by accident he has brought damages upon the land;

e) fish which live in the sea or in greater rivers belong to the first occupier because they enjoy liberty; but those which are in lesser rivers or in ponds (unless it is a very great lake) belong to the owners of

the banks, by whom they can easily be taken.

206. Concerning the occupation of tamed animals the principles to be attended to are:

1. Tamed or domesticated animals of themselves remain in the dominion of him who legitimately possesses and guards them, and with whom they are accustomed to remain or to whom they are accustomed to return, because by that very fact they are subject to his power.

2. Nevertheless, if they obtain liberty, they are things of no one and become the property of the first occupier; but they have recovered liberty when they have escaped custody and have definitively lost the custom of returning: thus, for example, doves, fish, and rabbits not returning for a notable time; because by that very fact the bond by which they were bound to the owner is broken.

3. It is unjust to turn them away from the owner by unjust means, as by frauds and devices, and to attract them to oneself, in order to take them, or to detain them violently, for example by enclosure.

Hence a) he plainly commits injustice who takes fish from a fish-pond, oysters from a park, wild animals and birds from enclosed places;

b) doves which so betake themselves to another's dovecote that they have lost the intention of returning and are not claimed in time by the owner pass into the dominion of another; nevertheless, by fraud and device (for example, by nets or snares set out, or by feed much more choice than is usually given), another's doves would be unjustly enticed into one's own dovecote and detained there;

c) but if another's doves gravely harm fields, and damage cannot easily be averted by another means, of itself it is licit to kill them and to take just compensation therefrom, especially if the owner is unknown or can only with difficulty be warned; unless notably greater damage would be brought upon the owner. Moreover, at the time of sowing and of harvest they are presumed by civil law to harm gravely (law of Aug. 4, 1789);

d) bees whose swarm has escaped remain, by natural and civil law, under the power of the owner as long as he does not cease to follow or claim them; if he has ceased, they belong to the first occupier, or, if this is lacking, to him who has the ownership or use of that place on which the swarm has settled. Thus the Belgian law in the Rural Code, Oct. 7, 1886, a. 14. If the owner does not pursue, by German law they are judged things of no one and become the property of the first occupier; on the contrary, by French law they belong to the owner of the land; by Swiss law they remain with the owner, unless they have joined themselves to another's hive; by Italian and Spanish law, unless within two days the owner has pursued them, they become the property of the possessor of the land taking and retaining them, and for domesticated animals, after 20 days.

207. Concerning the occupation of domestic animals the principles to be attended to are:

Domestic animals, even if they have withdrawn from custody and have wandered far away, remain under the dominion of him to whom they belong: for by natural disposition they do not have native liberty, and therefore they are the object of permanent dominion; and they remain constituted within

the moral power of the owner, nor is the moral bond by which they are bound with the owner broken as long as it is not impossible to recover them.

Hence a) if they have been lost, of themselves they must be restored to the owner, for example, a sheep wandering far away, even if they have been rescued from death by the industry of the occupier, for example, from shipwreck or fire;

b) if dead or partly destroyed, they must be returned to the owner, for example, a hen seized by a dog, a sheep by a wolf;

c) if they cause damage, their owner is held to compensate it (C.C., a. 1385); indeed they can be killed by the owner of the land, as long as they are on the land itself, if damage cannot otherwise be prevented and that damage is notable.[2]

[2] Thus in Belgium, also for rabbits and wild boars, from a. 6 and 7 of the law on hunting.

208. Concerning violation of civil law about hunting or fishing, it must be noted: of itself he probably does not sin who hunts or fishes in open places against the prohibition of civil law alone, for example, if he has not purchased the faculty of hunting, or hunts at a prohibited time or with a prohibited instrument: not indeed against commutative justice, because he occupies a thing of no one; nor against obedience or legal justice, because by custom such laws are considered as merely penal, as those which regard only external rule and order, nor is there sufficient certainty concerning the contrary intention of the legislator, at least in many regions.[3] Yet by accident such hunting can be illicit and sometimes unjust:

[3] Unless, as it seems, for Germany, because art. 958 of the German code denies acquisition of dominion to an illegitimate hunter.

1. illicit, by reason of the state of the person hunting, as of a religious, or of a cleric (for whom noisy hunting is prohibited); by reason of the danger to which the hunter exposes himself, for example, of exposing health, neglecting family affairs, incurring grave penalties with detriment to the family (and then it is against charity toward himself and his own); by reason of intention, for example, because he is prepared to resist violently those who by office are held to apply the law, and to wound or kill forest guards (and then the intention is unjust);

2. unjust, by reason of the damage which is brought upon the owner of the land, for example, by destroying crops, or of the damage which is brought upon him who has purchased the right of hunting, for example, by hunting too frequently or out of season: for then the right becomes notably cheaper. In which case the hunter must restore, not indeed the whole value of the animals taken, because he who buys the right of hunting is not the owner of the animals, but only acquires the right of hunting with impunity, but according to the hope of capture which he would have had to whom the right of hunting belongs.

209. II. Concerning the occupation of mines, especially of fossil coal and veins of metal, many of the Scholastics taught that by natural right they belong to the owner of the land, because they are an accessory part of the land, since it does not consist in the surface alone, but in the whole depth, indeed even to the center of the earth, and therefore the owner of the land has the power of receiving fruits from it. Nevertheless, several contradict this, as D. Soto and Lessius do for metallic veins, and today all jurists, who rather hold subterranean things as things of no one which become the property

of the first occupier, at least if they are enclosed not near the surface but more deeply. And indeed he who occupies the surface does not seem by that very fact sufficiently to have apprehended the whole subterranean depth.[4] This, when the present necessities of human industry and the conditions under which mines can perfectly serve the utility of men are considered, is understood still better.

[4] "Veins which lie deep in the earth, so that they can be worked while the soil is untouched, in reality are not thereby occupied because you have built on the soil or have begun to cultivate a field. For you neither exercise dominion over these nor have you thought of receiving any utility of this kind also from the thing. Therefore they are things of no one, until by digging you have effected that your occupation may lie open to those veins." Thus Vermeersch, *Quaestiones de Iustitia*, n. 218. - To others it does not seem equitable to consider a precious thing, as a vein of gold, as an accidental part of a thing of much smaller price.

For 1) many are situated under the earth so deeply that in certain places they are distant from the surface by more than 1000 meters; and therefore where surface properties are somewhat divided, it can scarcely be discerned to what determinate part of the surface they correspond.

2. The direction and extension of those veins is so irregular and uncertain that a new difficulty arises from this in referring them to the part of the surface which corresponds to them, and the simultaneous acquisition of several veins would have to be necessary.

3. Much knowledge and great expenses are needed so that they may be acquired, of which the private owners of those parts of the surface which correspond to the veins are scarcely capable.

4. Their acquisition can greatly contribute to the public good, because today it is of very great importance for such a good that metals and fossil coal be had easily and abundantly.

5. Many dangers inhere in the acquisition of those veins, both for those acquiring and for the buildings on the surface; which demands the intervention of public authority.

If these things are kept before the eyes, no argument seems to be made from which it may be concluded with certainty, according to natural right, that the owner of those veins is either the State, or the finder, or the owner of the surface to which the veins correspond; indeed not even he who would occupy them and at the same time would have means sufficient for the best acquisition. Hence the matter seems rather to be determined by positive human law, with the public good considered.[5] But if the opinion which holds that natural right attributes dominion to the owner of the land has pleased so many Scholastics, this proceeds from the fact that they very much had before their eyes veins which were not far distant from the surface and which could be considered almost as an integral part of the land.

[5] This conclusion is confirmed from the history of legislation: for no constant legislation appears determining to whom dominion belongs. Only one thing appears, namely, that always and everywhere some interference in the administration of veins of metal and of coal was attributed to the State or ruler.

For the sake of example, in Belgium, the civil law which was established on April 21, 1810, May 2, 1837, and June 5, 1911, perfectly distinguishes between mines (*mines; mijnen, bergstofwerk, bergwerk*) - and metallic strata brought by alluvion (*minieres; ertsgroef*) - and quarries and combustible earths (*carrieres et tourbieres; steen-, kalk-, zand-, mergelgroef, en veenderig, veengrond of turfland*), which both are on the surface.

A. As to quarries and combustible earths, the law confirms the right of nature, according to which they belong to the owner of the land in whose surface they are found (a. 81-83).

B. As to metallic strata brought by alluvion, it confirms the right of the owner of the land set forth in what precedes; nevertheless, on account of the common good, it establishes certain particulars:

1. they cannot be acquired without the permission of the State (a. 57); 2) if furnaces stand around for liquefying metals, the owner of the land is held to acquire the metallic strata after he has declared the matter to the authority. But if he himself does not acquire, the directors of the furnaces can, after the owner has been warned and a month has elapsed after the warning, and after the authority has been made more certain concerning the matter, acquire the strata; if, however, crops exist on the land, the director of the furnace is held to wait until the owner of the land has gathered the crops (a. 59, 60, 61). But a fitting indemnity is acknowledged to the owner (a. 66).

C. As to mines properly so called, the law constitutes a special regime concerning dominion in veins of metal and fossil coal. In such a regime the State appears almost as tutor of the common good, lest it suffer detriment from the ignorance or cupidity of private persons; hence it itself attributes the concession of dominion for the acquisition of mines to those whom it judges more fit for this (a. 14 and 16); nevertheless the law acknowledges, as seems equitable, some right both to the finder (a. 17), and to the State (a. 33), and especially to the owner of the land (a. 171), who, other things being equal, also has preference of concession (a. 11 of the law of 1837). And indeed:

1. before the acquisition of the vein is conceded by public authority, so that the owner may be held himself the owner of the surface, he therefore enjoys the right of digging, conformably to the Civil Code, a. 552 (a. 10 and 12);

2. if he to whom the acquisition has been conceded, going beyond the limits of the concession, should come beneath someone's land, he is held to indemnify its owner;

3. a concessionary who unduly extracts beneath someone's land must refund to him the whole of what he extracted, with the expenses of acquisition deducted;

4. if beneath someone's land the concessionary extracts material which is not included in the concession, he must pay indemnity to the owner of the surface;

5. from a decree of the council of veins of metal and coal (*conseil des mines*) of March 17, 1848, a vein not conceded is outside commerce, in this sense, that it cannot be the object of sale or of any agreement which would separate it from the surface.

But once conceded, a new dominion is created, distinct from the surface, capable of undergoing mortgages, perpetual, transmissible, and inviolable, as other dominions are (a. 7 and 11). Yet special burdens are imposed on this dominion, for a twofold payment is owed both to the State (a. 33) and to the owner of the surface (a. 42; and a. 9 of the law of 1837): one fixed, another proportioned to the quantity of metal or coal extracted; likewise to the finder, if he did not obtain the concession of some mine, an indemnity is owed (a. 11 of the law of 1837). Likewise, damages to be repaired are those

which come to the owners of the surface in buildings, fields, and industrial works from the acquisition made (a. 15 and 43-45).

210. III. Concerning gathering wood and pasturing, that is, concerning the collection of dry branches in woods and of grasses in pastures, it must be said:

1. If woods and pastures have their private owners or lessees, no one else can enjoy them, when the owner is unwilling, without injustice; nevertheless:

a) Sometimes the owner does not care about these things, for example, if in vast woods poor persons collect only dry wood, broom, thickets, and similar small green wood which is assimilated to thorns, or lead their animals to pasture those things which the owner is not going to collect nor give to his own animals as fodder. Nevertheless, let them take care lest they bring damage to green wood;[6]

[6] They themselves must carefully take care: 1) lest they dry out green wood by cutting the roots; 2) lest they cut down small or younger trees; for from this great detriment will arise if another tree is not substituted; 3) lest they carry away little trees planted in a row, especially next to a public way; for often it is difficult to find other similar ones.

b) From custom there sometimes exists vague pasturing, that is, the right of pasturing flocks in any unenclosed estate (by water, wall, iron), after the crops or first grasses have been collected, or from a determinate time to a determinate time; then the customs of the places must be consulted, which have the force of law. Thus the Belgian Rural Code, Oct. 7, 1886, a. 23-28.

2. If woods and pastures belong to the community, and have not been leased to others, any citizen of the place can enjoy them according to the customs of places, which are also consecrated by law. Thus the Rural Code, l.c., and the Belgian Forest Code, Dec. 19, 1854, art. 82 and 84 sq.

Yet those laws are judged merely penal, except where they prohibit notable damage to be caused to the community or to a third party, as can easily happen in practice.

211. IV. Concerning occupation of booty made in a just war, it must be said:

1. public goods (for example, arms) left by the enemy or violently taken away can be occupied; but occupation can be made not by private soldiers for their own advantage, but according to the law or command of the leader and for the public good, for booty taken does not belong to individual soldiers but to the government;

2. according to natural law even private things of enemies (not goods of the Church, nor of guests or foreigners) can directly be taken away and occupied; nevertheless, according to the convention of positive law, today in land war this is not licit, because war is not waged against simple citizens and private persons, but against the whole kingdom, unless by accident, as if some private person or village had exercised hostility;

3. nevertheless, from the authority of leaders, requisitions can be made from the goods of private persons, but according to certain limits, conformably to the Hague Convention, with due payment nevertheless being made to the owners.

Hence a) soldiers cannot retain for themselves except those things which are attributed to them by law or by concession of the leaders, and provided that the injustice of the war or of the concession is not evident;

b) outside the case of necessity, individual soldiers cannot even by their own authority snatch from enemies food to be eaten;

c) those things which by private authority they have usurped or plundered or destroyed, if they are of notable value, they are held under grave obligation to restore to those who have suffered damage, or, if these are unknown, to superiors (bishops, magistrates), who will distribute those goods to the poor of the places; unless nevertheless after the war the rulers have mutually condoned damages unjustly brought.

212. Observation. - Fr. Vermeersch well observes: from the nature of the thing, prescinding from the determination of civil law, occupation alone is not sufficient insofar as it manifests the will of having the thing, because then a public edict without occupation would better suffice, and because such a will, even most manifest, of itself does not touch the thing, and therefore does not bind it to anyone by a stable bond. Therefore true occupation is required, not merely legal occupation, by which the thing, according to its nature, is shown to be subject to someone's power or serving him for exclusively proper use.

"Nor do others more happily establish labor itself as the primordial fact. For either they understand the work by which the thing changes species: but then by what title do many things which of themselves are adapted by nature to our uses (think of fruits, animals, gold found by chance, etc.) enter private dominion? Or they are already content with that work which is contained in every occupation: and what labor then formally provides is not demonstrated. And, speaking universally, it is not doubted that each one acquires the fruit of his labor; but beyond this, from labor nothing can formally be concluded. Therefore those themselves who have labor for a title, if they are asked concerning the reason why they so judge, cannot argue except from the connection which is introduced by labor between the thing and the craftsman: so that at length they sometime formally name another cause" (o.c., n. 215). Labor, that is, is materially suitable for inducing this destination; formally it does not avail, except because it is a mode of subjecting the thing or converting it to one's own uses.

Article II: On Invention

213. Invention differs from occupation strictly so called: 1) for occupation supposes and includes the intention of acquiring for oneself the thing occupied, but invention denotes only the discovery of a thing, or at most its apprehension; 2) occupation is also and chiefly concerning things which have never belonged to anyone, but invention only concerning those which have had an owner but have ceased to be in his detention.

Therefore it is badly defined by some as a certain occupation of some thing separated in fact from its owner; but it must be defined as the discovery or bringing to light of some thing separated in fact from its owner. It is said:

1. discovery, and not real apprehension and occupation, because it can happen through merely intentional apprehension by sight alone, that is, by seeing the thing; indeed through the mere

manifestation and bringing to light of the thing, that is, by rendering it visible (by oneself or by others hired for this);

2. of a thing separated in fact from its owner, either so that he retains dominion over it (a lost thing), or so that he is no longer owner (an abandoned thing), whether because the owner has died without an heir, or because he has renounced his dominion, or because he can no longer prove his dominion, and then the thing is called a treasure.

214. I. Concerning the finding of treasure. - Treasure among abandoned goods deserves special mention; it is defined as: any hidden or buried thing which no one can prove to be his and which is found by fortuitous chance[1] (C.C., a. 716). It is said:

[1] Concerning treasure, the Italian code, a. 714; the Spanish, a. 352 and 514; the Austrian, a. 392; the German, a. 984.

1. any thing, whether it was hidden long ago or recently, whether it is money, or any other movable thing whatever, whether precious or cheap, provided it is estimable by price, for example, the jewel of a ring, documents, precious vessels,[2] etc.

[2] By Austrian law, only money, jewels, and a precious thing are held as treasure; by English and American law, only coin, or also a golden or silver thing.

2. hidden or buried: for if it is in the open, it is not a treasure but a lost thing or simply an abandoned thing. Furthermore it is required that it have been hidden by the hand of man; or, if by a fortuitous natural event, for example, an earthquake or volcanic eruption, it was covered over, that at least by an act of man it had been deposited there, whether in an immovable thing, as in a field, or in a movable thing, as in a cupboard, an old garment, an ancient chest;[3] hence treasures are not riches which by nature itself lie in some estate, as metallic or coal veins or precious stones, nor are tombs or sculptured stones buried in the earth treasures in the proper sense;

[3] In the Netherlands they dispute whether a thing hidden in a movable thing is treasure; which seems strange, since the Dutch code (a. 642) borrowed the definition of treasure from the French code.

3. which no one can prove to be his, for otherwise it would have to be restored to the owner;

4. there is added: which is found by chance. It is disputed among interpreters of civil law whether this element pertains to the essence of the definition; but it seems rather not to pertain, and only to indicate the ordinary mode by which treasure is found.

Now concerning the finding of treasure these principles are valid:

1. Treasure is a thing of no one: for it is not the thing of him who is the owner of the land, since it is not certain that it was hidden there by his ancestors; nor is it any longer the thing of him who hid the treasure, since by hypothesis he cannot be found.

2. Therefore treasure, if natural law alone is considered, belongs wholly to the finder; but the finder is deservedly judged to be he who, whether by himself or by another hired for this end, first discovers it or renders it visible, although he has not yet apprehended it by hand.[4]

[4] German law, however, requires both, for it says: "which is discovered and, when discovered, is occupied" (a. 984); likewise by Spanish law, he is held to be the finder who apprehends, not he who sees (a. 351, 610, and 614).

3. From present-day civil law, treasure found in another's land is generally to be divided equally between the finder and the owner[5] (not the usufructuary[6]) of the land, because the law presumes that the treasure has a certain special connection with the land, or even was hidden by the ancestors of the owner, which in the more frequent case, in which possession of the land has remained in the same family for a sufficiently long time, is probable. This law is equitable and therefore obliges in conscience.

[5] C.C., a. 716. The owner of the land is understood whether a private person, or the public treasury (the fisc), or a civil or ecclesiastical society. This last, however, is called into doubt by some, because it is not certain whether civil law is applicable in the case; on the contrary Vermeersch, applying can. 1529, with can. 20 considered. - Swiss law makes an exception, establishing that treasure belongs wholly to the owner of the land (a. 723); likewise English law, which attributes it to the public treasury (the fisc) if it claims it; otherwise it belongs to the first occupier.

[6] C.C., a. 598. - In an emphyteutic good, by Italian law (a. 1361) and Spanish law (a. 1632), it cedes to the useful owner; by Austrian law, to each owner (a. 399).

4. Civil laws often prohibit another's land from being dug up, without the owner's knowledge, in order to seek treasures, so that he who by design and without the consent of the owner has sought and found treasure in another's land is deprived of his part and is held to cede the whole to the owner.[7] Yet this disposition is a penalty inflicted for a delict, and therefore it does not oblige in conscience except after the sentence of a judge. But if the owner has been warned and has consented, the contract entered into with him must be observed.

[7] Thus French and Belgian, Italian, Spanish, and Dutch law.

215. Corollaries. - 1. He who buys a field at the current price, in which he suspects a treasure lies hidden, uses his right, and is not held to divide the found treasure with the former owner. For treasure is not a part or fruit of the land, nor is it occupied together with the field, and therefore it was not the owner's thing, but before invention was a thing of no one, which has an owner by invention alone.

2. On the contrary, he who hides a treasure already found, and after buying the field retains the whole for himself: by the very fact that he had found it, he is already held to hand over half the part to the owner.

3. If a precious thing has been made visible by a tempest, it already loses the character of treasure and will belong to the first occupier.

216. II. Concerning lost things. - A lost thing is called that which, against the will of the owner, has fallen out of his possession, although it is not hidden. Therefore it differs from treasure both because it is not hidden, and because it is not a thing of no one, but is presumed to have an owner. Hence:

1. A lost thing remains under the dominion of him who involuntarily lost it, as long as there is for him the possibility of recovering it.

2. If, all things considered, there is lacking the possibility of finding the owner, a lost thing probably becomes a thing of no one, and therefore can legitimately be retained by the finder, whatever many of the old authors may have said; because now it is impossible for the owner to exercise his dominion over the lost thing. For dominion of a thing is attributed insofar as utility can be perceived from the use of the thing; and this is impossible for one definitively losing it. Hence, the reason of dominion failing in him, his dominion ceases.

3. The finder is not held to pick up a lost thing, unless sometimes from charity, if it is notable and otherwise about to perish. But one taking the thing is now obliged from justice and quasi-contract: a) to guard the thing diligently, as a good father of a family, lest it perish for the owner, and if it cannot be preserved, to sell it and preserve the price; b) to inquire about the owner with moral diligence by apt means proportioned to the value of the thing found, not at his own expenses, however, but at the owner's; c) when the owner is known, to restore it to him, after deducting the expenses made in guarding and investigation, without being able strictly to demand a reward, unless the owner has promised it or civil law so establishes.[8]

[8] Civil law establishes this, for example, in Germany, Austria, Switzerland, Italy, and Spain. Remuneration is not owed if the finder neglected to inquire; Austrian Code a. 389; Spanish 615-617; German a. 965-968.

4. The finder who culpably is the cause that the owner cannot be found, because he neglected to inquire or sufficiently to inquire about the owner, or hid the thing so that the owner cannot recover it, is a possessor in bad faith, and therefore can have nothing of the thing for himself, as will be said later, n. 303. Hence he is held to restore the whole either to the probable owner, if there is one, or to pious works, even if he has consumed the thing.

5. A finder for whom, after sufficient diligence has been employed, the owner remains doubtful and uncertain, must divide the thing among a few uncertain owners according to the proportion of doubt or probability.

6. A finder for whom, after sufficient diligence has been employed, the owner remains wholly unknown, with no hope of discovering him, probably can make the thing his own, as a thing of no one, and indeed at once (unless civil law establishes otherwise[9]), nor is he held to expend it on pious uses, although it is more praiseworthy that this be done.

[9] Thus, for example, in Switzerland and Austria.

7. If, before the time for prescription established by law has elapsed, the owner appears, the finder who after an altogether diligent inquiry appropriated the thing to himself in good faith is held to restore it and its fruits, insofar as he still possesses them or has become richer from them; but if he has consumed it, or has completed the time required for prescription, he is held to restore nothing, as a possessor in good faith.

But the time established for prescription is various. By French and Belgian law (C.C., a. 2279), likewise Dutch (a. 2014) and Austrian law, it is 3 years, unless there are special dispositions for a particular case, for example, for things deposited in the *montes pietatis*, or transported or abandoned in public offices; by Italian law (a. 715-718) and Spanish law (a. 615 and 616), 2 years after publication;

by Swiss law, 5 years; by German law, 1 year after denunciation. By English law prescription is not admitted in this case.

217. Observation. - It suffices to apply the general prescriptions of civil law as to a certain deposit of lost things or the mode of seeking the owner; nevertheless this does not seem obligatory, unless they regard special things or cases. In Belgium, for the rest, prescriptions do not exist except for things which are transported by public services (for example, by railroad or postal service), and are abandoned there or in tribunals.

218. III. Concerning abandoned things. - That thing is called abandoned which the owner has voluntarily abdicated without transferring it into the dominion of another. Such are fruits which are left after the harvest has been completed, dry wood which lies on the ground and is not collected, old rags which are thrown away; and also goods which, when the owner is dead, become no one's, either because the deceased neither has nor constituted heirs, or because they renounce the succession (vacant inheritances). Therefore these goods now are no one's. Now:

1. By natural law, abandoned goods, as things of no one, can legitimately be occupied.

2. By civil law it is sometimes established that goods which lack an owner or abandoned inheritances devolve to the State; which law obliges even in conscience, at least after the intervention of authority claiming the rights of the State or the sentence of a judge.

Thus by French and Belgian law (C.C., a. 539, 713, 768[10]). But these words regard only immovable goods and inheritances (as is supposed, a. 564, 715, 716, 717). Hence for the remaining movable goods the right of the first occupier remains.

[10] Likewise Dutch code, a. 576; Italian, a. 742 and 758; Spanish, a. 913, 914, 956, 958.

219. Observation. - Things lost by shipwreck are not abandoned, nor things thrown into the sea to save a ship, or carried off by inundation (*epaves; strandgoed*): for owners did not freely and spontaneously cast these away, but intend to retain dominion over them as far as they can. Hence concerning these things the statements about lost things are valid; and therefore sometimes special civil laws are issued concerning these things,[11] or they even punish those who steal such goods.

[11] C.C., a. 717, and ordinance of the year 1681 concerning maritime things with decrees of 27 Thermidor, year VII, and 17 Floreal, year XX.

Article III: On Accession

220. Accession is an increase of one's own thing coming from the fact that another thing accedes to it and is joined to it. Hence, in the present matter, it is a special mode of acquiring dominion of a thing acceding to a thing legitimately possessed, from which it is produced or to which it is accidentally united by nature or art. Therefore a twofold accession is distinguished: one by production or fructification is improperly so called, for properly it is the right of using and enjoying, which is governed by the principle: the thing fructifies for the owner (n. 160); the other, properly so called, by accidental union, whether to a movable thing or to an immovable thing, constituted by industry or nature, is governed by the principle: the accessory follows the principal.

221. I. Concerning the right of accession from the production of fruits. - Principle: He who has of some thing either entirely full dominion, that is, of disposing and enjoying, or full useful

dominion, that is, of perfectly enjoying, which is called usufruct, has a right to all the fruits of the thing,[1] with the burden, however, of paying expenses which have been made by others for obtaining them.[2] Thus according to the principle: The thing fructifies for the owner.

[1] C.C., a. 546.

[2] C.C., a. 548.

The fruits to which he has a right are of three genera:[3]

[3] C.C., a. 547.

a) natural fruits, which are produced by nature alone and arise spontaneously without any or almost any labor, as the fruits of trees, grass, hay, and certain trees; to which, according to the civil code,[4] the offspring of animals also belong;

[4] A. 583. - Cf. Italian code, a. 443 sq.; Spanish, a. 353; Austrian, a. 405 sq.

b) industrial fruits, which are produced by the thing itself only through cultivation or by reason of greater labor, as crops, legumes, wine; hence they were called mixed by theologians, because they are generated partly by the nature of the thing, partly by labor;

c) civil fruits, which by a certain fiction of law and because of analogy are so called and are counted among fruits: for they are not born from the thing itself, but are revenues which come from a contract entered into concerning the thing, as the price of leasing, annual revenues, pensions, ordinary gain received from a loan.

Fruits of one's own industry alone must not be confused with industrial fruits; the thing is not the cause of these but only the occasion or condition, namely, they are produced not from the thing itself but only on occasion of the thing, so that another's thing is a mere instrument or quasi-instrument, and itself of itself contributes nothing to their production, as a painting made with another's brush, or business conducted with another's money. These in no way belong to the owner of the thing, but to the producer alone.

222. II. Concerning the right of accession from union to movable things. - This can happen in three different ways: by adjunction, specification, and commixture.

Adjunction is the union of two things belonging to diverse owners and so coalescing into one that they cannot be separated without detriment, for example, a jewel inserted into a gold ring, an image painted on another's canvas, a poem written on another's paper.

Specification is the artificial making from another's matter of some thing distinct in species from the former, for example, a statue made from another's marble, a garment or shoe from cloth or leather belonging to another.

Commixture or confusion is the joining of things equally principal belonging to diverse owners, as if two heaps of wheat, two metals, two casks of wine are mixed, or a thing is made from matter belonging to diverse persons.

Concerning these, the principles and rules are valid:

1. That right of accession is totally subordinated to the principles of natural equity, so that the rules to be handed down are mere examples.

2. In the case of adjunction, the whole thing belongs to the owner of the principal thing,[5] provided he pays the price of the lesser thing; for the accessory follows the principal. The thing to which another is joined for use, ornament, or complement is held to be principal; if none can be considered as principal or accessory, that is held as principal which excels in price or volume.[6] If, however, the added thing is much more precious than the principal thing, and was added to it without the owner's knowledge, he will be able to demand that it be torn away from the principal thing, even if it cannot be separated without detriment to this.

[5] C.C., a. 565.

[6] A. 566-569. - Cf. Italian code, a. 464 sq.; Spanish, a. 375 sq.; Austrian, a. 419 sq.; German, a. 948.

3. In the case of specification, the owner of the matter can reclaim the thing made, paying the price of the labor; unless, however, the work expended far exceeds the price of the matter: then the craftsman can retain the thing, paying the price of the matter, as if from cheap wood a very beautiful statue had been sculpted.[7] By Dutch, German, and Spanish law, the owner of the form can preserve the thing, the price of the matter having been paid, unless bad faith intervened or the value of the matter is greater.

[7] A. 570-571; likewise Italian code, a. 468 sq.

4. In the case of commixture or confusion, the things mixed become the common property of the owners, according to the proportional part of each. Hence, if they can be separated, his own part must be returned to each owner; otherwise either the mixed things must be divided according to the proportion of quantity, quality, and value of each owner, or the whole must be sold so that the money may be divided according to the proportional part of each. If, however, the matter of one greatly surpasses the matter of another in quantity or value, the owner of the more excellent matter can reclaim the whole thing, paying the other the price of the matter which belongs to him.[8]

[8] A. 572-575. - Cf. Italian code, a. 472; Austrian, a. 414; Spanish, a. 382; German, a. 947.

5. Besides these general rules received in every law, special rules also must be held, if any are handed down by law.

Thus from our Civil Code: a. When the thing remains common, it must be sold by bidding for the common utility of both owners (a. 575).

b. Whenever the owner of the matter from which, without his knowledge, a new species has been made can vindicate his matter, he can at his pleasure reclaim matter equal in every respect, or its price (a. 576).

c. He who has consumed another's matter without the owner's knowledge can be compelled by a judge to repair even the damage which the owner has suffered (a. 577).

223. III. The right of accession from union with immovable things made by the industry of man. - The principle is valid: the dominion of land draws with itself the dominion of those things which are built, planted, and sown on it, or are made on it, even by others, because they are presumed to have been made by the owner and at his expense;[9] yet it is equitable that he who in

good faith has made something on another's land receive compensation for the labor or matter used insofar as the owner has become richer thereby, just as it is also owed that he who on his own land has made something from another's matter compensate the other.

[9] C.C., a. 552-553. - Cf. Italian code, a. 477 sq.; Spanish, a. 358 sq.; Austrian, a. 417 sq.; German, a. 946.

Moreover, in the application of the principles, the special statutes of civil law must be considered. Thus, for example, in our Civil Code:

1. If someone builds on his own land from another's materials, he must pay the price of the matter and can be condemned to repair damages, but the owner of the matter does not have the right of destroying such a building (a. 554).

2. If someone from his own materials builds on another's land, and indeed in bad faith, knowing it to be another's land, he can be compelled to remove the building at his own expenses and to repair damage if any has been brought; but the owner of the land can retain the building, paying the price of the matter and labor, no regard being had to the value perhaps increased (a. 555).

3. But if a possessor in good faith has so acted, he cannot be compelled to remove the building; but there is given to the owner of the land the option of paying either the price of the matter and labor, or at least the increase of value which from that building has accrued to his land (a. 555).

The reason for this last is because one person is not held to bear all damages. He who acted in good faith does not deserve a penalty; since nevertheless perhaps there is damage, it is equitable that both should undergo something of the damage, because the owner of the land ought not bear all.

224. IV. The right of accession from union with immovable things accomplished by the work of nature. - It can happen by alluvion or reliction, or by avulsion or change of river-bed.

Alluvion or reliction is a hidden increase which, by the force of the waters of any river naturally and continuously flowing, gradually accedes to some estate, according as the course of water brings new matter or leaves behind parts previously watered. Avulsion or change of river-bed is had when by a sudden force of waters a great part of some estate is torn away from it, or a river, its course having changed, leaves its bed and chooses a new one for itself. On occasion of these, sometimes there is the formation of a new island. This right varies more than the preceding according to the diverse laws of States;[10] nevertheless, for the most part the following rules are valid:

[10] French Code, a. 556-560; Italian Code, a. 453-461; Spanish Code, a. 366-373; Austrian Code, a. 407-412; German Code, a. 65 sq.

1. What by alluvion or reliction gradually accedes to the adjacent bank by the river's bringing or receding is legitimately acquired by the owner of the adjacent bank, because nature brings it to him.[11]

[11] C.C., a. 556-557.

2. On the contrary, as to alluvions of the sea, lakes, and ponds, there is no right of accession, so that the limits of dominions remain as they were before.[12]

[12] C.C., a. 557-558.

3. What by avulsion and by the sudden force of waters is torn away in notable part from an estate is not acquired by the adjacent estate, but can be claimed by the owner, provided he does it within the time determined by law,[13] namely, within a year.

[13] C.C., a. 559.

4. The river-bed which, the bed having changed, has been abandoned by the river is acquired by those whose estates have been taken by the river, as an equitable compensation of damage to be divided among them according to proportional part.[14]

[14] C.C., a. 563.

5. Islands formed in small rivers are acquired by the dominion of the nearer bank; or, if situated in the middle, they are divided between the riparian dominions from each side according to the middle line of the river.[15] But those which are formed in a greater river, namely, one apt for navigation or for transporting things, cede to the republic, which has the right of dominion over these rivers, unless there is a contrary title or prescription.[16]

[15] C.C., a. 561.

[16] C.C., a. 560.

Article IV: On Prescription

225. Prescription in juridical speech is the same as exception, that is, a legitimate reason opposed to another in order to exclude or delay his action, without nevertheless denying the foundation of the action itself; in the present case it is a peremptory exception by which, against an owner reclaiming a thing (or debt), possession through a certain time is opposed, solely from the very lapse of time defined by law, so that by force of law the right of another can even be extinguished and a right in the thing can legitimately be acquired for the one prescribing. Hence it is a mode of acquiring dominion through possession under conditions of time and mode determined by law; or of liberating oneself thus from an obligation.

Therefore a twofold prescription is given: acquisitive, by which a new dominion or right is acquired, which is called usucapion, because by it something is taken into one's own by use; and liberative, by which someone frees himself or his thing from a burden or obligation.

It arises from positive human law, by force of high dominion for the sake of the common good; yet it is consonant with natural law, which establishes it as suitable, without nevertheless having it as strictly necessary.

226. Principle I. Concerning acquisitive prescription. - Prescription, clothed with due conditions, is a legitimate mode of acquiring dominion, even direct dominion, in the civil forum and in the forum of conscience.

It is certain because 1) the legislator could and willed truly to transfer dominion:

a) He could, by reason of the common good.

Its motives are four: 1. lest for a long time and almost always the dominions of certain things be uncertain; 2. that there be some end of lawsuits; 3. lest possessions be held in nearly immortal fear; 4. that the carelessness and negligence of owners omitting to pursue their things be corrected, whereby they may be rendered more vigilant.

b) He willed to transfer dominion and not only to deny a civil action.

This is clear both from the indicated end of the law, which otherwise cannot sufficiently be obtained; and from the entirely general words and the obvious sense signifying this, which it uses without any restriction;[1] and from the interpretation of jurists.

[1] Thus already in ancient law; and in various modern codes, for example, French Code, a. 2219-2224.

2. The Church recognized this in Lateran Council IV, which for the value of prescription requires only good faith; and in her own law, which admits its legitimacy, in Decr. IX, t. 26, c. 3, and can. 1508.

Hence St. Thomas already concluded (*Quodl.* XII, q. 24) that one legitimately prescribing is not held to restitution, even if after prescription he knows that it had been another's.

Yet in order that prescription concede dominion, it must be accompanied by the due conditions, which are: an apt thing - possession - title - good faith - and the required time.

227. A thing apt to be prescribed, or prescriptible, whose dominion can be acquired, is every thing, whether corporeal or incorporeal, which by its nature is capable of private dominion, and is not otherwise excepted by some law; or every thing which comes under private dominion and commerce. Hence it is said: things which are not in commerce cannot be prescribed (C.C., a. 2226), whether they are so from their nature or from the disposition of law. Therefore from prescription are excluded:

1. from the nature of the thing, all things which are of natural right or positive divine right (can. 1509): thus there cannot be prescription against obedience owed to a superior, against the indissolubility of marriage or the obligation of receiving sacraments, against the independence of the Church from civil power;

2. from ecclesiastical law: a) by reason of the common good, these are not subject to prescription: certain and indubitable boundaries of ecclesiastical provinces, dioceses, parishes, apostolic vicariates or prefectures, abbeys or prelatures nullius - alms and burdens of Masses - an ecclesiastical benefice without title - the right of visitation and obedience, so that subjects would be under the visitation or obedience of no prelate - payment of the cathedraticum[2] - all things which can be obtained by apostolic privilege alone (for example, the right of patronage for a layman, the rights of a pontiff for one not a bishop) - and spiritual rights of which laymen are not capable, if there is question of prescription for the advantage of laymen (can. 1509);

[2] This does not exist in Belgium.

b) sacred things which are not in the dominion of private persons cannot be prescribed by a private person, but only by an ecclesiastical moral person against another ecclesiastical moral person. On the

contrary, sacred things which are in the dominion of private persons can be acquired by prescription by private persons, who nevertheless cannot employ them for profane uses; but if they have lost consecration or blessing, they can freely be acquired even for profane uses, yet not sordid ones (can. 1510);

3. from civil law: a) things which are not capable of private dominion, but belong to public dominion and order, as public roads, rivers, squares, bridges, ports, citadels, and other things of this kind destined for public uses (a. 538 and 540); yet private goods of the State or of public institutions, because they are capable of private dominion, can be prescribed (a. 2227 and 541);

b) things which are of mere faculty or tolerance, as the right of building on one's own land, the tolerance of pasturing or passing through, and all non-continuous servitudes (a. 2232 and 691); likewise things possessed by force (a. 2233) or stealthily, but only as to those who occupied violently or stealthily (a. 2279);

c) things which belong to those who are impeded in the exercise of right or are specially protected: thus, for example, prescription does not run, during marriage, against dotal goods of the wife under the dotal regime (a. 2255 and 1561), nor generally against the goods of wards, minors, and interdicted persons (a. 2252), nor between spouses (a. 2253).

228. Prescriptive possession is the detention of some thing or the enjoyment of a right in one's own name, whether by ourselves, or by another in our name (a. 2228): for prescription is founded upon possession of another's thing, so that "without possession prescription does not proceed." It must be dominative - peaceful and continuous - indubitable and public (a. 2229):

1. Dominative, that is, held with the intention or title of an owner, not by a precarious or transitory title of deposit, lease, management, etc. (a. 2236), or of faculty or tolerance (a. 2232). Hence he who possesses a thing in another's name, as a tutor in the name of a ward, prescribes not for himself but for another, in the case the ward; on the contrary, he who detains a thing in his own name but through another, for instance through a servant or procurator, can acquire it for himself and not for another.

2. Peaceful and continuous, that is, held quietly, not violently, and undisturbed and uninterrupted. Hence prescription does not run:

a) in the case of violence, because this is not possession but invasion; and only when the violence ceases does useful possession begin (a. 2233);

b) in the case of suspension (*tschorsing*): for then prescription sleeps because of an impediment placed by law (for example, concerning the goods of minors or of a wife); but once the cause of suspension has ended and the impediment has ceased, it revives and is resumed so that the time preceding the suspension can be computed with the subsequent time for completing prescription (a. 2251);

c) in the case of interruption (*stuiting*'): for then, the required condition failing (for example, good faith ceasing or the owner reclaiming), prescription ceases definitively, so that the time elapsed

before is held as nothing and cannot be computed, but the whole course of prescription must be begun anew (a. 2243 sq.).

From the disposition of our civil code, prescription is suspended according to the rule: "Prescription does not proceed against one unable to act": 1. against minors and interdicted persons, unless there is question of liberative prescription, or in the few cases excepted by law (a. 2252); 2. between spouses, that is, one does not prescribe against the other (a. 2253); 3. against a wife, while the marriage stands, as to alienation of land constituted as dowry under the dotal regime (a. 1561), and as to actions which the wife cannot exercise unless an election has been made concerning accepting or repudiating the community, or whenever the husband, who sells goods proper to the wife without her consent, is held to provide security for the sale, and in all other cases in which the wife's action would redound against the husband (a. 2255 and 2256); 4. against an heir for debts owed to him from an inheritance which he accepted with benefit of inventory (a. 2258); 5. when the thing possessed is not yet demandable, as in debts under condition or to a day (a. 2257).

On the contrary, it is interrupted naturally or civilly (a. 2242): 1. naturally, if the possessor has been deprived for more than a year of enjoyment of the thing by the former owner or by some third party, without having intended a possessory action (a. 2243); 2. civilly, if he is summoned into court concerning the thing which he possesses, even before an incompetent judge, unless however this action is denied, revoked, or null because of defect of form (a. 2244-2247); 3. if the possessor or debtor has acknowledged the right of another against whom he prescribes (a. 2248).

3. Indubitable and public, that is, not equivocal but shown by acts of true and exclusive ownership, so that anyone who wished could have noticed it; otherwise the principle is valid: prescription does not run against one unable to act. Thus, for example, for uncertain limits of a field, for undivided possession, for possession or enjoyment exercised secretly, for a discontinuous or non-apparent servitude (a. 691).

229. The title of prescription is a cause of itself capable of transferring dominion, or a reason sufficient of itself on account of which someone possesses a thing and at the same time thinks it to be his, for example, purchase or donation or inheritance. It is required for prescription, because no one can possess a thing in good faith unless he has, or at least thinks that he has, a title from which a right arises. Title is:

1. true, which on the part of the thing truly exists and validly transfers dominion, for example, a valid purchase or donation. This is not required, because of itself it transfers dominion and therefore prescription is useless;

2. vicious, which from its nature is not translative of dominion, but of itself inept, as showing the dominion of another remaining, for example, lease, commodatum, deposit. This harms prescription and renders it impossible, because with a vicious title good faith cannot exist, since from it it is clear that the possessor is not the owner; hence "it is better not to have a title than a vicious one";

3. apparent, which on account of a defect does not transfer dominion, but is judged to transfer it. This can be:

a) just (or colorate), if it has the species and legal form of a true title and from its nature is apt for transferring dominion, but does not obtain its force and does not transfer dominion, because it is null, yet because of an occult defect, and therefore not from a defect of form (a. 2267): thus a sale made by one who is not the owner of the thing, as having it by theft or by usufruct;

b) believed or putative, if it is believed to be present although in reality it is not present: thus one who possesses something by force of a revoked testament, or because he prudently thinks a thing was bought by his father or by a servant, which nevertheless in no way was done, since it had been taken away by theft;

c) presumed, if in reality it does not exist, but because of the fact of possession, especially long possession, it is supposed by law to exist.

Now in present-day law:

1. A just title is required and suffices for prescription of 10 or 20 years (a. 2265), a fortiori for the prescription of those movable things for which possession holds the place of title.

2. But for prescription of 30 years, no certain title is required, but a presumed or putative title suffices (a. 2262), because such long possession is equated by law to title.

3. The same seems true concerning those movable goods which can be transferred from hand to hand, because possession as to these holds the place of title (a. 2279).

230. Good faith of prescription is the right opinion of dominion acquired, or the practical judgment by which the possessor of another's thing prudently has persuaded himself that he possesses the thing justly as his own. One kind is moral in conscience and before God, whence by others it is called theological: it is a judgment objectively erroneous but pronounced from inculpable ignorance, by which someone sincerely thinks that he has the thing legitimately; another is juridical before the law, resting upon a real just title (a. 2265), which, although null because of an occult defect, does not labor under a defect of form, and because of which in the external forum good faith is presumed to be present (a. 2267-68). Now:

A. Moral good faith is required at the beginning and through the whole course of prescription, namely, for beginning and continuing it. This is clear:

1. From the declarations of the Church: of Alexander III and Innocent III, in Decr. l. II, t. 2, c. 5 and ult., and of Lateran Council IV: "We define that no prescription, whether canonical or civil, has force without good faith... Hence it is necessary that he who prescribes, in no part of the time have consciousness that the thing belongs to another." Hence the Code of Canon Law: "No prescription has force unless it rests on good faith, not only at the beginning of possession, but during the whole time of possession required for prescription" (can. 1512).

2. By reason: from natural law, fraud and bad faith can patronize no one; because that would be against good social order. It directly conflicts with justice that someone make his own a thing which he knows to be another's, since rather he is held to return it; nor can civil law licitly or validly favor iniquity or assist in bringing injustice.

3. From the declarations of jurists, indeed of those who proposed the law.[3]

[3] Thus for French law, Bigot-Preameneu, *Expose des motifs*, apud Tanquerey, o.c., n. 255, note 3.

Hence a) he who from the beginning doubts whether the thing is his cannot begin prescription;

b) prudent judgment is lacking when someone has notably neglected diligently to examine the thing; on the contrary, invincible ignorance of law or fact does not impede moral good faith;

c) good faith is lacking as soon as the possessor notices that he possesses another's thing, or if, doubting about his own right, he nevertheless invades the thing: for he cannot invade the thing unless he is morally certain that it is his own. Doubt from the beginning of possession impedes good faith;

d) when doubt comes after possession begun in good faith, prescription is not interrupted, provided that in the meantime the possessor employs diligence to examine the matter and inquire into the truth. But if he neglects this, he becomes of bad faith and cannot prescribe; but if after diligent examination doubt persists, he can continue prescription and retain the thing, according to the certain principle of law: the condition of the possessor is the better. For although speculatively it is not certain that the thing is his, nevertheless practically it is certain that he possesses the thing justly.

B. Juridical good faith is moreover required at the beginning of possession, if civil law demands it. It is indeed not demanded in prescription of 30 years (a. 2262), but in prescription of 10 or 20 years (a. 2265), not for the whole time of prescription but at the beginning of possession (a. 2269). Hence:

1. it consists in this, that the possessor thinks that he from whom he received the thing by force of a title transferring ownership truly is the owner of this thing, although perhaps he was not;

2. ignorance of law, even inculpable, stands in its way, because the legislator must suppose each one to know the laws.

When civil codes say that for certain prescriptions good faith is not required, they exclude juridical good faith, but they do not deny that moral good faith, or good faith in conscience, is required; for that would be to favor fraud and injustice, and would be opposed to good social order, and thus would be against natural law.

231. The time required for acquisitive prescription is determined by positive law.

A. In many regions, especially of Latin law (France, Belgium, the Netherlands, Italy, Spain; also partly in Germany and Switzerland), it was determined thus by civil law:

1. All prescriptible goods, whether immovable or movable, are prescribed at least by a time of 30 years,[4] without title or juridical good faith being demanded: namely, possession itself through 30 years is a presumed title (a. 2262).

[4] In Germany 30 years are counted, not from the day of possession, but from inscription in the land-register (*Grundbuch*); from the day of possession they suffice with the sentence of a judge.

This can also be observed in conscience, provided there is moral good faith, or good faith in conscience.

2. Immovable goods acquired in good faith by a just title are prescribed by a time of 10 or 20 years.

Thus by French and Belgian law, they are prescribed by a time of 10 years if the true owner dwells in the territory of the same court of appeal in which the immovable good is situated; they are not prescribed except by 20 years if the owner dwells in the territory of another court; finally, if he has dwelt partly within and partly outside that territory, the time of absence must be double that which is lacking to the time of presence for completing the decade (a. 2265-2266). By Spanish law the same is established, but it understands the territory as the whole kingdom, absence as outside the kingdom. On the contrary, by Italian law it is uniformly established that prescription is made through 10 years even between absentees; likewise by Swiss law, but with inscription in the land-register and continuous good faith; by Portuguese law through 15 years, and by Dutch law through 20 years uniformly.

Austrian law admits prescription of immovables from title, after 3 years, but with inscription in public registers. On the contrary, German law admits no prescription of immovables except tricenary prescription, but has a prescription of 10 years made in good faith for movables.[5]

[5] By English law, prescription for movables is not admitted; but for rights in another's land, for example, of servitude, revenue, or use, 30 years are required; sometimes 40 or only 20. In England there was not prescription for lands; but now, from the Act of 1874, certain immovables can be acquired by 12 years. American law is various; nevertheless, prescription of 10 or 20 years generally exists.

3. Single movable goods, which someone in good faith acquires from a third party who is not the true owner, are prescribed without any lapse of time. They at once become the goods of the acquirer, according to the adage: in movables possession in good faith holds the place of title (a. 2279), and is a presumed title; yet the owner of a lost or stolen thing can reclaim it, from him who detains it, for 3 years according to the French, Belgian, and Dutch Code, for 2 years according to the Italian code, but the detainer can have recourse against him from whom he received the thing. Nevertheless, according to a. 2280, from him who bought a lost or stolen thing in markets or shops or at auction or from a merchant who is accustomed to sell things of the same species, the owner cannot reclaim his thing, unless by paying the price which the possessor himself paid; and then he can reclaim the price from him who put the thing into circulation.

For this it must be noted: a) that here the matter concerns corporeal movables, namely, those which easily pass from hand to hand, to which nevertheless unnamed credits or titles which are called to the bearer (*effets au porteur, aan toonder, al portatore*) are assimilated, because they are accustomed to be sold and bought with the same facility as corporeal wares;[6]

[6] Therefore in this way universals of movables cannot validly be prescribed; nor nominative titles; nor ships (Belgian Commercial Code, l. II, t. 1, a. 2), whose dominion is actually transferred by written act.

b) that no time of prescription is demanded in order to avoid difficulties often about to arise if movable things had to be returned to the former possessor; on the other hand, civil law does not deny a civil action against him who unjustly took away the thing;

c) that it is disputed whether those dispositions have force in conscience, or only deny a civil action. Most more recent theologians hold that they have force in conscience: for the civil law justly effects that transfer of dominion in order to favor the security of commerce in movable things and the stability of contracts; besides, the right of the prior owner is not abolished without fitting compensation.

In Germany civil law establishes still more broadly that a possessor in good faith definitively acquires dominion in certain things taken by theft, namely, in money, in monetary titles, and in things bought at a public auction, yet not in other stolen things (a. 935). In Austria, movable goods are not at once possessed legitimately, but 3 years are required; and for movables of the public treasury (the fisc) or of the Church, 6 or 40; in Spain, 3 with title and 6 without title; in Switzerland, 5 years of good faith.

B. By canon law it is established: prescription as a mode of acquiring and liberating oneself, just as it is in the civil legislation of the respective nation, is received by the Church for ecclesiastical goods, with the exceptions to be indicated or indicated above, n. 227, being saved (can. 1508). Specifically:

1. Immovable things, precious movable things, rights and actions, whether personal or real, which belong to the Apostolic See, are prescribed by the space of 100 years (can. 1511, § 1).

2. These same things, if they belong to another ecclesiastical moral person, are prescribed by the space of 30 years (can. 1511, § 2).

3. For other movable goods, the civil law of the respective nation is valid according to can. 1508.

4. A benefice, if a cleric has proved that he has peacefully been in possession of it in good faith for a whole three years, even perhaps with an invalid title, he obtains it by legitimate prescription, provided simony is absent (can. 1446).

5. Certain religious orders have the privilege of prescription of 60 or 100 years; thus, for example, prescription cannot be made against monasteries of Benedictines except by 60 years, against monasteries of Cistercians except by 100 years; and by communication of privileges the same is valid for mendicants. These privileges have not been abolished by the new law.

*232. Question:** Whether the bad faith of a predecessor harms the successor, so that one who in good faith succeeds a possessor of bad faith cannot legitimately prescribe?

Resp.: 1) The bad faith of the prior possessor must not be admitted unless it is certainly proved: for no one is judged bad unless he is proved so (a. 2268).

2. But if it is certain, for completing the time of prescription the time in which the predecessor possessed the thing certainly cannot be computed, for example, an heir who knows the bad faith of the deceased before he himself has completed the time of prescription certainly cannot prescribe, since he has lost good faith.

3. But what if the bad faith of the predecessor becomes known when the successor has already prescribed the thing in good faith for a sufficient time? Then one must distinguish between a particular successor, such as a particular legatee, donee, buyer - and a universal successor, such as an heir properly so called or another who succeeds by a universal title. The bad faith of the

predecessor does not harm the former, because by a fiction of law he is not one moral person with the predecessor, in the way a successor by a universal title is.

But if there is question of a successor by universal title:

a) for prescription of 30 years, the bad faith of the predecessor does not seem to harm him, because the successor was in theological good faith through the whole time of prescription; moreover, juridical good faith is not demanded in this case;

b) for prescription of 10 or 20 years, the bad faith of the predecessor harms him if he lacked the juridical good faith which the law requires; it does not harm him if the predecessor had juridical good faith and the heir thereafter in theological good faith completed the time of prescription of 10 or 20 years.[7]

[7] Thus, unless civil law disposes otherwise; for by Spanish law, a. 442, every successor, even one by universal hereditary title, can begin prescription, unless he knows the bad faith of the predecessor.

233. Principle II. Concerning liberative prescription. — Prescription, clothed with the conditions due to it, is a legitimate mode of freeing oneself from a debt or obligation in the civil forum and in conscience.

For the legislator could and willed truly to free from a debt:

a) He could, by reason of the common good, on account of the arguments adduced above, n. 226.

To these special motives can be added: 1) the presumption of payment (or remission) of debts from that which generally happens: for creditors are not accustomed to wait long without demanding a debt; 2) exemption from the grave burden of preserving for a longer time testimonies of payment or receipts; 3) as to payments to be made periodically, the avoidance of the accumulation of debts, lest afterwards, compelled to pay a great sum, they be reduced to want.

b) He willed, at least sometimes, as is clear from his intention or from various signs. To understand this it must be considered that the continuous time required for liberative prescription is determined very variously: either longer, or short, or very short; for example:

1. all actions, both real and personal, are prescribed by 30 years (a. 2262);

2. after five years have elapsed (elsewhere six or four), all things which must be paid yearly or at shorter periods are prescribed, for example, the interest or usury of borrowed money (a. 2277);

3. finally, in the civil code prescriptions of the very shortest time are set forth.

Thus, for example, after 6 months the action of teachers for lessons which are accustomed to be compensated by each month is prescribed; likewise the action of innkeepers for lodging and food is prescribed, and of workmen for their wages (a. 2271); after a year the action of physicians for visits is prescribed, of surgeons for amputations, of pharmacists for medicines, of merchants for wares sold at least to those who are not merchants (a. 2272).

Now liberative prescriptions generally have force in conscience; yet with the exception of the last, of the very shortest time, which from the intention of the law does not deny the civil action of the creditor, except insofar as it is presumed that payment has already been made. Hence those pleading

prescription are held to swear that they have really paid the debt[8] (a. 2275), and if by oath or in another way it is proved that payment has not been made, the debtor is compelled to pay. Therefore the right of the creditor is left intact. — On the contrary, in longer prescriptions no proof in favor of the creditor is admitted; and therefore the diverse intention of the law seems to be clear.

[8] For widows and heirs it is established by law: if payment of a debt which the deceased is said to have contracted is demanded from them, the judge can impose on them an oath by which they assert that they are ignorant of such a debt (a. 2275); which oath they can offer whenever they do not have a morally certain reason for thinking that the debt exists. But if afterwards they discover that they have erred, they are more probably held to pay, because a clear contrary disposition of the law is not had; some, however, judge that they are not strictly held to pay, because the law probably requires nothing else for prescribing than that oath offered in good faith. Thus Van Egeren and Waffelaert.

Thus in French law and in others which were derived more immediately from it.[9] But it is doubtful for German law, in which there are biennial prescriptions for debts of commerce, lease, and wages, which, "with good faith acceding," according to some, "perhaps can be applied in practice" (Prümmer, *Th. M.* II, n. 64).

[9] Namely Belgian, Dutch, Spanish, Italian, Portuguese, and of Latin America. — Yet these are only the principal dispositions, because there are many particular dispositions. And also they are various in various law. Thus in Germany: 4 years for revenues, 2 for debts of commerce, lease, and wages. In Switzerland: all actions by 10 years, except hypothecary debts, which are never prescribed; 5 years for debts of lease, interest, and wages; lapses of the very shortest time (for example, 1 month, 3 m., 6 m., 1 yr., 3 yrs.), especially in banking matters to be received. In Austria, besides 30 years: 3 years for actions concerning debts of commerce, services, census. By English and American law 20 years are regularly required.

234. Certain special determinations of time are established in canon law, can. 1701 and following:

1° "In contentious matters, actions both real and personal are extinguished by prescription according to the norm of c. 1508-1512; but actions concerning the state of persons are never extinguished" (c. 1701).

2° "Every criminal action is extinguished by the death of the accused, by condonation of the legitimate power, and by the lapse of the useful time for proposing a criminal action" (c. 1702).

"With the prescription of can. 1555, § 1 remaining firm concerning delicts reserved to the Sacred Congregation of the Holy Office, the useful time for proposing a criminal action is three years, unless there is question: 1) of an action for injuries, which is extinguished by one year; 2) of an action on account of qualified delicts against the VI and VII divine precept, which is extinguished by five years; 3) of actions on account of simony or homicide, against which criminal action endures for ten years" (c. 1703).

3° "When the criminal action has been taken away by prescription: 1) the contentious action, perhaps arising from the delict, for repairing damages, is not by that very fact taken away; 2) the Ordinary can still use the remedies established by can. 2222, § 2" (c. 1704).

4° "Prescription in contentious matters runs from the time when the action could first be proposed by right; in criminal matters, from the day of the committed delict.

If the delict has, as they call it, a successive course, prescription does not run except from the day on which the course of the delict ceased.

In a habitual or continued delict, prescription does not run except after the last act; and the defendant, on account of some criminal act not prescribed, is held concerning the older acts which

are connected with the same act, even if, taken singly, they would be excluded by prescription" (c. 1705).

5° For the interruption of liberative prescription, ordinarily the civil law of the respective nation has force (c. 1725, 4° and 1508).

235. The conditions required for liberative prescription are not altogether the same as in acquisitive prescription. Certainly the required continuous time and a prescriptible thing must be present, according to what was said in n. 227; but there is not required:

a) possession properly so called, since there is no question of acquiring dominion, but of liberation from a right which another possesses, and of the non-exercise of the creditor's right, whence already the possession of liberty is obtained, by which a person or thing is not held to serve for the utility of another;

b) nor juridical title, because it is rather possessed against the title of the creditor;

c) nor positive good faith, that is, persuasion resting upon a juridical title at least supposed, or the supposition of freedom from a debt, but negative good faith suffices, or the absence of fraud or of bad faith, namely:

1. in liberative prescription from a debt, against an action to be furnished by the debtor, the absence of bad faith, or inculpable ignorance, or inadvertence or forgetfulness of the debt to be furnished, so that one is not in culpable delay in fulfilling the obligation; or

2. in liberative prescription from being subject to another's claim, against an action of the creditor to be undergone, the absence of fraud, so that nothing is done by which another is impeded in exercising his right: for to such a prescription it suffices that the other does not use his right, or the mere negligence of another. Thus in liberation from a passive servitude, one is not held to warn another concerning the right of servitude which will shortly be extinguished; likewise, in fines to be paid by reason of a penal sentence, the debtor can wait until the fine is demanded.

The same could not generally be admitted for ordinary debts, unless somewhere it had been established by law or general custom that they are to be demanded before they ought to be paid; as, for example, in those things which are paid by banks upon the received presentation of the note. But this cannot generally be supposed; on the contrary, regularly: he who ought to pay is held to pay, even when not asked. Hence there is no parity with passive servitude: in this case nothing is to be done, but the one prescribing can conduct himself passively; but he who is conscious of a debt, if he does not pay but conducts himself merely passively, does not act when he ought to act.

Therefore the absence of bad faith is required and can be lacking where there is something to be done or omitted, for example, that one pay or not build higher. But where an act is not required, but it suffices that another not use his right, properly there is no question of good or bad faith. For the obligation to do something, or to omit something, is one thing; the obligation to tolerate or permit something is another. For prescribing in the first case inculpable ignorance, or absence of bad faith, is required; for prescribing in the second case the negligence of another suffices, provided it was not obtained by fraud or by some other unjust means.

Chapter III: Concerning Injustice or Injury in General

Question One: Concerning Injustice Itself in Itself

S. Th. II-II, q. 59.

236. Injustice, etymologically, is the privation or violation of justice, just as injury is the violation of right, which is the object of justice. Hence according to the various significations of the word justice, various kinds of injustice are spoken of:

1. improperly and metaphorically so called, it is the complex of vices and every transgression of law, in which sense every sin and every violation of virtue is called injustice or iniquity (I John, III, 4 in the Vulg.), because it injures the right or law of God;

2. properly so called, it is the violation of the special virtue of justice strictly so called, and in this sense it is taken in the present treatise, and indeed

a) either actually, and then it is the violation of another's right, which is strictly due to him according to perfect equality;

b) or habitually, and it is the depraved habit which is opposed contrarily to justice and inclines the will to injuring the right of another.

Among more recent authors, however, injustice is usually distinguished from injury: the former more indicates a habit inclining one to act unjustly; the latter rather the act by which the right of another, properly so called, is violated, although it is also quite often taken in a restricted sense for insult alone, or an unjust injury to honor.

237. Injury, or actual injustice, is defined: the voluntary and efficacious violation or injury of another's right properly so called. It is said:

a) of another's right properly so called, because where there is not right simply so called, there cannot be injury strictly so called, although there can be sin against charity or also against another virtue; and thus it is distinguished from simple offense, by which the reasonable will or good pleasure of another is violated, so that there is for him a motive of displeasure or indignation, without violation of right; for example, if you refuse to point out the way to one who asks politely;

b) violation or injury, and not necessarily the infliction of damage, because there can be injury without damage, as an insult inflicted on someone with no one else present, or adultery committed secretly with no offspring conceived; and, on the contrary, not every infliction of damage is always unjust, when we are not held to abstain from damage and do not use an unjust means: thus, for example, to plant trees next to the field of a neighbor, to open a well, to condemn justly to death.

Moreover violation is an action by which violence is brought to bear and a right is injured against the will of the person; this can be done by a positive unjust deed, or by omission of that which from justice is due to be furnished to another. Everyone is judged to will to preserve what is his, and to be unwilling and to resist lest his right be injured by another. But if he consents, injury will no longer be present, because he renounces his right or the use of it; and therefore that ceases and can no longer be violated;

c) voluntary: for if it is voluntary neither in itself and directly, nor in its cause or indirectly, there can be merely material injury, by which an unjust thing is done; there is not formal injustice, by which something is done unjustly;

d) efficacious: for injury it is not sufficient to have the intention of injuring a right, or an unjust affection, nor from such an intention to posit a condition or mere occasion of injuring the rights of others; but it is necessary effectively to injure the right and to posit a cause which truly influences such injury. Injustice is in external things, not in mere intention.

238. Division of injury. — 1. By reason of morality, one injury is formal, by which someone knowingly and willingly injures the right of another; another is material, by which a right is violated involuntarily, for example, from invincible ignorance or by chance event.

2. By reason of effect, it is divided into mere injury and damaging injury, according as a right is injured without damage, or also damage is inflicted on him whose right is injured: thus secret adultery without offspring conceived is mere injury, but public adultery, or secret adultery by which offspring is introduced among legitimate children, is damaging.

3. By reason of the goods which are injured, it is divided into real and personal injury, according as the right of another is directly violated in external goods, or in his person, namely, in the internal goods of soul or body.

4. By reason of the act or mode by which it is done, it is divided into mental, verbal, and real injury, according as it is done by a merely internal mental act, by word or writing, or by deed and work.

239. Principle. Injustice is a mortal sin from its genus. — For it consists in harm inflicted on another, which is against charity, which moves one to will good to another. But through charity there is the supernatural life of the soul. Hence injustice of itself takes away charity, and thus brings death to the soul. For:

a) It is repugnant to the primary precept of the natural law, commanding one to preserve the right of each one uninjured, and forbidding one to cause to another the detriment which we do not will to be done to ourselves.

b) In the decalogue itself it is forbidden, in which only grave matters are set forth (Exod. XX, 13-17), which must be observed in order to have eternal life (Mt. XIX, 17-18); hence the unjust will not possess the kingdom of God (I Cor. VI, 8-10).

It is nevertheless venial, both from indeliberation or imperfection of the act, and from the quantity of the matter in slight things, or where the owner is known not to be much unwilling, at least reasonably.

For order is not gravely disturbed if right is injured in a slight matter. Therefore attention must be paid

a) to the private person whose right is injured, whether a right of great moment is injured, the sign of which is that he himself is much saddened or indignant, gravely unwilling; — or whether grave

harm or damage is inflicted on him, whether material or spiritual, which by its nature disturbs the liberty, security, or peace of men, dissolves public tranquility, the mutual union of men, or friendship;

b) to society itself, or to the damage which is inflicted on the public good: damage not only actual, but also virtual, which would be done to society if such an injury were committed with impunity or multiplied. For the common good, other things being equal, is preferable to private good. And therefore an injury is grave which, although it inflicts slight damage on some private person, gravely harms the republic, or is of a nature to harm it unless it is prohibited under grave obligation. Thus one who steals a horse, or an ox, or a hundred gold coins from a very rich man brings only slight harm upon him; and nevertheless he commits a grave injury, because such an action much harms the public good, since it is of a nature to overturn the order of society.

240. Observation. — St. Thomas notes, in art. 2, that someone is not properly called unjust from the fact that he does an unjust thing, but if he does it from a habitual and deliberate choice of committing injustice. He who does an unjust thing is not unjust 1) if this is done beyond intention and by accident, while he does not intend to do an unjust thing, for example, if he does it through ignorance, not thinking that he is doing an unjust thing: then the injustice is only material, because per se and formally he does not do an unjust thing; 2) even if knowingly and from intention he does an unjust thing, yet not from the end of injustice, but is enticed by some passion, such as anger, cupidity, or hatred, and wills the unjust thing: for then he acts unjustly and commits formal injustice, but he is not unjust, because he does not act from a habit of injustice by which with a habitual and deliberate will he seeks injustice. But he who from intention and from choice does an unjust thing, not on account of something else but on account of itself, namely, because injustice is pleasing to him per se, he is unjust, because he has the habit of injustice. Hence although acts of injustice are very frequent, the vice of injustice is rare.

Question Two: Concerning the Species of Injustice

S. Th. II-II, q. 59, a. 1.

241. By reason of object, injustice properly so called is divided into various moral species, according to the diverse species of justice, and according to the rights diverse in species to which it is opposed. And indeed: 1° there is illegal or general injustice, which injures legal right or the common good; and 2° particular injustice, which injures a particular right and is subdivided into a) injustice concerning distributions, which is the violation of distributive justice and is called acceptance of persons, and b) injustice concerning commutations, which is the violation of commutative justice and more properly and strictly is called injury.

Each one is a special vice, that is, specifically distinct from others, because it regards an object distinct in species, a diverse right.

242. Illegal injustice regards the common good, which it contemns and against which it acts intentionally. If someone without this intention injures the common good, so that he may satisfy his appetite, it is not a vice distinct in species, but is a general condition of every sin, because every sin harms the common good. But if someone sins, not only so that he may satisfy his appetite, but from contempt of the common good and from the intention of acting against it, thus it is a special vice of injustice because it has a special object specifically distinct from all others. And although, as to its essence, it is essentially a special vice, nevertheless it is causally general, as to intention, virtue, and

command, because in every sin a man can act from contempt of the common good, and through contempt of the common good he can be led to every sin. "Just as it pertains to the proper account of legal justice to attend to the due of the precept, so it pertains to the proper account of transgression to attend to contempt of the precept," q. 79, a. 2.

243. Particular injustice regards inequality toward another in things, while a man wills to have more of goods, for example, of riches and honors, and less of evils, for example, of labors and damages, than he ought, for example, by selling more dearly, buying more cheaply: thus injustice has special matter and is a particular vice, opposed to particular justice.

Particular injustice, especially commutative injustice, is divided into several diverse species, according to the various goods diverse in species and the rights to which it is opposed and which it injures, such as internal goods of soul or body, goods of marriage, external goods, goods of reputation and honor; — and according to the diverse unjust modes by which those things are injured and which are more or less against the will and right of another: thus, for example, robbery is distinguished from theft and from fraudulence.

244. Diverse injustices are graver, some than others, according to the species of good and right which is injured, and of harm which is inflicted on another, which are greater, some than others; — and in the same species, according to the greater or lesser quality and quantity of the harm brought and of the damage caused, whether to a private person or to society.

Question Three: Concerning the General Principles of Right by Which Injury Is Discerned

S. Th. II-II, q. 59, a. 3.

From the notion of injury handed down, certain general principles of right can easily be understood by which injury may be discerned, and in what precise sense they are to be interpreted.

245. Principle I and principal: To one knowing and consenting, neither injury nor deceit is done (reg. 27 in VI of law). — St. Thomas, art. 3, shows this almost thus:

Just as no one per se and formally does an unjust thing unless willing, so neither does he suffer it unless unwilling. For action as action proceeds from the agent himself; passion as passion is from another; hence the same one cannot be agent and patient under the same respect. Now the proper principle of acting in man is the will, and therefore properly a man does what he does willingly; otherwise the human action would not be from him as agent; — and properly he suffers what he suffers contrary to his will, otherwise he would suffer from himself willing and acting, and under the same respect he would be patient and agent; all of which things are repugnant. Therefore properly, per se and formally, no one can do an unjust thing unless willing, nor suffer one unless unwilling. — Yet accidentally and materially someone can either do an unjust thing unwillingly, if he works beyond intention, or suffer one willingly, as when someone gives more to another by his own will than he ought.

Therefore "if we speak formally, someone can do an unjust thing intending to do an unjust thing, and yet another will not suffer an unjust thing, because he wills the unjust thing; — and conversely someone can suffer an unjust thing, if unwillingly he suffers that which is unjust, and yet he who does this in ignorance does not do an unjust thing formally but materially only" (ad 3).

But lest the aforesaid axiom be understood wrongly, it must be noted that not any consent whatever on the part of the owner suffices so that formal injury is not had. Therefore:

1. Knowledge must be immune from error which, if it were recognized, would of itself hold one back from giving consent.

Thus he suffers injury who in the purchase of a defective thing consents but errs through deceit or fraud, and perhaps even through simple ignorance of it. Likewise he inflicts injury who obtains money from him whom he has falsely persuaded that he has rendered him an office of great moment.

2. Consent must be full on every part, namely:

a) on the part of the motive, altogether voluntary and free, and in no part involuntary, mixed with no involuntary element; hence the consent which someone gives unwillingly, or which is extorted through violence or fear, does not suffice: for insofar as he in some way does not will and does not consent, he has that from which he suffers, whence injury can be done to him.

Thus the traveler lacks due liberty who, from fear of death, hands money to a robber; or the workman who, compelled by necessity, accepts a wage less than what is due from justice; or the needy man who borrows money but with usurious interest.

b) on the part of the will, not merely permissive, by which one tolerates the injury, but positive, which really admits it.

Thus the martyr, who by suffering injury tolerates and remits it, or desires reproach, does not by that very fact yield from his right, but an act is required by which he positively abdicates it;

c) on the part of the object, which yields the whole and every right: for insofar as he does not yield, or even cannot yield, to that extent injury subsists.

The consent is not full of him who consents to be killed in a duel, or of the husband who consents that another abuse his wife by adultery, or of the cleric who renounces the privilege of the canon: for the rights of which there is question he cannot fully renounce, since he does not have full dominion over them. In such a case perhaps a man can renounce the right, or at least its use, insofar as it is on his own part, and if he does this, under this respect injury is not done to him formally, because he no longer suffers; but he cannot renounce the right insofar as it is on the part of God, of others, of the Church, or of the republic, to whom injury is always inflicted.[1]

[1] Many moderns are accustomed to say that these rights can in no way be renounced, and that the renunciation is invalid; hence they are accustomed to limit the principle to one consenting as to rights which he can abdicate. Certain unnamed authors already held this in the time of Lessius, of whom he says: "Certain doctors have limited this rule to those things in which by natural right we can yield, as in reputation and honor and other external goods of which we are masters. For in these, to one knowing and willing injury is not done, because since these are subject to our disposition, by the very fact that we will to be despoiled of them we deprive ourselves of our right and place it at another's judgment. It is otherwise in other things of which we are not masters but only guardians, as in life and the integrity of members, in a spouse, in offspring, and like things in which we cannot yield from our right. For in these, injury is properly done to him to whom these things have been entrusted or to whom they are bound, if they are destroyed or injured, even if this is done with him willing.

But that which we have said is more consonant with the accustomed manner of speaking: for no one who willingly has been injured in body by someone, or has given his spouse to be violated by another, will be able to say that injury has been done to him or to complain of injury (the radical right cannot

be lost, but the use of the right can be renounced). — Then the doctrine itself is Aristotle's, *Eth.* V, c. 9, where he shows that no one suffers injury spontaneously, even if he can spontaneously be injured and affected by damage, because for that it is required that he suffer unwillingly. Nor does he understand this only in those things which are subject to our disposition, as in reputation and riches, but also in others in which we cannot yield from our right, as in life and members; this is clear from the beginning of the chapter, where in Euripides he adduces the example of the one who kills his mother when she is asking and willing.

It is confirmed. For no one can do injury to himself or receive injury from himself for this reason: because he cannot suffer unwillingly from himself. For it cannot happen that someone wills to inflict damage on himself and at the same time does not will to suffer it from himself. St. Thomas teaches the same, q. 59, a. 3, ad 2.

Nor does it stand in the way that someone in those things cannot yield his right, and therefore that right which he has, that he not be injured in them, remains; because it remains only materially: for just as there can be material injury on the part of one ignorant, so also on the part of him upon whom it is inflicted. Yet there can be formal injury in respect of a third party who does not consent." Thus Lessius, *De Iustitia et Iure*, l. III, c. 7, dub. 2, n. 13.

This can be confirmed from Vermeersch: "a. Nothing is repugnant to the supposition that the will by which injury is admitted is a command or consent such as the principal author of an action is accustomed to have, suppose that you command another to kill. Now the principal author of an action must participate in every guilt of the action, and therefore in the malice of injury, if there was any. Yet from another source it is clear that no one can do injury to himself...

b. The right does not actually remain beyond the extent to which the reason of the right is borne, which is that the personal independence of man be preserved. But this is plainly preserved, so long as the property of a man somewhat unwilling is protected; yet it remains intact through every action to which someone has freely consented... Therefore an action of this sort is not opposed to an actually remaining right," *Quaestiones de Iustitia*, q. 4, c. 2, a. 1. Cf. also Billuart, diss. 6, a. 2. — The proposition 57 condemned by Innocent XI is objected. Resp.: In order that the condemnation be avoided, it is enough to affirm that adultery, even in this case, is against the good of offspring and of the sacrament; and from these heads differs in species from fornication, so that the circumstance of adultery must be declared in confession.

246. Principle II. To an owner who is irrationally unwilling, injury is not done. — An owner is not judged reasonably unwilling when he is held not to be unwilling or to consent, and indeed from a strict and rigorous debt. For if the owner is obligated by charity alone or by moral debt, the thing is not strictly and perfectly owed to the other, but only imperfectly; and therefore it cannot be strictly and rigorously exacted.

And although he who does not observe charity does not act reasonably, nevertheless he does act reasonably in this, that he wills that the other not seize it while he himself is unwilling.

247. Principle III. Unjust intention alone does not constitute injury. — For injury requires not only the mind of harming, or internal will, but also an external unjust work, or one injurious to right. Hence an unjust intention does not make injury, unless it truly causes an external unjust work, and

unless that arises from the real influence of a voluntary action of itself causing an injury of right. Hence:

1. Intention alone cannot determine an indifferent external work so that it is or is not harmful; yet the intention of a further external act, just or unjust, makes that indifferent work to be the beginning of something just or unjust. Thus he who takes up a lost thing or buys a stolen thing with the intention of returning it to its owner acts justly; but if with the mind of retaining it, he commits injury.

2. A work of itself harmful to another, to which someone positively has a right, is not unjust even if it is done from an unjust intention. A judge who condemns a guilty man from hatred so that he may harm him and his family, or one who in legitimate defense wounds an aggressor from hatred, is not unjust, although he sins against charity, because he has a right to condemn or to defend himself.

3. A work not even materially injuring the right of another is not unjust if it is done from an intention of harming. A private person does not act unjustly who from a depraved mind of harming does not extinguish a fire, or does not grant aid, because he is not held to this by strict right.

4. Indeed a materially unjust work, of which someone is only a condition, or occasion, or cause by accident, even if it is done from an unjust intention of harming, is not yet formally unjust, because he himself does not truly effect it, since it does not follow per se from his action. For intention does not change the efficacy of the cause. Thus he who takes away from a miser a thing of slight value, so that he may die from sadness, is guilty not of real death but only of a depraved intention.

Chapter IV: Concerning the Division of Justice

248. Justice is divided into various parts. — In the virtues, especially the cardinal virtues, integral, subjective, and potential parts are distinguished. They are called integral by similitude to the integral parts of a body, without which the body is not perfect, and therefore they are conditions, acts, dispositions, without which the act or use of some virtue is not perfect. — Subjective parts are those into which virtue is divided as a genus into species. — Potential parts are so called by similitude to the powers of the soul, which have power from the soul but not its whole power; and therefore they are habits which agree in some respect with a cardinal virtue, but in another respect fall short of its perfect notion. They are also called annexed virtues, in which the proper notion of some virtue is present in some way, but deficiently.

Which these various parts are for the virtue of justice must now be declared.

Question One: Concerning the Integral Parts

S. Th. II-II, q. 79.

249. In every justice there are two integral parts: to decline from evil, not any evil whatever, but that which is harmful to another (whether to a particular person, or to society); and to do good, not

any good whatever, but that which is due to another. These two are required for the perfect act of justice (whether general or particular), so that someone may be simply and perfectly just.

It is proved: For it pertains to justice to constitute and preserve equality in those things which are toward another. But someone constitutes the equality of justice by doing good, that is, by rendering to another what is due; and he preserves the already constituted equality of justice by declining from evil, that is, by inflicting no harm on another.

But it should be noted that to decline from evil does not import a pure negation or mere omission, namely, not to do evil (for this is not an act of virtue), but a positive movement of the will repudiating evil. And this act is the more imperfect and secondary act of justice, without which the other cannot be: to do good, which is the principal act and the completion of justice.

250. These integral parts are proper to justice itself. — Although every virtue declines from evil and does good, nevertheless these two are really distinguished only in the cardinal virtue of justice, and therefore they are integral parts of justice alone.

It is proved: The other virtues are concerned with passions, in which to do good is to attain the mean of virtue (for example, to take food in due quantity), and by that very fact to avoid either excess or defect; and therefore in those virtues to do good is the same as to avoid evil.

On the contrary, justice is not concerned with passions, but with operations and exterior things in which what is due to another is rendered: but in these, to make equality is one thing, and not to corrupt equality once made is another. For justice obligates one to render what is due according to equality; but this obligation can be violated in a twofold distinct mode: a) by not rendering that which is due; b) by taking away what has been rendered as due. In the first mode, if someone renders what is due, he does good; in the second mode, he declines from evil. Hence these two are really distinguished in justice alone.

In other words: justice tends to a twofold good: a) negatively, not to take away what belongs to another; b) positively, to render what is due. But while it does either of the two, it already constitutes the mean of virtue. For example, while someone pays a debt, he can sin by defect if he pays less than he ought, and by excess if he pays more from goods which he himself needs. And while he does not take away what belongs to another, he preserves the mean already constituted. And thus one who does not take away what belongs to another already performs an act of justice, just as he who pays a debt does. Hence there are two distinct acts.

251. Opposed sins. — To declination from evil there is opposed the special vice which is called transgression, that is, an action against a negative precept, just as to the operation of good there is opposed omission, which imports the passing over not of just any good, but of a due good.

These occur materially in some way in every species of sin, because in every species sin is against a divine precept, just as it also omits a due good. But they are special sins against justice (legal or particular) if they are done formally, insofar as someone intends to act against a negative precept, precisely because it is to act against that which is due; and thus he contemns the due;[1] — or omits some good precisely because this is due. These two are really distinct, just as the two parts of justice to which they are opposed.

[1] Nevertheless transgression as a special sin is not to be confused with formal disobedience. Obedience regards the precept as it is from a superior, because it is good to be subject to a superior as such; legal justice regards the precept as procuring the common good and as due by law on account of the common good, without considering whether a superior commands. Hence formal disobedience is contempt of the precept as brought by a superior; transgression is contempt of the precept as precept or as due.

Thus, however, they are a special sin in two ways:

a) "In one way, according as it is opposed to the genera of sins opposed to other virtues: for just as it pertains to the proper account of legal justice to attend to the due of the precept, so it pertains to the proper account of transgression to attend to contempt of the precept" (q. 79, a. 2). And from the opposite side, "good under the aspect of due properly pertains to justice: to legal justice indeed, if the due is taken in order to divine or human law; but to special (or particular) justice, according as the due is considered in order to one's neighbor. Hence in that mode in which justice is a special virtue, omission also is a special sin distinct from sins which are opposed to other virtues" (a. 3). And although omission is opposed to every virtue because the good of any virtue can be omitted, nevertheless "it is directly opposed to justice...: for there is not an omission of the good of some virtue except under the aspect of due, which pertains to justice" (ad 4).

b) "In another way," according as they are really distinct from each other, just as the two integral parts of justice to which they are opposed. Thus transgression of a negative precept "is distinguished from omission, which is contrary to an affirmative precept" (a. 2); and "in that mode in which to do good, to which omission is opposed, is a certain special part of justice distinct from declination from evil, to which transgression is opposed, omission also is distinguished from transgression" (a. 3).

Other things being equal, the sin of transgression is graver than that of omission: 1) because it is easier to abstain from evil than to fulfill good; 2) because transgression is farther distant from virtue. For a contrary is farther distant from its contrary than the simple negation of it (for example, black from white more than non-white). But transgression is contrary to the act of virtue; omission of the act imports the negation of it. Therefore, speaking simply and absolutely, transgression is a graver sin than omission, although some omission can be graver than some transgression. Thus, for example, passing violence is less grave than the habitual absence of love or honor due.

Question Two: Concerning the Subjective Parts

S. Th. II-II, q. 58, a. 5, 6, 7; q. 61.

252. Justice strictly so called has three subjective parts. — For thus the diverse species of a virtue are called. But justice strictly so called is divided into two species: legal or general (*algemeene of wettelijke*), and particular (*bijzondere*), and this latter is subdivided into two others: commutative (*ruilende*) and distributive (*verdeelende*). And thus there are three species of justice, or subjective parts, and only three.

It is proved: There is a threefold species of due or of right to be rendered: for the good due is either the good of the community as such (the common good), which is to be rendered to it by private persons who are its members; — or the good of a singular person, which is to be rendered to each one, either by society itself, — or by other private persons.

Hence a threefold order is required: the order of part to whole — the order of whole to part — the order of part to part. The first regards legal justice, which orders subjects to the republic; the second,

distributive justice, which orders the republic to the subjects; the third, commutative justice, which orders a private person to a private person. A fourth order is not possible, and therefore neither is a fourth species of justice.

Legal justice is that by which the members of society as such (whether the prince or the subjects) give to society whatever is owed to it as such for procuring the common good. Distributive justice is that by which the republic, or its presiding officers, distribute common goods or offices and burdens among the members of the community according to the gifts, merits, faculties, and needs of each. Commutative justice is that by which a private man, or even society acting as a particular person, renders to a private man that which is owed to him from strict right.

253. The three species of justice differ among themselves:

1° By reason of object,

both a) principal object, which is the due of private persons toward society, — or the due of the community toward private persons, — or the due of a private person toward a private person.

Moreover this threefold due, according to St. Thomas, is of a diverse account: "for the account of common good and of singular good is diverse, just as the account of whole and part is diverse" (q. 58, a. 7, ad 2), and "what is common is due to someone in one way, and what is proper in another way" (q. 61, a. 1, ad 5);

and b) secondary object, which comprises either the acts of all virtues insofar as they can be ordered to the common good; — or distributions of goods and burdens; — or commutations among private persons: for although distributions and commutations pertain to the same things, nevertheless the use is diverse.

2° By reason of subject:

a) legal justice is principally and, as it were, architectonically or directively in the prince and rulers, as in those commanding the things which pertain to the common good; in subjects it is secondarily and, as it were, administratively, as in those executing the things which have been constituted by rulers and laws;

b) distributive justice is properly and formally in the superior presiding over common goods and distributing them; in subjects it is participatively, insofar as they are content with a just distribution;

c) commutative justice is in private persons.

Hence he to whom something is owed and he who owes are physically adequately distinct in commutative justice; in legal and distributive justice they are not physically adequately distinguished, but only morally, insofar as according to the estimation of men and according to the consideration of reason, one moral or juridical person is that of society, another that of the members.

3° By reason of equality:

A. In commutative justice there is absolute equality of thing to thing (for example, of what is given to what is accepted, of wage to labor, of the thing restored to the thing taken away), and therefore the mean of the thing is taken according to arithmetic equality, for example, 100 to 100.

B. In distributive justice there is relative equality of the proportion of things to be distributed to the persons to whom they are to be distributed; so that, just as one person exceeds another in dignity or need, so also the thing which is given to one person exceeds the thing which is given to another: for that which is owed by the whole to the part is so much greater as the part has a greater principality (merit, dignity) in the whole. And therefore the mean of the thing is taken according to geometric proportion, in which the equal is attended to not according to quantity but according to proportion, for example, as six is to four, so three is to two, because in each there is the same proportion.

C. In legal justice there is relative equality of the proportion of the person to the community.

254. Conclusion to be noted. — Hence commutative justice of itself obligates to restitution, because restitution makes equality of thing to thing; as is clear from the very notion of restitution, which is to render to another his own proper thing. — But the same is not proved for distributive and legal justice, insofar as they are such, because they make equality of thing to person, or of person to community.

Common goods, namely, are not simply and immediately the goods of the members, as if they were appropriated or owed to them, as their own proper things and their own possession (for they are goods of the community), but they pertain to them only under some respect and mediately, namely by destination, insofar as in them there is dignity or need for obtaining those goods.[1] Hence neither is there a complete right to the thing: a strict right to such or such a good; for these things do not yet pertain to this or that man, but to all. There is only a certain beginning of right (a non-strict right), by which they are owed by reason of condignity and of the community of which they are parts, insofar as the things which are of the whole are in some way owed to the parts.[2] Likewise, conversely, the goods of the members pertain only mediately to the community. The goods, namely, of the community are for the sake of the subjects, but they are not the subjects' goods; and conversely, the goods of the subjects sometimes ought to be ordered to the community, but they are not goods of the community. — And therefore in those goods, pertaining to distributive or legal justice, restitution is not proved to be owed, because no one is deprived of his own proper thing.

[1] A right to a common thing does not become a right to a private thing.

[2] "Just as part and whole in some way are the same, so that which is of the whole in some way is of the part; and thus when from common goods something is distributed to individuals, each one in some way receives what is his own," q. 61, a. 1, ad 2. Similarly, "the part is that which belongs to the whole; whence also any good of the part is orderable to the good of the whole," and can be due (q. 58, a. 5).

This is more confirmed: a) the good which commutative justice regards and commands (namely, that each one not be without his own things) perseveres as possible and commanded, whether before this justice is violated by unjustly taking away the thing of another, or after it has been violated. For once the injury has been posited, the other remains, because of your deed, deprived of his own thing, and right reason demands that by your deed this disorder cease; this happens through restitution to the equality of the thing or its equivalent.

On the contrary, b) legal justice: for if an act which ought to have been ordered to the common good was not ordered to it, it now becomes impossible to refer it, or to reduce the ordering of a past act to the common good; other new acts can be ordered, not that one. But no virtue can obligate to the impossible.

Similarly, c) distributive justice: for when this has been violated, it is not possible to restore the thing to its former state; for no one had a strict and complete right to the just portion, because the things distributed were not from the goods of someone, but from the goods of the community. Hence neither was the strict complete right of him who had less violated, because he was not deprived of his own proper thing in the strict sense. But after the distribution has been made, each acquires a strict right to his portion, nor can he be despoiled even partially without violation of commutative justice; and if the distributor restores from his private goods, for that reason he does not repair the unequal distribution of common goods; but if in a second distribution of goods the unjust distributor wishes to compensate, he will violate distributive justice in this second distribution, and the first distribution will remain unjust.[3]

[3] It could be objected: 1° By the injury of distributive justice, inequality is introduced; this ought to be repaired. Therefore. — Resp. I distinguish the major: inequality is introduced without a permanent right to the goods which ought to have been received, concedo; with such a right, nego.

Yet by accident legal and distributive justice obligate to restitution, if commutative justice is at the same time injured, as often happens; as if a distribution is made from contract, for example, a competition, or if legal justice commands an act of commutative justice.

2° It is urged: He who was unjustly passed over has, from the unjust omission itself, a title so that he may receive compensation in a new distribution. Therefore. — Resp. I distinguish: insofar as this passing over leaves aptitude or present dignity on account of which some good is formally conferred, for example, a public office, concedo; insofar as compensation for the passing over would be the formal and sufficient reason, nego. For if after a distribution of offices badly made, the candidate who was more worthy has become less suitable because of illness, old age, etc. (or if a new one arises still more worthy), nothing now remains for him to expect for himself.

255. Corollaries. — 1. In every virtue, the general just commensuration is to that to which it ought to be equated, or the measure of reason; for justice properly so called, equality is either arithmetic equality of thing to thing, which is invariable for anyone, rich or poor, prince or subject; — or geometric equality of proportion to proportion.

2. Distributive justice according to itself in every act directly attends to the dignity and qualities of the person; on the contrary, commutative justice does so only by accident and according as the thing is diversified thereby.

For, as St. Thomas says, q. 61, a. 2, ad 3, commutative justice also considers the person, but indirectly, "insofar as the condition of the person contributes to the quantity of the thing: for the injury is greater if a prince is struck than if a private person is struck. And therefore the condition of the person in distributive justice is attended to according to itself (insofar as it per se influences the proportion of the thing); but in commutative justice according as by this the thing is diversified," and therefore by accident. Cf. Cajetan on this place.

3. "Legal justice attends to a certain equality tempered from each of the aforesaid: for insofar as any part gives to the whole, for example, any citizen to the city, according to the proportion of his powers, which are not the same in all, it seems to preserve an equality of proportion. But insofar as any part in rendering to the whole ought not to attend to what another renders, and

therefore ought not to preserve proportion between that which another gives and that which it itself repays, but each part, without any account taken of the others, ought to give as much as it can and as is required from it, thus there seems to be a certain equality of quantities or arithmetic equality." Thus Goudin, in *Philosophia*, III, q. 6, a. 2, § 1.

It must be noted, however, that the equality which it primarily regards is equality of proportion; only secondarily and consequently, equality of quantity.

4. In commutative justice there is given counter-suffering or reaction, that is, recompensation of suffering to the preceding action, and indeed according to equality, so that the recompensated suffering or reaction is equal to the action, and someone suffers as much as he himself has done; as if, if he struck, he is struck back; if he inflicted damage, he is also damaged in his own thing; if he bought a thing, he also gives his own thing. But this recompensation or counter-suffering is not always to be attended to according to material equality (or in the same species), but according to equality of injury; for example, if someone strikes a prince, he is not only struck back, but is punished much more gravely; and if he steals, he must not only restore, but also repair the damage inflicted on the private person and on the republic; and in commutation it would not always be equal "if someone gave his own thing, receiving the thing of another, because perhaps the thing of another is much greater than his own" (a. 4).

But in distributive justice there is no counter-suffering, because in it equality of thing to thing, or of suffering to action, is not attended to, but according to the proportionality of things to persons.

256. Observations. — 1. Some among more recent authors, after Schmalzgrueber, posit a fourth species of justice, namely, vindictive justice, by which superiors afflict guilty subjects with due punishments for the common good. Yet this is rightly reduced to one of those named above: to commutative justice, insofar as the prince or judge inflicting punishment is held from strict office or quasi-contract to just punishment; — to legal justice, insofar as he acts with regard to the common good; — to distributive justice, insofar as he proceeds by geometric proportion and decrees punishments proportionally to the gravity of delicts; indeed to commutative justice, if he punishes in order equally to repair damage inflicted on someone. But insofar as vengeance is sought before the judge by a private person injured, in that person there is a virtue which moderates the appetite for external vengeance; yet it is not justice strictly so called, but a potential part or virtue annexed to commutative justice, because a private person is not strictly held to seek punishment; — but the prince or judge is strictly held to punish.

2. Several more recent authors hold only commutative justice as justice strictly so called,[4] but the others are called justice by analogy: for legal and distributive justice are not toward another perfectly distinct, because the part is that which belongs to the whole, and the whole is that which belongs to the parts. Yet better with St. Thomas it is said that in them "the proper account of justice" is found (q. 58, a. 5): for society is a moral person distinct from the private persons who are its members, and has a perfectly distinct end; and therefore there is sufficient otherness so that between them there can be an order of justice.

[4] Thus, after Lugo, Waffelaert, Pottier, the Mechlin authors, Cathrein. On the contrary, the Thomists, and also Vermeersch.

3. Social justice understood in the strict sense is nothing other than legal justice, which directly orders to the common or social good and renders what is due to the community. Certain authors, however, also call distributive justice social, but not rightly, because although it is exercised by society, nevertheless it does not render what is due to society, but to private persons. In a broader and general sense every justice is social insofar as it orders us to another.

Recently it has been said that social justice is a certain justice, specifically distinct from the others, by which the diverse classes or orders of citizens will to give to one another a part of the common good, especially under the economic respect.[5] — But individuals, just as social orders, ought to will this; moreover, that justice of a diverse genus is exercised by the orders of citizens or by individuals, concerning economic goods or concerning others of a different genus, is a merely material difference from which a diverse species does not arise; — furthermore, since they say that this is done formally with regard to the common good, for this legal or general justice itself fully suffices, and the other virtues under its direction and command; — finally, neither is a fourth species of justice possible, as we noted in n. 252.[6]

[5] Thus Hentzen, *Commentaar op Quadragesimo anno*, I, 3° B.

[6] Cf. Kors, *Sociale Rechtvaardigheid*.

Moreover, as Pius XI acknowledges in the encyclical *Divini Redemptoris* against the communists, March 19, 1937, "it belongs to social justice to demand from individuals all that is necessary for the common good." And although therefore in his encyclicals the Pontiff wished to insist much that among individual citizens, and among individual classes or social orders of citizens, there be a more equitable distribution of goods — which of itself regards distributive justice — just as also that everyone's strict rights be preserved uninjured — which according to itself belongs to commutative justice — nevertheless those things do not belong to social justice except insofar as they are necessary for the common good.

4. In present times they speak much of international justice; but this is not a distinct species of justice, but is easily reduced to the species enumerated. For since the matter concerns due relations among various nations, which justice certainly ought to rule, nations must be considered as individual moral persons. Furthermore, the society of nations can be conceived and considered as a certain higher society and as the common good of all nations. And thus it is commutative justice itself which obligates individual nations to render to others what is owed to them; — and if certain goods accrue to them and are distributed by the society of nations, this ought to be done according to the rules of distributive justice, just as conversely, those things which individual nations are obligated to furnish and owe toward their common society and the common good of all and of the whole of humanity, pertain to legal justice.

Question Three: Concerning the Potential Parts

S. Th. II-II, q. 80.

257. Potential parts are annexed virtues which agree in something with the cardinal virtue, but in another respect fall short of its perfect account; whence they do not have the whole power of the cardinal virtue. This, namely, is concerned with the principal and more difficult matter; the annexed virtues are concerned with secondary, less difficult matter, in which they imitate the principal virtue.

Justice, therefore, is concerned with that which is principal in operations, namely, a strict due which is rendered even to equality in every way; — the joined virtues are concerned with a due which either is not strict, or is not rendered to equality.

258. The principal potential parts of particular justice are eight, as St. Thomas shows: Justice consists in this, that what is due is rendered to another according to equality. But several virtues agree with justice in this, that they are toward another, which nevertheless fall short of justice:

A. three fall short in rendering the due, because they do not render an equal thing, that is, they do not render as much as has been received, namely:

1. religion (to which, sin being supposed, penance is added) toward God;

2. piety toward parents;

3. observance toward those constituted in dignity;

B. others fall short because they do not render a strict due which is owed by law, but a moral due which is owed from the honesty of virtue, whether a) that due is necessary for the honesty of morals, either by reason of the one owing:

4. truth, by which someone shows himself to another as he is; or by reason of him to whom it is owed:

5. gratitude, by which someone compensates another in goods; and

6. vindication, in evils; — or b) it is a due insofar as it only contributes to greater honesty of morals, such as

7. liberality, to which mercy is akin,

8. affability, and certain others which could be called by the general name equity.[1]

[1] Here, ad 3. This equity is not taken in the same sense as epikeia, which is special equity pertaining to legal justice. Concerning this it was said in the introduction on Laws, n. 286-287, and it will be said below, n. 891.

Therefore those virtues are rightly said to be annexed to justice.

Second Part: Concerning Legal Justice

S. Th. II-II, q. 58, a. 5 and 6.

259. Legal justice is the virtue which inclines men to giving to the community what is owed to it, or which orders acts due to the common good to this end.[1]

[1] St. Thomas can be compared, *in Eth.*, l. I; *De Reg. princ.*, l. I, c. 14 and 15; II-II, q. 58, a. 5 and 6, with the commentary of Bannez; — Vermeersch, *Quaestiones de Iustitia*; — Michel, *La Question sociale et les principes théologiques. Justice légale et charité*; — M. St. Gillet, *Conscience chrétienne et Justice sociale*; — and especially A. Pottier, *De Iure et Iustitia*, whose hearers in school we were, and whose doctrine we here report compendiously with a grateful mind. See also Hering, *De genuina notione iustitiae generalis seu legalis*, in *Angelicum*, 1937.

It is a special virtue, distinct from the others, by which one is borne toward the good of the community of which he himself is a part; per se it directly regards, as its proper end and object, the common good, and therefore orders subjects to the republic. It therefore renders what is due to the community as such, and its formal object is the special honesty of procuring the common good. But this common good is a sufficient motive so that some honest act can be terminated at it on account of itself, as if someone establishes or observes a law, or serves in war, or pays tribute on account of the good of the republic. Therefore there is some special virtue which is borne toward it.

It is rightly called legal, because in the community the actions of private persons are ordered by law to the common good.[2] It is also called general justice, not indeed by predication and by reason of essence, as if it were every virtue or the complex of all virtues; but according to virtue and by reason of matter, because it tends to the general good and can order the acts of all virtues to this good.

[2] I-II, q. 90, q. 2, ad 1; II-II, q. 58, a. 5.

But by its formal account it differs from every other virtue which has a certain likeness with it:

a) from obedience, which acts because something is commanded by a legitimate superior; hence obedience intends to obey the commanding superior, without attending to the common good, while legal justice procures the common good, even if it is not specially commanded;

b) from piety toward one's fatherland: piety regards the fatherland according as it is the principle of our procreation and education; legal justice according as it is the common good. Moreover, nothing prevents one of the two motives from being attended to while abstracting from the other;

c) from observance, which renders the worship of honor and submission due to a superior, while legal justice renders what is due to the community;

d) from charity toward one's neighbor: for even he who neither loves God nor his neighbor on account of God can do many things from the motive of the common good; and conversely, one can be led to acting from charity without being specially moved by the common good.

260. Subject of legal justice. — Legal justice inclines the members of the community, whether superiors or subjects, to rendering what is due to the community as such. But it is in the prince or superiors principally and, as it were, architectonically, insofar as through laws they establish and command those things which pertain to the common good and to the best administration of the republic, so that each one conducts himself as the common good and perfection of the republic demand. Hence the laws and statutes of the prince, and the remaining things which the rulers of the republic commit to execution, insofar as they direct them to that end, pertain to this virtue. In subjects it is present secondarily and ministerially, as in those committing to execution the things which have been constituted by rulers, while they accommodate themselves to the laws for the same end. Hence Aristotle says that the object of this virtue is not the equitable but the legal, or that which is conformable to law.

Therefore in the prince it is principally, because it belongs to him to govern, that is, to move toward the end; therefore to move toward the common good pertains to him as to the principal cause; — also architectonically, because the prince in procuring the common good is the directive, as it were architectonic, and dispositive cause. In subjects it is secondarily, because under the prince they ought to lead toward the end; — and as it were ministerially, that is, executively.

261. Matter to be treated. — In the first place, one must speak of legal justice, which excels particular justice, because it immediately pursues the common good itself, while particular justice immediately intends private good; but the common good excels private good, just as the whole is preferable to the part. We shall speak:

1. of pursuing the common good, which is the proper object of legal justice;

2. of procuring the common good;

3. of the defense of the common good.

Question One: Concerning the Common Good to Be Pursued

S. Th. II-II, q. 58, a. 5 and 6; I-II, q. 90, a. 2 and 3.

262. Legal justice is necessary to man, by which he may order his acts to the common good of the whole society. For it is natural to man to live in society, because outside society he cannot attain in this life his end, temporal happiness or perfect sufficiency of life, nor consequently eternal beatitude. But for man living in society it is necessary to order his acts to the common good: for happiness or sufficiency of life must be obtained by the operations of individuals coordinated among themselves toward that end which is to be procured for all existing in society. But to order acts to the common good pertains to legal justice. Therefore legal justice is necessary to man.

263. How the common good is to be obtained. — Society is not a mere aggregation but an organized multitude. A community, namely, is not a mechanical whole, coalescing from homogeneous parts merely placed side by side and for this reason alone counted under one enumeration of multitude, as happens in a heap of wheat; — but it is an organic whole, coalescing from heterogeneous parts fitted among themselves in due proportion and coordinated to one end, from which the whole obtains its species and name, as happens in a clock, in a tree, in the human body. Hence this end is obtained by the active conspiring of the individual parts, acting according to their mode and according to their function.

"The whole which is a civil multitude," says St. Thomas, I *Eth.*, lect. 1, "has only unity of order, according to which it is not something simply one. And therefore a part of that whole can have an operation which is not the operation of the whole, just as a soldier in an army has an operation which is not that of the whole army. Nevertheless the whole itself also has some operation which is not proper to any of the parts, but to the whole, for instance the conflict of the whole army; and the dragging of a ship is the operation of the multitude dragging the ship."

Thus those living in society sometimes exercise operations by which they are referred to themselves or to other private persons; but there are other operations by which they are immediately referred to the whole society, for example, that they establish or observe law, or that each one contribute into the public treasury the due part from his own goods. These operations are specifically distinguished, as being ordered to a diverse good.

264. The common good is spoken of by opposition to private good: not indeed in the sense that it excludes private good, for the common good redounds into private good; but because the common

good is something more excellent and more extensive than private good and specifically distinct from it.

The common good, namely, is not a heap of particular goods or a mere resultant from particular goods; but the good of the whole collectivity, the common happiness of society. Hence "they do not differ only according to much and little (quantitatively), but according to formal difference (qualitatively and specifically). For the account of common good and of singular good is diverse, just as the account of whole and part is diverse" (q. 58, a. 5, ad 1), or the proper good of the individual is one thing, and the good of human nature as such is another.

Therefore the common good is not an addition of particular goods: for an addition of opposed individual utilities could not constitute a common good which serves all and from which the right of drawing is open to all. But it is a higher, more eminent human good, although of the same order.

But this good is to be procured in society:

1. by the social operation of the whole, by which, with forces coordinated, individuals conspire toward the common good of the whole according as it has been prescribed by law to individuals;

2. by the individual operations of individuals: for all his operations, and not only those by which he is directly referred to others, it is fitting for a man living in society to refer to the common good, according to the principle: the part is for the sake of the whole. "All," says St. Thomas, q. 58, a. 5, "who are contained under some community are compared to the community as parts to the whole; but the part is that which belongs to the whole; whence also any good of the part is orderable to the good of the whole."

Hence although from every act of a particular virtue something flows back into the common good secondarily and mediately, insofar as the good of the part is indirectly also the good of the whole, nevertheless this is by accident when the proper account of each virtue is considered; and therefore "there must be another higher virtue, which (properly and per se) orders all virtues to the common good, which is legal justice and is another virtue by essence from every virtue" (q. 58, a. 6, ad 4).

There is an obligation of acting toward the common good: 1. special, a) if positive law prescribes something on account of the common good; b) likewise if in determinate circumstances to do or omit something is necessary to the common good, as can happen for the use of the right of suffrage: then the natural law obligates to this; 2. also general, by which not only is each one prohibited from harming the common good, but also he ought so to do all actions which he posits as a member of the community that they are at least virtually ordered to the common good of society: for the part as part is for the good of the whole.

265. The common good is the common temporal happiness of the whole society, or perfect sufficiency of life, duly subordinated to eternal beatitude: human well-being, or the harmonious plenitude of human goods, human good in plenitude and according to the proportion which human nature requires, perfect human good as it can be had on this earth.

But this consists principally in the good of human virtue, intellectual and moral. For since man is in potency to act, the perfection or happiness of man is in the act of virtuous operation, which, namely,

is conformable to his rational nature. Hence essentially it is in those virtues which must be exercised for perfect human life, whether contemplative or active; integrally in the remaining sciences and arts; consequently in common friendship and peace, which connaturally follows from virtuous life; instrumentally in a certain abundance of external goods, whose use is required in a well constituted society. Hence St. Thomas, I-II, q. 4, a. 7:

"For imperfect beatitude, such as can be had in this life, exterior goods are required... as serving beatitude instrumentally, which consists in the operation of virtue. For man in this life needs the necessities of the body, both for the operation of contemplative virtue and also for the operation of active virtue, for which several other things are also required, by which he may exercise the works of virtue. The reason for this is that all exterior goods of this kind are either required for the sustenance of the animal body, or are required for certain operations which we exercise through the animal body, and which befit human life."

It should be noted that for the common good it is not required that it immediately touch all and each member of society, but it is enough if it regards all mediately and by redundancy. There is a twofold good of the republic: one which per se and immediately is ordered to the use of the whole community and is not under the dominion of anyone, such as temples, sacred things, magistracies, public roads, common pastures, etc. Another which immediately is ordered to private good, but secondarily and by a certain redundancy to the common good; and this in two ways: a) from the fact that each person is a part of the community, the good of each, provided it is not harmful to others, is for the advantage of the whole community; whence they say that it is expedient for the republic that citizens be wealthy and that no one use his own thing badly; — b) if the good regards the common utility of citizens of some order, or condition, or office, or place, etc., insofar as it pertains to the good of the republic that opportune provision be made for its diverse orders, conditions and offices, and for its individual parts and organs. For, as Leo XIII says, "among the not few nor slight duties of rulers consulting well for the people, this especially stands out: that they protect each order of citizens equably, preserving inviolate that, namely, which is called distributive justice."

The common good or perfect sufficiency of life is obtained in a perfect society. But the life whose perfect sufficiency is to be procured is twofold: eternal life, which is to be procured through the Church of Christ, and temporal life duly subordinated to eternal life, to be brought forth through the city and in the city; hence:

1. Legal justice exists in a twofold perfect society: namely, in civil society and in the Church.

2. But since relations among peoples become more frequent from day to day, and since for perfect sufficiency of human life and common peace international pacts are now made and required, indeed a certain society of nations has been constituted, legal justice must now be extended to the common good of nations; — indeed, even apart from special present-day conditions or human conventions, the whole of humanity seems to be considered as one society of rational beings under God, which is ruled by natural and divine law:[1] for if there were no civil society, there would still be the common good of humanity to be pursued. Hence the goods of individual nations must be subordinated to the common good of the whole of humanity.[2]

[1] I-II, q. 100, a. 5.

[2] Thus Fr. de Victoria; Suarez also seems to admit this, *De Legibus*, l. II, c. 19, n. 9. — Aptly Pius XI, in the encyclical *Quadragesimo anno*, May 15, 1931: "Indeed it is fitting that the various nations, by associated studies and labors, strive for this, that, since in the economic order they depend very much upon one another and need mutual help, they promote by wise pacts and institutions a certain favorable and happy conspiracy of peoples in economic matters." And below: "The public institutions of peoples themselves ought to conform the whole human fellowship to the necessities of the common good or to the norm of social justice; by which it cannot happen otherwise than that even that most grave part of social life, which is the economic order, return to a right and sound order."

3. On the contrary, in communities or particular societies it must be said that there is not properly a special legal justice, because those societies tend to some particular good, and do not regard or procure a common good specifically distinct from the good of the whole Church or city, but help procure it in a partial or particular way. Hence, since the particular good of these societies is a mode or part of the common good of the whole perfect society, the common legal justice suffices for ordering the acts of members to the common good of particular societies.

4. Specifically, it is not in domestic society, which constitutes something particular for the particular good of the members. For it is not a union of distinct persons, as citizens are united in the city; but each person is something of another: husband and wife constitute one principle of the generation and education of offspring; children are something of father and mother; servants with and under the master are one principle of operation for procuring the necessities of domestic life. Hence in the family there is not given a common good specifically and adequately distinct from the particular good of the members.

266. Corollary. — Since the end of society is the end itself of men, and the perfection of man itself, or the sufficiency of life, is the end to which the city, from the nature of things, is ordered, it follows:

1. Where in the city the citizens did not have aid for procuring for themselves sufficiency of life, the city would not obtain its end and would become useless.

2. Where the city itself stood in the way of the sufficiency of life to be procured, it would act against natural justice and would have to be fled rather than sought.

3. Where many citizens did not obtain sufficiency of life, and there were no other means for procuring it, not only the right but also the office of the city demands that it intervene.

Question Two: Concerning the Procuration of the Common Good

S. Th. I-II, q. 96, a. 1, 2, 3.

267. The common good is composed of many things.[1] — Principally it is the intellectual and moral good of virtue; instrumentally, the sufficiency of exterior goods whose use is required in a well constituted society for the exercise of virtue. Hence legal justice assumes as its proper matter all things which conduce to the exercise of virtue and to a due abundance of goods.

[1] I-II, q. 96, a. 1.

Hence the office of the republic is not merely negative: order to be preserved, rights, goods, and liberty to be protected, existing or imminent evil to be warded off; but also positive: the common good to be promoted, by a certain general action by which the prosperity of the collectivity arises and,

as it were, spontaneously flows out to all. "Therefore," says Leo XIII, "those by whom the city is ruled ought first to contribute their labor generally and universally by the whole plan of laws and institutions, namely, by bringing it about that from the very conformation and administration of the republic prosperity, both of the community and of private persons, freely blossoms forth."[2]

[2] Which Pius XI again inculcates in the encyclical *Quadragesimo anno*, May 15, 1931, I, 2.

Let St. Thomas be heard:[3] "The king, therefore, instructed in the divine law, ought to direct his chief study to this: in what way the multitude subject to him may live well. This study indeed is divided into three things: first, that he institute a good life in the subject multitude; second, that he conserve it once instituted; third, that he lead it, once conserved, on to better things. For the good life of one man two things are required: one principal thing, which is operation according to virtue, for virtue is that by which one lives well; but another secondary and, as it were, instrumental thing, namely, the sufficiency of bodily goods, whose use is necessary for the act of virtue. Yet the unity of man himself is caused through nature; but the unity of a multitude, which is called peace, must be procured through the industry of the agent. Thus, therefore, for instituting the good life of a multitude, three things are required: first, that the multitude be constituted in the unity of peace; second, that the multitude, united in the unity of peace, be directed to acting well...; third, that by the industry of the king there be present a sufficient abundance of things necessary for living well...

[3] *De Regimine principum*, l. I, c. 15.

"Therefore, for the institution of a good multitude... there remains, pertaining to the office of the king, that he be solicitous about promotion; and this is done when, in the several things which have been premised, if anything is disordered, he studies to correct it; if anything is lacking, to supply it; if anything can be done better, to perfect it."

*268. The material object of legal justice, considered generally,** is the good of any virtue whatever, insofar as it is ordered to the common good; as St. Thomas shows, q. 58, a. 5:

"All who are contained under some community are compared to the community as parts to the whole; but the part is that which belongs to the whole; whence also any good of the part is orderable to the good of the whole. According to this, therefore, the good of any virtue whatever, whether ordering some man to himself, or ordering him to certain other singular persons, is referable to the common good, to which justice, namely legal justice, orders. And according to this the acts of all virtues can pertain to legal justice." "And because it pertains to law to order to the common good,... through this justice man agrees with the law ordering the acts of all virtues to the common good."[4]

[4] From this it is clear that the legislator can also command acts of beneficence toward the poor.

From these things it is inferred:

1. that it pertains to the legislators of the republic to establish not only those laws which pertain to justice as a cardinal virtue (as many present-day economists think), but also those which look to the other virtues, namely fortitude and temperance and the rest;

2. that the axiom, *The State is the guardian of the just*, is false and contrary to the whole tradition of the scholastics if it is understood in an exclusive sense of particular justice alone, namely commutative or even distributive justice; but it must be understood of legal justice, whose

matter is the matter of all virtues, whose acts nevertheless are not commanded except under the aspect of the just, or of what is due to the common good;

3. consequently, that all vices also can be prohibited;

4. nevertheless, just as law cannot command all the acts of the individual virtues, so it is not expedient to restrain all the acts of individual vices; but in the matter of any virtue whatever it can command, and in the matter of any vice whatever it can prohibit, those things which are required by the common good, according as in determinate circumstances, in proportion to the condition of the people's weakness and virtue, it is possible (I, n. 280).[5]

[5] Cf. I-II, q. 96, a. 3, ad 1, and a. 2.

269. The material object of legal justice, considered more specifically in present-day necessities, is indicated by Leo XIII in the encyclical *Rerum novarum*:

"Therefore those by whom the city is ruled ought first to contribute their labor generally and universally by the whole plan of laws and institutions, namely, by bringing it about that from the very conformation and administration of the republic prosperity, both of the community and of private persons, freely blossoms forth. For this is the duty of civil prudence, and the proper office of those who preside.

"Now those things especially make cities prosperous: uprightness of morals; families rightly and orderly constituted; the guardianship of religion and justice; the moderate imposition and equitable distribution of public burdens; the increase of arts and commerce; flourishing cultivation of the fields; and if there are any other things of the same kind, the more diligently these are promoted, the better and happier the citizens will live."

According to the doctrine of the Pontiff, the matter of legal justice is:

1. Those acts which, ordered through laws and institutions, procure such a conformation and administration of the republic that the prosperity both of the community and of private persons may freely blossom forth. But since the task of the city is not that it substitute itself for the citizens and take away their activity, but rather that in exercising their own energy and power of acting they be helped in such a way that they obtain from themselves the full and perfect development of their faculties; hence in those things in which men or families suffice for themselves, the republic ought not to intervene. For the individual person and the family, since they have being and operation independently from civil society, have their own end independent from it; whence "man is not ordered to the political community according to his whole self and according to all his things."[6] Hence civil society:

[6] I-II, q. 21, a. 4, ad 3.

a) ought to acknowledge and protect the rights and suitable liberty of individuals and families: "it is not right for the citizen or the family to be absorbed by the republic; it is equitable that the faculty of acting with liberty be permitted to each, as much as can be done with the common good unharmed and without injury to anyone";

b) likewise ought to acknowledge and protect private societies, for example, associations of workers, for "it has been granted to man by natural right to enter private societies." Hence in protecting these societies those who preside over the city should not intrude into their intimate plan and order of life; but if certain societies plainly adverse to honesty, justice, or the safety of the republic must be prevented or dissolved, nevertheless the greatest caution must be used;

c) a fortiori those who preside over society cannot rightly arrogate to themselves any right over religious societies, nor transfer their administration to themselves, but ought to reverence them, preserve them, and, when circumstances require, protect them from injury.

2. Uprightness of morals and peace. It is of public safety:

a) that "upright morals flourish privately and publicly" among all orders of citizens, that vices be restrained, and that "affairs be peaceful and composed";

b) for this reason public society ought to intervene "if any disturbances threaten on account of withdrawals of workers or on account of work interrupted by agreement";

c) likewise where "longer or more burdensome labor and the expectation of scanty wages give workers a cause on account of which they release themselves from work by agreement, and give themselves to voluntary idleness. This customary and grave inconvenience must be remedied publicly...; and in this matter this is more effective and wholesome: to forestall by the authority of laws,... with the causes of conflict removed in due time";

d) likewise it ought to take care lest "danger to integrity of morals arise in workshops from a mingling of sex, or from other pernicious enticements to sin."

3. Families rightly and orderly instituted. Public authority:

a) ought to watch over domestic affairs so that they proceed according to the dictates of natural and divine right; thus, for example, that marriages be indissoluble, that the natural order be observed in procreating offspring, and that, as far as possible, vices against nature be restrained; that parents not fail in their office in educating offspring; that things necessary for this not be lacking; and therefore that the father of a family be able to acquire a sufficient abundance of goods for his own, etc.;

b) hence "it is right that assistance be given publicly in extreme affairs," "if some family is in the greatest difficulty of affairs and lack of counsel, so that in no way can it extricate itself by itself";

c) also "if somewhere within domestic walls a grave disturbance of mutual rights has arisen, let the public power vindicate to each his right; for this is not to seize to itself the rights of citizens, but to fortify and strengthen them by a just and due protection";

d) likewise, if "the natural bonds of the family among proletarians are loosened," public authority ought to intervene.

4. Guardianship of religion. Namely, public society ought to take care:

a) that religion be guarded and aided, and that God be worshiped;

b) therefore it must be publicly protected that sufficient convenience be granted to workers for the duties of piety;

c) and it must be publicly protected that there be rest from work on Sundays and feast days.

5. Guardianship of justice. Let the city publicly care:

a) that "justice be held sacred and that some not violate others with impunity... Rights, indeed, in whomever they are, must be kept sacred; and public power ought to provide that each one keep his own, by warding off and avenging injuries. Except that, in protecting the rights of private persons themselves, special account must be had of the weak and needy."

b) For this reason it ought to protect against this: that "the class of workers be oppressed by the class of masters with unjust burdens, or afflicted with conditions foreign to the human person and dignity," or that "health be harmed by immoderate work, and by work not accommodated to sex and age."

In particular: it must be publicly protected that the daily work of the worker not be drawn out into more hours than strength permits; that suitable intervals of rest be established according to the various kind of work, circumstances of times and places, and the health of workers; in such a way that the much greater the labor is and the more burdensome to health, the shorter it be in time, and that account be taken in such a matter of the different seasons of the year.

Likewise, publicly, "great care must be taken concerning children, lest the workshop receive them before age has sufficiently strengthened body, mind, and soul." And "certain trades less aptly suit women, born for domestic works." But "what a man of adult age and good strength can do and strive for, it is not equitable to demand from a woman or a child."

c) It ought publicly to care and provide especially for wage-earners, because they are protected by no resources of their own; and to take care that the proletarian "from the fact that he contributes to the common utility may himself receive something, so that, sheltered, clothed, and safe, he may be able to endure life less painfully. Whence it follows that all things should be favored which seem in any way likely to profit the condition of workers." Hence laws, as far as possible, ought to provide that, from wages sufficiently ample, workers may arrive at a modest estate to be acquired from expenses set aside, and thus protect the right of private possessions, while as many as possible from the multitude prefer to have a thing of their own. When this is done, "certainly a more equitable distribution of goods" will arise.

Pius XI judged that this should most recently be commented upon in the encyclical *Quadragesimo anno*, May 15, 1931: "The riches which are continually enlarged by economic-social increases ought to be attributed to individual persons and classes of men in such a way that that common utility of all, which Leo XIII praises, is preserved, or, in other words, that the common good of the whole society be kept unharmed. By this law of social justice one class is forbidden to exclude another from participation in benefits...

"Therefore his own part of goods must be attributed to each; and it must be brought about that the distribution of created goods be recalled and conformed to the norms of the common good or of social justice, a distribution which, as every sensible man knows, labors today under a most grave

inconvenience because of the enormous difference between the few very rich and the innumerable poor." This must be understood not only of dominions and fruits of the earth, but also of goods produced by human industry: "the very immense multitude of proletarians on one side, and on the other side the greatest resources of certain very rich men, are a sure proof that the riches so abundantly produced in this our age, which they call the age of 'industrialism,' are not rightly distributed nor applied equitably to the different classes of men."

d) Public authority ought to intervene, Leo XIII continues, "with the rein put upon agitators," so that "corrupting arts be restrained from the morals of the workers, and the danger of robberies from lawful masters." Pius XI declares that the duties of masters in order to the common good, "to define in detail, where necessity demands it and the natural law itself has not supplied, belongs to those who preside over the republic. Therefore what, with consideration of the necessity of the common good, may be permitted to those who possess, and what may be illicit in the use of their goods, public authority, with the natural and divine law always shining before it, can determine more accurately." By this, Leo XIII warns, it will happen that "however distributed among private persons, the earth does not cease to serve the utility of all."

But since in very recent times a certain economic power has arisen from the accumulation of riches in the hands of a few, who especially hold and dominate money, and by whom also "there is sharp contention about taking possession of the very power over the republic, so that they may abuse its forces and power for economic conflicts," this economic power "must be restrained firmly and ruled wisely," in such a way that it be "governed severely and integrally" by social justice and social charity. This is so all the more because "from the intermingling and foul confusion of the duties and offices of public power and of the economy itself, most grave harms have arisen, such as, one of the greatest, a certain abasement of the majesty of the republic, which, since it ought to sit on high, free from every zeal of parties and intent upon the common good alone and justice, like a queen and supreme arbitress of affairs, becomes a servant, handed over and enslaved to the passion and cupidity of men." Thus Pius XI.

e) Finally, in establishing the amount of wage not unequal to nourishing a thrifty and well-mannered worker, in determining the amount of hours to be worked, and in similar causes, let the magistrate not intrude too importunately; but "it will be better to reserve these matters to the judgment of associations, or to enter upon another way by which the interests of wage-earners may be kept safe, as is fitting, with the protection and aid of the republic added if circumstances demand it."

Pius XI explains this last point more fully: "Therefore every effort must be made that fathers of families receive wages sufficiently ample, which may suitably provide for common domestic necessities. But if in the present circumstances of things this cannot always be furnished, social justice demands that those changes be introduced as soon as possible by which wages of this kind are secured for every adult worker...

"But another thing must not be passed over, of scarcely less moment and especially necessary in our times: namely, that the opportunity of working be furnished to those who can and will work."

"The right proportion among wages also pertains to the matter. For who does not know that wages, too diminished or increased beyond measure, have been a cause why workers were barred from hiring out their labor?... Therefore it is foreign to social justice that, for the sake of one's own profit

and with the account of the common good disregarded, the wages of workers be too much depressed or raised; and the same justice demands that, by agreement of counsels and wills, as far as can be done, wages be so ruled that as many as possible may hire out their labor and receive suitable fruits for the sustenance of life."

6. The moderate imposition and equitable distribution of public burdens, especially of taxes and military service, according to the respective capacity of subjects, conformably to the precepts of distributive justice.

7. The increase of arts and commerce: that both liberal and mechanical arts be cultivated and advanced, and that commerce be increased in such a way that a sufficient quantity of useful things be offered to all, to be acquired at no excessive price, with frauds, usuries, and unjust agreements set aside.

8. Flourishing cultivation of the fields, in such a way that all, especially the farmers themselves, may be able to receive from the fruits of the earth as much as is required for the fittingness of life.

270. The limits within which intervention is to be made in all these matters are determined by the end itself or the cause of intervening: "the same cause," says Leo XIII, "which asks the help of laws, determines the limits." Therefore:

1. "It is not right, as we have said, for the citizen or the family to be absorbed by the republic; it is equitable that the faculty of acting with liberty be permitted to each, as much as can be done with the common good unharmed and without injury to anyone."

Pius XI has most recently applied this to the various groups and associations of orders: "Just as those things which can be accomplished by individual men by their own initiative and their own industry must not be taken away from them and handed over to the community, so also those things which can be effected and furnished by lesser and inferior communities, to call these away to a greater and higher society is at once an injury, a grave damage, and a disturbance of right order; since every social work by its force and nature ought to bring aid to the members of the social body, but never to destroy and absorb them.

"Therefore the supreme authority of the republic ought to permit affairs and concerns of lesser moment, by which otherwise it would be especially detained, to be dispatched by inferior groups; by which it will happen that it may execute more freely, strongly, and efficaciously all those things which pertain to it alone, as things which it alone can furnish: by directing, watching over, urging, restraining, according as the case bears and necessity demands."

2. The common good is to be promoted of the whole society and of the individual parts, as Leo XIII shows: "Those who command must see to it that they protect the community and its parts. The community indeed, since nature has entrusted it to the supreme power to be preserved, to such a degree that the guarding of public safety is not only the supreme law but the whole cause and reason of rulership; the parts, moreover, because both philosophy and the Christian faith equally agree that the administration of the republic by nature pertains not to

the utility of those to whom it has been entrusted, but to those who have been entrusted. And since the faculty of commanding proceeds from God, and is a certain communication of His supreme principate, it must be carried on according to the example of divine power, which consults with paternal care no less for singular things than for universal things.[7] If, therefore, any detriment has been brought or threatens either to common affairs or to the interests of individual orders, which cannot be healed or prevented in another way, it is necessary that it be met by public authority."

[7] St. Thomas already has the same thing, *De Reg. princ.*, I, c. 12 at the end: "Let the king know that he has taken up this office, that he be in the kingdom as the soul in the body and as God in the world"; and c. 15 at the beginning: "The king, just as he ought to be subject to the dominion and governance which is administered through the office of the priesthood, so also ought to preside over all human offices and order them by the command of his rule."

3. In warding off evil, "not more things must be undertaken by laws, nor must progress be made farther, than the healing of inconveniences or the repulsion of danger requires."

Thus in governing society, the middle way must be held between socialism, which takes away the liberty of individuals and contends that all things be defined by the State, and individualism or liberalism, which thinks that the State is composed of individuals alone, with intermediate associations removed, in such a way that, says Pius XI, "almost only individual men and the republic remained, to no small detriment of the republic itself, which, having lost the form of social governance and having taken up all the burdens which those destroyed associations formerly bore, has been overwhelmed and oppressed by affairs and offices almost infinite."

271. Notice. — The civil State by which intervention is to be made in the aforesaid matters and limits is any State whatever, and not the State insofar as it exists under a special form in this or that people: for the motive of intervention is by no means the quality or particular form of the State, but the natural requirement itself of things. Hence Leo XIII: "By republic in this place we understand not the republic such as one or another people uses, but such as right reason, congruent with nature, both wills, and the documents of divine wisdom approve."

This text of the holy Pontiff could not be understood in that sense in which some would wish, that the ideal State alone intervenes, and one which is already perfect. Such an interpretation is contrary to the obvious sense itself, and to the very nature of the matter; for a) the intervention of which it has been spoken is an office derived from the nature of things, and on that account imprescriptible; — b) if the interpretation which we reject were true, there would have been no need for the Pontiff to demand this part of the remedy from the State, since the perfect State already furnishes all those things which the holy Pontiff recalls as to be furnished; — c) he would also have spoken in vain, since now nowhere in the world does such a perfect State exist in fact. It is added that such an interpretation is opposed to the common doctrine of the scholastics.

Question Three: Concerning the Defense of the Common Good or On War

S. Th. II-II, q. 40.

272. War is a means of defending the common good of the political community against foreign enemies: namely, the public taking up of arms for the sake of protecting or vindicating the commonwealth. It can be defined: a conflict by force and arms between two or more nations; or the

fight of a multitude or commonwealth with a foreign multitude or commonwealth, undertaken by public authority for the common good.

It differs: a) from a brawl, which is undertaken in a private capacity and is of one or a few against one or a few, and not always with arms;

b) from a duel, which is a contest with arms, but singular, not of a multitude, and is instituted by agreement;

c) from sedition, which is an uprising or conflict of a multitude against the prince, or against the political society to which it belongs, or the fight of a multitude against a multitude in the same community; whence it is, as it were, civil war.

Hence St. Thomas, q. 42, a. 1: "War properly is against foreign enemies, as of a multitude against a multitude; but a brawl is of one against one, or of few against few; sedition, however, is properly among the parts of one multitude disagreeing among themselves, for instance, when one part of the political community is stirred up in tumult against another."

War is either offensive, when it is undertaken to avenge or obtain reparation for an injury inflicted by another nation; or defensive, when it is sustained for repelling unjust force by force, namely, an aggression made by another prince or kingdom, or for warding off an injury which is being inflicted here and now.

Ordinarily offensive war is waged by him who first begins hostilities; not always, however, because sometimes an apparent aggression is nothing other than necessary defense.

273. Principle I. War can be undertaken justly; for this a threefold condition is required: the authority of the supreme civil power, a just cause, and right intention.[1]

[1] On war, besides St. Thomas in the cited place with the commentary of Cajetan and Bannez, one may consult Fr. de Victoria, *Relectiones morales*, l. IV, *de iure belli*; — Suarez, *De Charitate*, on II-II, q. 40; — Grotius, *De Iure belli ac pacis*; — Pufendorf, *De Iure naturae et gentium*; — Van der Pol, *Le Droit de guerre d'après les théologiens et les canonistes du moyen âge*, 1911; *La Guerre devant le christianisme*, 1912; *La Doctrine scolastique du droit de guerre*, 1919; — Michel, *Questions théologiques du temps présent: I. Questions de guerre*, 1918; — Strattman, *Weltkirche und Weltfriede*, 1925 (Dutch translation); — *La société internationale*, edited by 4 professors of Lille, 1928: I. *La doctrine* by Fr. Delos, ch. 5: war; — *Bulletin catholique international*, in which periodical several things deserve to be read, as for example Flajolles: *Que disent nos manuels sur le droit de guerre*, 1930; — Delattre, *La religion et la paix*; — *Conclusio conventus theologici Friburgensis de Bello* 1932, in *Docum. de Vie intell.* t. X; — *Deux façons d'envisager la paix*, in *Vie intell.* t. XIV, 1932; Regout, *La doctrine de la guerre juste*, 1935. — Also Benedict XV, in the peace proposals of August 1, 1917.

A. The first part is proved: War is sometimes just and licit, if for some people it is the only means for vindicating its own rights of great moment, or for defending its own existence.

Hence a) God also at times commanded war, and Scripture sometimes approved it. Cf. Gen. XIV; Ex. XVII; Deut. VII, XXIII; Num. XXI, XXV; Jos. I, VI, VIII, X; I Reg. XV; II Reg. VIII; Hebr. XI, 29 sq.;

b) so holds the common doctrine of the Fathers and theologians, against the Manicheans and Quakers condemning every war as illicit, against the Wycliffites and Erasmus forbidding it to Christians, and against Luther prohibiting war against the Turks, since God visits our iniquities through them. Cf. Ambrose, *de Off.*, l. I, c. 40; Augustine, *c. Faust.*, l. 22, c. 74; Gregory, l. I, epist., 72;

c) the Church herself decreed war for recovering the Holy Land.

B. The second part is proved. Three conditions are required:

1. The authority of the supreme civil power, both because a private person, or a non-supreme authority, can pursue right in the judgment of a superior judge, and therefore does not need war in its own cause, and because it does not belong principally to such an authority to procure the common good or to call together the multitude, which must be done in wars.

"But since," says St. Thomas, a. 1, "the care of the republic has been entrusted to princes, it pertains to them to protect the republic of the city, or kingdom, or province subject to them. And just as they licitly defend it by the material sword against interior disturbances, when they punish evildoers,... so also it pertains to them by the warlike sword to protect the republic from exterior enemies." Because, Billuart notes,[2] "by this very fact, that among princes who have no superior one offends another, the offender becomes subject to the offended, in this sense, that the offended can punish the offender according to the measure of the injury." — Authority sometimes resides in the prince alone, sometimes in the prince together with the consent of the legislative assembly.

[2] *De Charitate*, diss. 7, a. 3.

2. A just, proportionate, grave, and necessary cause, which can be remedied by no peaceful means, or the necessity of the common good: "To wage war is not a matter of will, but of necessity." But since war is apt to cause immense damages, especially in our times, and to be harmful to both sides, a most grave cause is required: namely, an injury received whose reparation or repulsion cannot be had in another way, and which is so grave that it outweighs the immense evils which war brings. For to save a good of a higher order, or to avoid a greater evil, even the community itself must yield its strict right.

For defensive war, however, the conditions of just defense suffice, which is to be undertaken with the moderation of blameless protection.[3] But for offensive war, "the one and only just cause of inflicting war is an injury received,"[4] a grave injury inflicted and not repaired nor to be repaired in another way.

[3] Cf. below, n. 361.

[4] Fr. de Victoria, *Relectiones, de iure belli*, n. 13.

In particular the cause can be: the unjust invasion or detention of a province or city by enemies; grave injuries inflicted either upon the nation itself, or upon ambassadors, or upon citizens, which a foreign nation obstinately refuses to repair; the recovery of a grave debt, the protection of rights of great moment, or of things necessary for existence; the unjust violation, as they say, of neutrality or of a treaty, or help given to an unjust enemy; the necessity of bringing aid to an ally or another people unjustly oppressed, whence proposition 62 of the *Syllabus* is condemned: "The principle which they call non-intervention is to be proclaimed and observed"; religion or the right of preaching the Gospel, to be protected from aggressors against unbelievers, as St. Thomas teaches, q. 10, a. 8: "the faithful of Christ frequently move war against unbelievers, not indeed in order to compel them to believe,... but for this, that they compel them not to impede the faith of Christ." — But these do not suffice: diversity of religion or the desire of converting unbelievers to the true faith; the enlargement of one's own empire; singular progress or a superior culture of a nation which surpasses others; the power of a prince or neighboring nation to be diminished lest it be able to harm (it is illicit to kill men lest they be able to harm); one's own glory; a claim of expediency; celebrity of name; or the private good

of the prince or of his family; the benefit of imparting a higher civilization even to the uncultivated or barbarians. If, however, a people altogether needs a more ample territory, as if it has more citizens than it can nourish, and there are regions little cultivated because of the paucity, ignorance, or laziness of the inhabitants, it does not seem unjust by peaceful means to occupy territories nearly empty, with equitable compensation given to the natives, because the earth is destined for the subsistence of all from primary natural right; and this right, even by moderate force, if it should be necessary, it is licit to protect.

But the cause must be a) deliberated, or subjected to mature and prudent examination, with upright men and experts in international law also consulted; b) morally certain, both because otherwise a doubt of fact would expose one to the danger of inflicting unjust damage, and because no one can be despoiled or punished unless the injustice or delict is certainly established (n. 91); c) necessary, so that other ways of satisfaction are first attempted, by which the dispute may be settled peacefully: by sending ambassadors, by recurring to mediators or arbiters, as often as this can be done without dishonor; but if the offender offers full satisfaction, the offended is bound from justice to accept it: for when the just cause ceases, the war becomes unjust.

3. Right intention of justice and of the common good, "by which, namely, it is intended either that good be promoted, or that evil be avoided." Therefore war is not to be waged from hatred, vain glory, private vengeance, desire of harming, cruelty of avenging, lust of dominating, or an implacable spirit, but from love of the common good.

Therefore the end of war is peace, or the tranquillity of order. Hence St. Thomas, a. 1, ad 3: "Even those who wage wars justly intend peace; and thus they are not contrary to peace, except an evil peace, which the Lord did not come to send upon the earth, as is said in Mt. X, 34. Whence Augustine says to Boniface (ep. 205): Peace is not sought in order that war may be exercised; but war is waged in order that peace may be acquired. Therefore be peaceful in warring, so that by conquering you may lead those whom you attack to the utility of peace."

274. Principle II. For waging war justly and licitly, even a just war, both the natural law and the prevailing statutes of the law of nations and international agreements must be observed. — For evils must not be done that goods may come. Hence a) in a just war all things are licit which are necessary or apt for obtaining the end and are permitted by right: for he who has a right to the end has a right to the means. On the contrary b) those things which are forbidden or useless cannot be employed without injustice, and therefore damage thus inflicted must be repaired. — But by present-day right:

A. The principle holds: War is not waged against private citizens, but against the nation as a public person.

Hence 1) it is licit to besiege fortified strongholds and deprive them of water or food so that they surrender more quickly; to fire artillery against them even with the danger of indirectly killing the innocent; to destroy private houses, monasteries, churches when enemies use them for defending themselves; to destroy the walls of a city, etc., insofar as these things are necessary or useful for conquering the enemies and done with the permission of the commander; — but not to infect springs or wells with poison, or to use poisoned weapons, because these things are cruel and not necessary: namely, the manner of waging war must be humane, withdrawing from all savagery and ferocity;

2. it is licit to render harmless by armed force those fighting and existing under arms, and for this to wound them, indeed, if it is necessary, directly to kill them; not however enemies already captured (unless by sentence of a judge they were proved guilty of a more grave crime); — a fortiori it is illicit directly to kill or reduce to captivity ambassadors, or hostages (even if they consented to death, because they are not masters of their own life), or innocents, such as children, women, old men, clerics, religious, merchants, etc., who are presumed to be not armed and contributing nothing to the war, or pilgrims or foreigners;

3. it is licit, on account of the expenses of war, to impose upon captured cities or regions taxes proportionate to the resources of the inhabitants, and to require from them things necessary for sustaining the army; — not however, by received right, to hand over a captured city to the army as prey, or in land war to usurp the goods of private persons without necessity or equitable compensation; the contrary holds in naval war; a fortiori it is altogether illicit to despoil or take the goods of guests, foreigners, or the Church;

4. it is licit to set ambushes for enemies and to use stratagems to overcome them, for example, simulated flight, feigned aggression, deceptive signs, the obtaining of intelligence, etc.; — but betrayals, violations of treaties or even of a true promise, or frauds which can be guarded against by no prudence, are not licit, such as infecting springs with poison, suborning assassins who secretly slaughter, etc.;

5. reprisals are dangerous and easily provide occasion for more grave evils; — nevertheless they can be licit, but exclusively by command of the prince, where the injustice inflicted is established, satisfaction cannot be had otherwise, and they are exercised against guilty persons or against goods, and just compensation is not exceeded.

B. War is not to be begun before a formal declaration of war is made, which ought to be preceded by an ultimate warning, that is, an intimation concerning war about to be undertaken immediately unless such and such a due condition is fulfilled.

Thus a final opportunity is given to the enemy of repairing the injury inflicted, and, to foreigners staying within the borders of the territory, time within which they can provide for themselves and their goods.

C. When the enemy has been conquered and asks for peace, equitable and moderate conditions are to be established, without harshness or a spirit of harming. For, as Fr. de Victoria notes,[5] the victor ought to pronounce concerning the conditions of peace, not indeed as victor or as accuser or enemy, but as an equitable judge and according to the rights and merits of the cause; and to dictate those conditions by which international order may be restored, namely the order of justice and cooperation, so that good relations between the victor and the conquered may again be possible. Therefore it is unjust to impose harsh or excessively burdensome conditions, or to bring on the ruin or destruction of the adverse nation.

[5] Cited work, at the end.

Nevertheless these can be demanded in a just war: just satisfaction of the right on account of which the war was declared; — indemnities for necessary expenses of war and damages, but proportioned to

the means and resources of the conquered; — also moderate precautions for security, if it is necessary.

Treaties of peace, since they have been entered upon for the common good of nations, must be altogether observed, unless they are certainly proved to labor under most manifest injustice; and this is not easy.

*275. Corollaries.** — 1. He who declares war without a just cause sins gravely: first and formally against charity, because he disturbs peace, which is an effect of charity; at the same time, however, against justice, on account of the unjust damages which war is apt to inflict.

2. War per se and from its nature cannot be just on both sides, namely, materially or objectively, because right cannot belong except to one or the other, since contrary rights do not exist concerning the same thing; nevertheless it can be just on both sides subjectively and formally, but per accidens from invincible ignorance or good faith.

3. In doubt concerning the justice of the cause, recourse must be had to an amicable composition or transaction, or to the arbitration of others, especially of the Supreme Pontiff, or to an international tribunal of peace or a society of nations; — but if the other party rejects recourse or refuses to obey the sentence given by the arbiter, there is now a certain injury on account of which, if the cause is proportionate, it is licit to wage war.

4. In a just war, commanders and soldiers called by precept or legitimately hired are bound to serve the community to be defended, even with danger of life: for the common good demands this. Hence they cannot desert; and per se deserters are bound to return to camp; but those who would flee to the enemy to help them would be traitors guilty of a most grave crime.

5. Soldiers — not so the learned and theologians — ordinarily are not able to judge concerning the justice of a war, nor are they bound as far as possible to inquire concerning it, unless the contrary would seem very probable, but they can presume it to be just. Even in positive doubt concerning the justice of the war, subjects who have been ordered or previously enrolled can and are bound to serve as soldiers, because presumption stands for the superior commanding; — non-subjects, or those not ordered or not hired, but free soldiers who of their own accord wish to fight, cannot enlist unless morally certain of the justice of the war, lest, namely, they involve themselves in the danger of inflicting grave injuries.

6. In a war plainly unjust, no one, neither subjects nor foreigners, can fight; because they would be cooperators in injustice. Hence they ought to withdraw from the war; but if they cannot do so without grave danger, they can exercise only actions indifferent of themselves, but they ought to abstain from fighting and hostile acts, and to surrender themselves to an enemy soldier whom they cannot avoid by flight; but if the enemy does not consent to this and nevertheless attacks, he himself now seems to become an unjust aggressor against an innocent man, and consequently the latter then probably can defend his life.

7. Today, on account of their greater security and the common good, it is strictly prohibited that merely private men, during war, involve themselves in military affairs or snatch up arms; and

transgressors of this statute expose themselves to most grave penalties, even of death, which is not inflicted unjustly.

276. Observations. — 1. Today, because a society of nations has been instituted among several peoples, and because of the international pact which places war outside the law, cases are now rarer in which war occurs or offensive war is licit and just. Nevertheless it is not impossible, because nations, just as they freely enter the society of nations, so also can freely leave it, nor must all conflicts be subjected to it; moreover, the international pact has not been concluded or ratified by all peoples; and it could also happen that some nation would not wish to submit itself to an arbitral sentence.

Nevertheless, because of these new circumstances, a) it will now be easier to judge concerning the justice or injustice of a war, and, when war has been declared, cases of licit or obligatory flight or abstention will be more frequent; — b) subjects can now more easily demand from rulers that a conflict be submitted to arbiters; — c) or also that military expenses and the number of soldiers be notably diminished, since these have been increased and multiplied beyond every proportion of necessities.[6]

[6] Benedict XV said, in the peace proposals directed to the belligerent princes on August 1, 1917: "First of all, the fundamental point must be that the moral force of right be substituted for the material force of arms; whence a just agreement of all for the simultaneous and reciprocal diminution of armaments, according to rules and guarantees to be established, in the measure necessary and sufficient for maintaining public order in each State; then, in substitution for armies, the institution of arbitration, with its high pacifying function, according to norms to be agreed upon and sanctions to be determined against the State which would refuse either to submit international questions to arbitration or to accept its decisions."

2. To serve as soldiers, which by natural and divine right is less fitting for clerics and religious, is strictly forbidden by ecclesiastical law (can. 141), unless by urgent necessity, or unless it has been dispensed by the Church (a. 2). They can, however, take part in war so that they may be present to those fighting with spiritual or bodily help (ad 2); indeed, they can exhort them to fight for the fatherland in a war that is not certainly unjust (ad 3): nevertheless, in judging concerning this matter, let them be prudent.

3. On feast days, just as from judicial business, so also from war one must abstain, especially because of the public unrest which draws back from divine worship; unless, however, necessity is present (a. 4).

4. Princes and commanders by office ought to take care of military discipline and restrain plunder, thefts, arson, and rapes, etc.; otherwise they are bound to restitution in solidum together with the soldiers; but the latter individually, unless they inflicted injustices from a true conspiracy. See below, n. 316-317.

Third Part: Concerning Commutative Justice

277. Commutative justice regards commutations in which it establishes and preserves the due equality toward another. But commutations, or operations by which something is transferred from one to another, are some involuntary, others voluntary. Hence we shall speak:

1. of the act of commutative justice by which due equality is established or rendered, namely, of restitution;

2. of justice and injustice in involuntary commutations;

3. of justice and injustice in voluntary commutations.

Section A: Concerning the Proper Act of Commutative Justice or Concerning Restitution

S. Th. II-II, q. 62, a. 1.

278. What restitution is. — To restore, according to etymology, is as it were to set up again, and therefore it is the replacement of a person or thing into its former state. At present the question is only of the restitution of a thing. In a broader and improper sense, to restore is to render whatever is owed to another from commutative justice, to pay whatever debt must be paid from commutative justice, for example, from a contract, because the thing owed to another is already considered to be his; in the proper and strict sense, it is to set someone again in the possession or dominion of his own thing, and thus it especially has place in exterior things which, remaining the same, can pass from one person to another. But since certain things taken away now cannot be rendered and possessed again by someone, such as life, an eye torn out, a member cut off, restitution, in a derived sense, also includes recompensation for damage of this kind inflicted: namely, the name has been extended to actions and passions "which pertain to the reverence or injury of some person, or to harm or advancement" (a. 1, ad 2), and which do not remain really but only in an effect, either bodily, as an injury of the body, or intentional in the knowledge of men, as defamation and diminution of honor.

Restitution, understood in the proper sense, can be defined: an act of commutative justice by which, according to equality of thing to thing, there is rendered to another what has been received from him, whether willingly or unwillingly. It is said:

1. an act of commutative justice, because from the violation of another virtue as such (charity, religion, obedience, even legal and distributive justice) there does not arise an obligation of restoring, except per accidens, if commutative justice is at the same time violated, whose office is to preserve equality with the strict right of another;

2. by which there is rendered to another: restitution must be made to another by him who holds or has injured, and thus it differs from recovery or recompensation which someone makes for himself, although this is equivalent to restitution and takes away its obligation;

3. according to equality of thing to thing, for if as much is not rendered as was taken away, the damage is not repaired and equality is not restored;

4. that which was received from him whether willingly or unwillingly, that is, the thing to which another has a right that it be rendered either in itself, or at least in an equivalent; and thus restitution is distinguished from satisfaction, which regards not the thing but the person, and from the payment of a debt, by which a diverse thing is granted. But it happens, according to St. Thomas, in two ways: "when the thing of one is had by another either through his will, as

in a loan (or commodatum) or deposit; or against his will, as in robbery or theft" (a. 1). Hence the obligation of restitution arises by a twofold title:

a) from another's thing received, or from the mere possession of it, even not unjust;

b) from an unjust taking by which a thing is withdrawn from another, even if it is useless to the one receiving; or from unjust damaging. But the damage must be unjust, because if damage is inflicted justly, for example, by public authority, or by necessary defense, or by the use of one's own right, there is no obligation of restitution.

Hence restitution can also be defined: an act by which another's thing is rendered or damage unjustly inflicted is repaired.

Therefore injustice is not the root of restitution, but inequality on the part of the thing. For the obligation of restoring can be present without injustice committed; on the contrary, when injustice has been given, it does not arise if that injustice is not damaging.

279. Restitution is the proper act of commutative justice. — For:

1. "Restitution is opposed to taking away. But the taking away of another's thing is an act of injustice concerning commutations. Therefore restitution of the same is an act of justice, which is directive in commutations" (St. Thomas, a. 1);

2. "To restore seems to be nothing other than to set someone again in the possession or dominion of his own thing; and thus in restitution the equality of justice is attended to according to recompensation of thing to thing, which pertains to commutative justice" (ibid.);

3. "To commutative justice," says Billuart,[1] "it pertains to establish equality of thing to thing, between what is given and what is received, between damage and compensation. But this is done through restitution. Therefore it is an act of commutative justice."

[1] Diss. VIII, art. 1.

And indeed this justice has as its proper object the good of equality of thing to thing, so that each person has those things which are his by strict right, and no one remains without his own thing and its fruits. But this good intended from justice obligates in the same way after the receiving of the thing as before. Therefore, just as commutative justice prohibits another's thing from being snatched away lest he lack his own thing, so in the same way it prohibits that a thing already snatched away be retained, or that a thing destroyed not be repaired, on account of the same motive, lest the other lack his own thing and its fruits; otherwise the good of equality would not be had, but an inequality by which someone would lack his own thing.

In the other virtues it is not so: namely, after the violation of the virtue has been completed, the motive which that virtue regarded no longer per se remains; for example, if charity is injured insofar as help is not given to a poor man in necessity, after the injury has been completed that necessity of the poor man no longer remains, and consequently neither does the obligation of charity. Per accidens the obligation can remain insofar as the necessity endures; nevertheless charity then does not obligate by reason of damage inflicted, but by reason of a new present necessity; but if the necessity has ceased, there is no longer any obligation, because the motive which charity regards in

the case has ceased: the relief of the poor man. Similarly one must speak of obedience and legal justice, and of distributive justice: if a superior commands that you obey a master, or if he himself ought now justly to distribute such goods of the community, there is sin if it is not done, yet there is not an obligation of placing afterward a similar work (unless per accidens the precept perseveres), because now the precept given cannot be fulfilled or the completed distribution of such goods be made just (n. 254), and therefore the same motive of virtue does not remain.

Therefore, when all other virtues have been violated, the obligation of restoring equality does not press, because no complete and permanent strict right of another was injured concerning the thing itself; and therefore only of commutative justice does the axiom of St. Augustine hold: The sin is not remitted unless what was taken away is restored.

280. Restitution differs: A. from payment:

1. because this is not always an act of justice strictly so called; for example, we also pay the things which we owe from a vow or from charity; but restitution supposes a true right, and indeed a strict one;

2. because the thing which is paid must a) be diverse from the thing for which it is paid; b) not yet have been possessed by him to whom it is paid; on the contrary restitution demands a) that the same thing, as far as can be done, be restored; b) that, as much as is from itself, it already was in the possession of him to whom it is restored. Hence one who returns a deposit truly restores, he does not pay; one who gives money for a thing bought, pays, he does not restore;

3. payment does not consider so much the value of the thing as the agreement entered upon; restitution attends to the value of the thing to which it ought to be equivalent. Hence it happens that one person pays more than another for a thing of equal value, which cannot happen for just restitution.

B. from satisfaction:

1. because this is sometimes taken in a more general sense for the fulfillment of every obligation even without a debt of justice, or not from strict justice;

2. because satisfaction strictly taken regards the person to whom satisfaction is made, although it does not furnish an equivalent to the debt; but restitution regards the thing which must be rendered, the same thing or, if this is impossible, at least an equivalent;

3. because satisfaction is the repair of injured honor even without damage or with irreparable damage; but restitution is the repair of repairable damage inflicted. Hence there can be satisfaction without restitution, for example, when we make satisfaction to God for sins or ask pardon from offended parents; likewise there can be restitution without satisfaction, as in the restitution of a deposit or loan; both can also be together, as when we render a thing injuriously taken away and at the same time humbly ask pardon.

281. Matter to be treated. — In what follows we shall speak:

1. of the necessity of restitution;

2. of the roots of restitution, namely, a) of unjust taking, b) of detention of a thing received, c) of unjust taking together with detention of the thing, d) of unjust cooperation;

3. of the circumstances of restitution: a) concerning him to whom restitution is to be made, b) concerning the order of those to whom restitution is to be made, c) concerning the manner in which restitution is to be made, d) concerning the place where restitution is to be made, e) concerning the time when restitution is to be made;

4. of causes excusing from restitution, whether a) for a time, or b) forever.

Question One: Concerning the Necessity of Restitution

S. Th. II-II, q. 62, a. 2 and 8.

282. Thesis. Restitution is necessary for salvation by necessity of precept, which per se obligates under grave sin to restoring, in fact or in desire, that which is owed to one's neighbor from strict right.

It is said A. necessary, and indeed:

1. in fact or in desire: in fact whenever this is morally possible; but if for the time it is impossible, at least the intention must be conceived in the mind, that is, the desire or efficacious proposal of restoring as soon as possible;

2. per se under grave sin: for just as injury per se is prohibited under grave sin, so its repair per se is commanded under grave sin; unless the damaging injury is light, for then the repair can be owed only under venial sin. Hence one who, in restoring, would retain a part which does not reach grave matter, would not sin gravely by detaining it; nevertheless, even for a light injury or small matter, restitution must be prescribed under venial sin;

3. by necessity of precept, but not, even in desire, by necessity of means, because restitution contributes nothing positive to salvation, but is a mere condition like the fulfillment of every grave precept;

B. for salvation, namely, so that sincere contrition and a firm purpose are impossible without the efficacious will of restoring.

It is proved A. by reason. The first part: Justice forbids that injury be inflicted upon someone or that an inflicted injury be continued. But he who does not restore a thing received from another, or for damage inflicted, when he can, by that very fact causes injury or does not cease to cause it. Therefore justice forbids omitting restitution. For:

a) He who unjustly detains another's thing impedes his neighbor from the use of his own thing, and thus does injury to him: namely, to detain that which is owed to another has the same account of harm as an unjust taking, and is equivalently to steal; — likewise he who does not compensate damage voluntarily continues it in its effect, and does not cease to violate another's right.

b) He who does not restore harms his neighbor, and thus acts against the precept: What you wish men not to do to you, do not do to them.

c) Right reason dictates that to each his own must be rendered. Therefore that which has been unjustly received or is unjustly detained must be rendered.

The second part: a) Sin cannot be remitted without sincere contrition and firm purpose. But he lacks sincere contrition who wills to retain a good unjustly possessed, because he does not retract his sin; — nor does he have a firm purpose of not sinning who pertinaciously refuses to repair damage unjustly inflicted by him.

b) To preserve justice is of the necessity of salvation. But he who does not restore, when he can, does not preserve justice but violates it, because he does not preserve equality. Therefore restitution is of the necessity of salvation.

B. What the Scriptures say: a) the precept of restitution is expressed in Ex. XXII, 1-5 and following: "If anyone shall have stolen an ox, or sheep, and shall have killed or sold it, he shall restore five oxen for one ox, and four sheep for one sheep... If he shall not have that with which he may repay for the theft, he himself shall be sold...[1] If anyone injures a field or vineyard and lets his animal go so that it feeds on another's... according to the estimation of the damage let him restore..." b) But this is necessary for pardon, Ezech. XXXIII, 14-16: "If... he shall have done penance for his sin, and shall have done judgment and justice, and that wicked man shall have restored the pledge, and returned the robbery, he shall live with life and shall not die." c) Hence those who were held to be holy, or who sincerely wish to return from injustice, are found very solicitous about restitution, for example, Tobias, II, 21: "See lest perhaps it is stolen (the kid): return it to its owners, because it is not licit for us either to eat anything from theft, or to touch it"; and Zacchaeus, Lk. XIX, 8: "If I have defrauded anyone of anything, I restore fourfold." Hence James says, V, 4: "Behold, the wages of the workers who reaped your regions, which has been defrauded by you, cries out, and their cry has entered into the ears of the Lord."

[1] Here it is said that more must be restored than was taken away, but this is by way of penalty, by which the Jews might be more effectively deterred from theft.

C. Tradition states the same thing and has solemnly placed in the law the axiom of St. Augustine:[2] "The sin is not remitted unless what was taken away is restored."

[2] Ep. 54, to Macedonius.

283. It is objected: No one is bound to restore another's thing if the owner is unreasonably unwilling that the holder detain the thing. But the owner is unreasonably unwilling who prefers his own temporal good to the spiritual salvation of his neighbor, since the neighbor himself is to be damned if he does not restore. Therefore.

Resp.: 1) I deny the minor, because someone is not bound to prefer the salvation of his neighbor to his own temporal good unless the neighbor, in extreme or grave necessity, could not be saved otherwise; but here the neighbor can be saved, and he suffers the danger of salvation from his own perverse will alone.

2. I distinguish the major: if the owner were bound by justice or strict debt not to be unreasonably unwilling, I concede; if he were bound to this by charity alone, I deny. But in the

case, supposing that the owner were bound to this, which is false, he would be bound only from charity alone, and thus the injustice remains (n. 246).

284. The precept of restitution according to the form and sense of the words is affirmative, but according to the thing it implies a negative precept by which we are prohibited from detaining another's thing (a. 8, ad 1). And indeed it is primarily negative: for it commands rendering another's thing precisely because to detain that thing, or to deprive him of it, is evil and prohibited. Hence the negative precept is the reason of the affirmative precept. Hence:

1. Restitution always obligates and must be made as soon as possible; otherwise the owner is unjustly deprived of the use of his own thing; and therefore he who at present cannot restore is bound at least to have the proposal or intention of restoring, and at the same time to take care that he satisfy the obligation as soon as possible; and if he cannot restore the whole, let him immediately restore a part.

2. He who voluntarily omits restitution sins during the whole time of the omission, because he transgresses the negative precept which obligates at every moment.

3. Nevertheless, he who keeps another's thing for a long time commits one sin in number, provided that he always perseveres in the proposal of not restoring; but if he revokes it explicitly or implicitly, he sins as often as he renews the interrupted proposal. Yet let the confessor not be too concerned about the number of sins, but let him ask the penitent how long he has detained another's thing, and whether he persevered in the same will of not restoring.

285. Practical corollaries are deduced from this by theologians for confessors:[3]

[3] Cf. our little work: *De Variis Peccatis in sacramentali confessione medendis*, c. 11, § B, q. 4.

A. He cannot be absolved:

1. who, conscious of his obligation, without an excusing reason, does not wish to restore another's thing of great price: for he lacks true contrition;

2. who without cause delays restitution, for example, until death; or if he is near death and can conveniently restore by himself, commands his heirs to restore: for by experience it is known that this is dangerous;

3. who cannot restore but neglects to procure for himself the faculty of restoring, such as one who, burdened by debt, makes useless expenses and does not pay debts: for he is bound to live with a certain parsimony, that is, not only to avoid superfluous expenses, but also to diminish daily expenses, insofar as he can according to his condition;

4. who does not wish immediately, when he conveniently can, to restore a notable debt all at once: to will to retain a notable part while the owner is reasonably unwilling is actually to sin.

B. Nevertheless, if the penitent is in good faith, and at the same time it is certainly foreseen that admonition will be useful in no way — which, however, should not easily be presumed — the

admonition can be omitted and absolution granted.

C. He who promises that he will morally restore at once can be absolved the first time, unless from the circumstances deception is prudently feared; nevertheless it is generally more opportune that he first be compelled to restore, if this can easily be done, lest afterward he change his mind. — But if he had already promised, especially several times, regularly he is not again to be absolved before restitution has been made, because his disposition is very doubtful and there is great danger of a new delay.

286. Concerning restitution to be made by a dying man. — With a dying man one must act cautiously:

1. If the penitent seems to be in good faith, and no time remains for prudently admonishing him concerning his obligation, or it is foreseen that the admonition will not be useful, it is to be omitted.

2. But if it is hoped that the admonition will be useful, or if the penitent is in bad faith or in vincible ignorance, he is to be admonished concerning his obligation both firmly and gently, and helped to fulfill it at once.

3. If the obligation is hidden and cannot be fulfilled at once, the dying man is to be induced to entrust the money to the confessor himself, or rather to another faithful man, so that it may be sent to the creditor in secret; or, if it can be done prudently, to leave that sum in his testament to the same creditor, with mention of restitution omitted.

4. If the obligation is not hidden, and cannot be fulfilled at once, let the confessor bring it about that it be certainly fulfilled, either through the heirs, or through a note to be handed to the creditor.

287. Notice. — Here the error of the common people must be corrected, who think that souls are detained in purgatory until restitution has actually been made by the heirs: for no one in the other life is compelled to undergo penalties on account of the negligence of heirs.

Question Two: Concerning the Roots of Restitution

S. Th. II-II, q. 62, a. 4 and 6.

288. The root or title from which the obligation of restoring arises is twofold: another's thing received, and unjust taking; these titles of themselves exist separately, yet sometimes they are joined.

1. From the sole title of a thing received, or by reason of simple detention, he is bound to restore who has another's thing with himself even without fault, whether the other is willing, as in a commodatum or deposit, and then the detention becomes unjust if the thing is not rendered at its time; — or whether the other is unwilling, as if by chance accident or by the act of a third party it is with me and I do not know that it belongs to another, and then the detention becomes unjust if the thing is not immediately rendered when it appears to belong to another. For a thing cries out for its owner, and no one can voluntarily be deprived by another of his

own thing against his will; and therefore when someone "has beyond that which is his, it ought to be taken away from him and given to him who lacks it" (a. 6).

2. From the sole title of unjust taking he is bound to restore who by an unjust way has taken away another's thing, even if the thing does not remain with him, or even has been destroyed, and he has nothing from it; in one word, he who inflicted unjust damage on another and thus unjustly deprived him of a thing: "for he who damages someone seems to take away from him that in which he damages him" (a. 4). — The reason is that, although he himself does not have more than he ought to have, the other nevertheless, from his unjust action, has less than he ought to have; whence he violated justice concerning the thing of another, which he is bound to remove by restitution (a. 6, ad 1).

3. By both titles at once he is bound to restore who unjustly has taken away another's thing and has it with himself, in itself or in an equivalent.

Among these titles a great difference is to be noted for practice; for:

a) He who is bound to restore by reason of unjust taking remains obligated to restitution, even if the thing owed perishes without his fault (unless perhaps it would certainly have perished with the owner at the same time), because the title of obligation always remains, namely, the violation of justice, until it is repaired by restitution; — on the contrary, he who is bound to restore by reason only of the thing received does not, because if some thing perishes without his fault, the title of obligation ceases, which is to have another's thing.

b) He who is bound by reason of unjust taking must restore not only the thing or its value, but also all fruits even consumed and all damages and detriments caused, because he is their voluntary and culpable cause; — on the contrary, he who is bound by reason only of the thing received is not bound to repair damages of which he is not the voluntary cause, nor to restore fruits, if they were consumed in good faith and he was not made richer from them.

c) Hence the measure of restitution for unjust taking is the quantity of damage inflicted (*benadeeling*); for a thing received, the quantity of possession, or how much from another's thing someone possesses or has been made richer (*bezitting*).

Article I: On Unjust Taking

S. Th. II-II, q. 62, a. 4.

289. The first title of restitution is unjust taking (*benadeeling*). — An unjust receiver or damager is one who voluntarily inflicts damage on another without a just cause, even without gain, whether physically or immediately through himself, or morally and mediately by cooperating with another. Damage is an unjust detriment inflicted upon a neighbor by the action of another, whether by an internal act, as by rash judgment, or by an external action, as by taking away, destroying, detaining another's thing, for example, by theft, fraud, usury, or by not impeding what from justice one is bound to impede, or by cooperating with the same. Now "whoever damages someone seems to take away from him that in which he damages him: for damage is spoken of from the fact that someone has less than he ought to have... And therefore a man is bound to restitution of that in which he has damaged someone," q. 62, a. 4.

290. The general principle is: In order that the damager be bound to restore, three conditions are required together, namely, that the action (or omission) be truly, efficaciously, and formally unjust; or that the cause be 1) unjustly damaging, namely, that it inflict rigorously unjust damage or injure strict right, 2) efficacious of the damage, and 3) culpable.

291. The damaging action must be truly unjust, that is, violate the strict right of another and consequently injure commutative justice; otherwise it would not be an injury strictly so called, nor would it bring the obligation of restoring. But it is unjust:

1. if it takes away or destroys a thing in which another has a right in the thing;

2. if in any way it impedes that a thing be had by another, to which another has a right to the thing;

3. if by an unjust means it impedes another from justly obtaining some good to which he does not have a strict right, because each one has a strict right not to be impeded by an unjust means from obtaining a good. In this case, the damager must repair not so much the good itself, unless it would certainly have been obtained, but rather the hope of obtaining it, which he injuriously snatched away from the other.

Hence a) he is not bound to restitution who, while he uses his own right, harms others; for example, he who, by intercepting veins of water or by trading justly, is the cause why another takes or sells less; he who by mere persuasions, counsels, or prayers persuades another not to make a legacy or confer an office on another who does not have a strict right to it; he who, fleeing from enemies, tramples another's crops;

b) on the contrary, he is bound (whether an advocate or a judge) who impedes a creditor from obtaining payment of a debt, or by persuasions induces a master not to pay wages to a servant;

c) a fortiori he who uses unjust means, namely force, fraud, deception, calumnies, unjust divulgation of a secret, or detraction, for harming another; for example, he who by force or fraud impedes an uncle from making a testament in favor of a nephew or friend, or a notary from writing it; he who by calumnies prevents a rich man from bestowing alms on such a poor man, or a superior from conferring an office on someone worthy; he who, by unjustly defaming a servant, bars him from his service; he who, by intercepting letters or spreading calumnies, harms other merchants in trade; he who, by a false title of consanguinity or of service furnished, extorts gifts, money, or legacies; he who, pretending to be poor, obtains alms: this last, however, ordinarily will be able, from the intention of the owner, to restore to other poor persons, unless the matter concerns a gift of greater moment;

d) but he is not bound who by either just or unjust means impedes someone from the attainment of an illicit good, which, namely, could not licitly be conferred or accepted, because there can be no right at all to obtaining it; for example, he who, by uncovering hidden crimes or even by calumniating, impedes an office from being conferred on someone inept or unworthy; he who turns away a prodigal man from giving to one who pretends to be poor.

292. The damaging action must be efficaciously unjust; for this there is required damage that has followed in fact — and not only been intended — and indeed from the action as from its cause per se, which, namely, flows into the damage from its nature and proper force, and from which it follows of

itself necessarily. For no one is bound to repair damage unless he truly is the author of the damage, that is, unless physically or morally, through himself or through another, he was its true efficient cause, total or partial. Therefore the intention alone of the damage, or occasion, or condition, or cause per accidens is not sufficient.

Hence he is not bound to restore: 1) who, with the intention of harming, posits a damaging act when the effect has not followed: for thus commutative justice is injured affectively, but the right of another was not injured effectively;

2. who was the sole occasion of damage, for example, he who by evil examples of fraud or theft found imitators; he who, after theft or homicide had been committed, provided an occasion for suspecting or punishing an innocent man, even if he intended this, since not he, but the accusers and condemning judges, are the true cause of the injustice; — unless, however, he exercised some influence into it, as if by design he used another's clothing or instruments so that the other might be accused: for then he is a moral cause positively moving to this, that the other be held as guilty;

3. who was a mere condition without which the injustice would not have been committed: thus one who furnishes or sells to another poison, weapons, or instruments by which a crime is perpetrated; — unless, however, this were done with that end manifested in some way, or the means were determinately handed over or sought precisely for an unjust action: for then he would be a cooperating partial cause (n. 247, 1);

4. indeed, who is only a cause per accidens, even if he intends the damage: for then the action of the agent does not have a sufficient connection with the damaging effect, but that effect is produced by the concurrence of another cause to which it must be imputed. Thus one who serves wine to a drunkard, foreseeing great damage from drunkenness; one who lightly wounded someone who dies from the inexperience of the physician; one who infects a cup with poison but places it in a very remote place to which the enemy is not accustomed to go, yet wishing that he drink, as in fact happens; one who takes away from an avaricious man a thing of small value, even with the intention that he die from sadness: for the true cause of this death is not the theft, but avarice. A fortiori one who did not close the door so that a thief might be able to take away silver vessels, while the thief entered through a window, because the damage did not follow from the omission of not closing the door. Likewise, one who lightly wounded someone who dies from the inexperience of the physician is bound concerning the wound, not concerning the death. And one who kindles a fire in a remote place which a wind unexpectedly throws into the crops is not the per se and responsible cause of the conflagration; otherwise, if he kindled the fire when a wind had already arisen and while foreseeing the burning, because this would be, as it were, to conspire with the wind and to use it as a means to a harmful effect.

293. The damaging action as such must be formally unjust or culpable. — For no one is bound concerning his actions and their effects unless they are voluntary and free; whence a non-voluntary act per se imports no obligation. But a damaging action which is not formally unjust and culpable, according to this, is not voluntary and free. Therefore per se it does not import an obligation of

restitution. And indeed: a) the obligation of restoring arises from a thing received or from unjust taking; but in the case there is no unjust taking, because no one does injury unless willing; b) besides, restitution on account of unjust taking is after the manner of a penalty; but penalty supposes fault.

Nevertheless, a twofold fault is distinguished by moralists: 1) moral fault and fault in conscience (by others it is called theological and before God), which proceeds from deliberation of reason and free consent of will; concerning which we have spoken above; 2) juridical fault and fault before the law, which arises from omission of due diligence required by law; from which defect of reason, coercion, fortuitous chance, and other legal causes excuse, but not simple inadvertence; and therefore it can be present without truly culpable negligence, in which case it is called merely juridical fault. Nevertheless, the law requiring greater diligence on account of the common good is just and therefore to be observed, because it favors all citizens equally for the security of dominions, and makes men more watchful lest they inflict damage on others.

And therefore, although true moral fault is per se required for inducing an obligation of restitution in conscience, per accidens merely juridical fault sometimes suffices, namely:

1. after the sentence of a judge compelling restitution: for since restitution from merely juridical fault is a mere penalty, it does not obligate until after it has been inflicted;

2. from a contract explicit or implicit, by reason of a special obligation which someone has assumed upon himself of repairing damage in any case whatever, even without moral fault; then, however, it is rather payment than restitution strictly so called.

Hence a) a physician who from inculpable error furnished a harmful remedy to a sick man neither sinned nor is bound to restitution;

b) a confessor who from inculpable error freed a penitent from an obligation of restitution, whom he cannot admonish concerning this, neither sinned nor is bound to reparation of the damage;

c) a man who by entirely fortuitous chance without any negligence killed another neither sinned, nor is he obligated to reparation of material damage perhaps inflicted.[1]

[1] Cf. Prummer, *Th. M.* II, n. 96.

294. The obligation of restitution is measured by the gravity of the damage together with the gravity of the fault. — Hence:

1. He who from grave fault has caused grave damage is obligated under grave sin to repair it insofar as it truly was caused by him.

2. He who from either light or grave fault has caused light damage is obligated under venial sin to repair it.

3. He who from fault light because of inadvertence has caused grave damage is obligated only under venial sin to repair the damage partially, according to the proportion of the fault; because from an imperfectly human act there cannot follow a grave obligation or grave penalty, since they are not proportionate to it. Thus one who, from anger not fully deliberated, gravely

wounded someone is bound not under grave sin but under venial sin, nor to repairing the total damage.

4. He who from light fault posited with full advertence has caused grave damage which he thinks light is obligated, at least under venial sin, to repair the whole damage, because he voluntarily inflicted the whole and consequently voluntarily obligated himself to it; indeed under grave sin, if in some way in confusion he adverted to the danger of grave damage, because then he took that danger upon himself. — Others, however, say: always under grave sin, because the obligation of restoring from a fully voluntary action is measured by the quantity of damage.

5. He who from multiplied light faults has caused several light damages which together constitute one grave damage: if he has thus inflicted grave damage on one person, he is bound under grave sin also to repair it, at least if in some way he adverted to the danger of inflicting grave damage, as is to be presumed and almost always happens; — on the contrary, if he has inflicted it on diverse persons so that none has suffered grave damage, he is bound under venial sin to repair the individual damages; unless he still detains a great good taken away from several: for then he is bound by reason of the thing received.

Prummer aptly notes[2] from Billuart:[3] "Whatever may be the case in speculation about this question, commonly the authors of any opinion warn that it rarely happens in practice that grave damage is caused from venial fault; because, although venial inconsideration is frequent in surreptitious thoughts and internal movements of the soul..., nevertheless it rarely happens in external works of grave moment, which ordinarily at once present their danger and more strongly excite the mind to consideration of themselves, or at least to confused knowledge of the danger. Hence, unless it is certainly established that the inadvertence was venial, in practice it is to be held as mortal, namely conformable to the damage, and the obligation of restoring under mortal sin is to be inculcated."

[2] *Th. M.* II, n. 97.

[3] Diss. VIII, art. 5.

295. The obligation of restitution does not arise from violation of legal or distributive justice, except per accidens, if commutative justice is at the same time injured, for example, if a contract is violated. Public good indeed demands that offices and benefices be granted to the more worthy; but these do not have a strict and rigorous nor complete right to obtaining them.[4]

[4] Cf. Tanquerey, *De Iustitia,* n. 467-468.

Nevertheless, sometimes commutative justice is at the same time injured, with the burden of restitution:

1. in the distribution of offices and duties, if the superior chooses those altogether inept or incapable, for example, as physicians of an army, and thus is the cause of damage for society or also for its members, which will have to be repaired: from contract he is bound toward society; — but not if he chooses the worthy and fit, but passes over the more worthy, unless the designation is made by way of an onerous contract or of a contest entered upon in the strict sense;

2. in the distribution of any benefices whatever, by way of contest, namely, a) if a contestant who is truly worthy is unjustly judged unworthy and thus deprived of his strict right; in which case restitution will have to be made according to the proportion of the hope which he otherwise would have had of obtaining the benefice; b) on the contrary, if an unworthy contestant is admitted as worthy, and thus, because of the determinate number of those to be admitted, another worthy person is excluded; in which case the damage caused to him must be repaired; c) if, when a contest has been instituted precisely for this, that the more worthy be named, the less worthy is preferred to him; in which case the one distributing ought to restore to the more worthy for the damage inflicted: for then the more worthy has a strict right; — but not if the contest is instituted only for knowing in general who are fit and worthy;

3. also in the distribution of burdens, for example, of taxes: if those taxing burden some less and others too much, they are bound to repair the damage inflicted on the latter, because each one has a strict right not to be deprived of his goods beyond what is due, namely, without necessity or a just cause.

296. Corollaries. — From the doctrine set forth the following things are deduced:

A. Concerning a cause of damage posited voluntarily or involuntarily:

1. He who culpably posited a cause of another's damage, if that damage has not yet followed, is bound to retract his fault, and in every way in which he can to impede the cause from producing the harmful effect; otherwise he is bound to restore. But if he could not impede the physical cause thus posited by him, he is nevertheless bound to repair the whole damage caused, because by voluntarily positing a cause whose influence he did not remove, he was truly, efficaciously, and formally the unjust cause of the damage, if not from actual will, nevertheless from preceding will.

2. But he who inculpably posited the cause of another's damage is bound to impede such a cause from producing the harmful effect, provided it can be done without relatively grave inconvenience, that is, without equal or greater damage; otherwise he is bound to restore under grave sin, because the effect becomes indirectly voluntary from an injurious omission, since each person, as long as he can, ought to take care lest an action posited by him harm another.

Hence a) a physician or pharmacist who inadvertently prescribes or furnishes poison, and afterward notices this, ought according to his strength to forestall the effect; — he who inadvertently casts fire into a haystack or into a forest is bound as far as he can to extinguish the fire; — he who from error gravely injures the reputation of his neighbor, or gave harmful counsel, ought to retract, etc.; otherwise they are bound to reparation of the damage;

b) but he who voluntarily administered poison to another, although afterward, repenting, he furnished an antidote but in vain, truly is the cause of the death; — he who, wishing to burn a house, brought fire to the house, even if afterward he tries to extinguish it, truly is the cause of the burned house; — he who by voluntary calumny, even if he retracted as far as he could, harmed his neighbor by damage in temporal things, truly is the cause of the damage: all these are bound to reparation.

B. Concerning damage caused from error:

1. From error concerning the gravity of the damage: he who from invincible error thinks that the damage which he causes is less than it is, is bound only to restore according to this estimation, because only this is voluntary; unless, however, he foresaw the whole damage in some way indistinctly or in confusion: thus if a servant alienated or destroyed a gem which he thinks to be worth 100 francs, while in reality it is worth 1,000, he must restore 100, unless at the same time he thought that it was a thing of great moment whose value could not be well determined, and thus knew the possibility of great value.

2. From error concerning the person injured: he who, wishing to inflict damage on one person, inflicts it on another, as he who, wishing to burn Peter's house, burns Paul's house, is bound to restore to Paul, because his damaging action is truly, efficaciously, and formally unjust; — whatever some have said: that restitution need not be made for the formal injury toward the first because it was not damaging to him, nor for the damaging injury inflicted on the other because it was merely material. For this is a mere subtlety.

a) For it is a material injury against Paul as Paul, but it is formal against Paul as owner of the thing destroyed; whence the injury is against a man in confusion, but against the owner of the thing, although it is invincibly unknown who that owner may be. And although the personal injury was involuntary, the real injury is fully voluntary, since someone voluntarily destroys a thing which he knows belongs to another, which suffices for moral fault and formal injustice.

b) Hence the error is not substantial, as regards the damaging itself (which would free the act from formal injustice), but merely accidental concerning the circumstances of the damaging action: the agent indeed errs concerning the owner of the thing, but at the same time he knows that the thing belongs to another, which justice forbids to be taken away, and nevertheless he wills to destroy this other person's thing. On the part, namely, of the intellect, although there is error concerning the person, who he is, there is perfect knowledge concerning what he is, or that injury is inflicted upon him; — and therefore on the part of the will, the act is borne toward an evil object, the injury of the right of the owner whose thing is destroyed.

c) Hence it is not relevant to say that the damager is so disposed that he would not inflict damage on Paul if he knew that the thing pertained to him, not to Peter: for the matter is not what he would do, but what he voluntarily did. By interpretative will he would not will the damage, but in fact he wills it. For error makes the act involuntary only concerning the person of Paul as such, not concerning the person as owner.

This is still more indubitable: 1. if the reason for inflicting damage was not the person as such, but his function or office, as if someone from hatred against religion or society wished to kill a priest or judge, and only erred concerning the person of the priest or judge;

2. if sufficient diligence for avoiding the error was not used, and from culpable negligence damage was inflicted on one rather than on another: for then this was foreseen in confusion.

3. From error concerning the substance of the thing destroyed: he who, wishing to destroy one thing, by error destroys another of the same owner, for example, he who, wishing to kill the

goat of an enemy, kills the cow of the same man, is bound at least to restore the price of the thing which is of lesser value, because this damage was voluntarily inflicted from formal injury: for although he did not wish to kill the cow, nevertheless he wished to destroy another's thing and to inflict grave damage on him, although he erred concerning its quantity.

C. Concerning doubtful damaging by doubt of fact:

1. If doubt of fact precedes the action, that is, if the agent doubts whether the action to be posited inflicts certainly unjust damage or injures a certain right of another, he ought to inquire with diligence proportionate to the gravity of the matter; and if after examination a founded doubt endures, he ought to abstain from the doubtfully harmful action. For justice strictly obligates that we do nothing from which unjust damage of another could follow; and it strictly forbids us to expose ourselves to the danger of probably inflicting certainly unjust damage on a neighbor. In doubt of fact, the safer course must be taken (n. 90-91).

Thus a judge cannot condemn someone concerning whom he seriously doubts whether he is guilty; nor can a physician employ a remedy which is probably harmful, unless another is lacking; nor can a hunter fire a gun if he doubts whether he is about to wound a beast or a man.

2. If doubt follows the action and after diligent examination a founded doubt remains:

a) If it is doubted whether the damage was in fact caused, or whether the cause was unjust, or sufficient for inflicting the damage, the obligation of restoring is doubtful and cannot strictly be imposed.

b) If the damage is certain and the cause of the damage posited is certainly sufficient, but it is doubted whether the cause was efficacious — or whether from that cause, and not rather from another, this damage was inflicted — this is to be presumed until serious reasons are brought forward to the contrary; but if there are founded reasons for doubting, the obligation of restoring, as being doubtful, cannot strictly be imposed.

c) If the damage was certainly inflicted, and a twofold (or multiple) cause is present, of itself efficacious, but it is doubted from which one the harmful effect followed, they are bound to restore in solidum if they acted from mutual conspiracy or with advertence to mutual concurrence: because then the uncertainty concerning the author of the damage is to be attributed to the damagers themselves; and this uncertainty is already damaging in itself and especially in its consequences, for example, in the deprivation of restitution. On the contrary, if each acted entirely unaware of the action of the other, the obligation of restoring becomes doubtful for each one and cannot strictly be imposed on either, because neither is proved to be the author of the damage.

297. Question: Whether one unable to restore from goods of the same order is bound to restore from goods of a diverse order?

Thus, for example, whether he who inflicted merely personal damage by adultery, insult, killing, wounding, etc., is bound to restore from real goods and to give money if he cannot otherwise compensate the damage? St. Thomas affirms, because he who cannot restore the whole is bound at least to compensate the part which he can (a. 2, ad 1 and 2). Many more recent authors with St.

Alphonsus deny this: for commutative justice obligates to restitution according to the equality of the damage inflicted; but where restitution must be made in a diverse genus, no equality is present, nor will any compensation ever be possible: by whatever money, the damage is in no way repaired, neither in whole nor in part. Namely, a right in one thing is not a right in another; whence the connection with the damage, the object being lacking, now does not exist.

Now 1) speaking speculatively, the opinion of St. Thomas seems more probable, because if someone cannot render a thing totally to equality, he is bound at least to render as much as he can; and if he cannot render the thing itself, he is bound to render in an equivalent. For although there is not equality of compensation from the nature of the thing, nevertheless there is according to the estimation of men.

2. In practice it is certain a) that the other opinion can be used, and no one can be compelled to restitution, on account of the authority of the great Doctor who holds it, St. Alphonsus; — b) nevertheless that restitution is to be advised, as all say; — c) that it is also of precept for real damage which perhaps will follow from personal damage, for example, for the care of a wound; — d) that material reparation must be furnished for personal damage if a judge has imposed it.

Article II: On Detention of a Thing Received

S. Thom. II-II, q. 62, a. 6.

298. The second title of restitution is another's thing received (*bezitting*). — By this title the possessor who detains another's thing is bound to restitution, whether in itself, or in an equivalent, insofar as he has been made richer from it, as if he has the price of the thing or its fruits, or insofar as he has spared his own things, as if by consuming another's thing he preserved his own which otherwise he would have consumed. He must restore it from the moment when he knows it to be another's thing, and that the other justly claims his own thing: for if it were not rendered at its time, it would already be an unjust taking. This is established from the axioms: the thing cries out for its owner, and right reason dictates that no one can become rich from another's thing (n. 160).

Before he knows this, that the thing is another's and to be restored, he is a possessor of good faith and inculpable, and is bound to restore by the sole title of the thing received or possession; after he knows this, if he retains the thing, he is culpable and a possessor of bad faith, and now by a twofold title he is bound to restore, namely, of the thing received and of unjust taking (as will be said in the following article); but if he doubts, he is a possessor of doubtful faith.

At present we shall speak of the possessor of good faith, who, namely, while detaining another's thing, inculpably thinks it is his own.

299. The general principle is that a possessor of good faith is bound to restitution:

1. as often as he is conscious that he here and now detains another's thing without legitimate cause: the thing cries out for its owner;

2. as often as he has been made richer from another's thing: the thing bears fruit for its owner, and no one can become richer from another's thing.

For, as St. Thomas says, a. 6: "That which he has beyond what is his ought to be taken away from him and given to him who lacks it, according to the form of commutative justice."

For declaring this we shall successively consider the possessor as to the thing itself, as to the fruits of the thing, and as to expenses.

A. As to the thing itself. 1) A possessor of good faith, as long as he remains in good faith, can use another's thing as his own; and when the time required for prescription has elapsed, he becomes owner, if the other conditions are present.

2. When he discovers that the thing belongs to another, he is bound to preserve it and as soon as possible to offer it to the owner, or at least to warn him that he should take it away at his own expense; otherwise he would become a possessor of bad faith. For the thing cries out for its owner. But if he bought the thing, he will be able to recover the price from the seller, but not demand it from the owner before he renders the thing, unless civil law determines otherwise.

3. If, during good faith, another's thing has perished or been consumed or lost, he is bound to nothing: not by the title of unjust taking, which did not exist because of good faith; not by the title of the thing received, which no longer exists. For the thing perishes to its owner; unless, however, the possessor was certainly made richer from it, for example, if he had the price of the thing, such as he received from sale (a. 1380), or if he gave or consumed the thing when otherwise he would have given or consumed from his own: for then the thing exists in an equivalent.

4. If he possesses the thing not entirely but only in part, he must restore the part which he has; if the thing was made worse even from his fault, it suffices to restore it as it now is, unless he acquired a gain from it; if it was made better, expenses being deducted.

B. As to fruits. 1) Personal fruits, not indeed fruits of the thing but of mere industry, which, namely, were acquired on the occasion of the thing solely or principally by the possessor's own labor, are not to be restored, because the fruits of labor are proper to each person.

2. Fruits of the thing, whether natural, industrial (or mixed), or civil, provided they exist in themselves or in an equivalent and have not been legitimately prescribed, must be restored, with expenses deducted, however, which were necessary for gathering, producing, or preserving them.

3. Nevertheless, by French civil law, which has been adopted in almost all regions,[1] the possessor of good faith makes his own all fruits already perceived during good faith, or while ignorance has not yet ceased, even those still existing (a. 549 and 138), namely, if they have been separated from the thing, as to natural and industrial fruits, and as to civil fruits, if they have occurred. This law is just, as one passed for the common good, so that many lawsuits and inextricable difficulties may be avoided, and the possessor not suffer great damage from unexpected restitution, but each person may securely determine his expenses according to his revenues. For this, however, good faith of conscience is not sufficient, but juridical good faith is also required, namely, resting on a title transferring property whose defects are unknown (a.

550); if this is not present, civil law does not intervene, and then one must stand by natural law alone, as was said under 2.

[1] It holds in Belgium, Italy (a. 703), Spain (a. 451), Austria (a. 330), the Netherlands (a. 604), Switzerland (a. 938); by German law, if a possessor of good faith acquired the thing by a gratuitous title, he is bound to render the fruits, otherwise not (a. 988 and 2020).

Hence a) he who in good faith, by trading with another's money, for example, of a deposit, acquired great riches, is not bound to restore these to the owner, as being fruits of industry alone, but only the usual interest, which is a civil fruit;

b) likewise, he who made an artistic painting with another's brush and colors is not bound to yield it to him, but only compensation for the use of another's material;

c) he who is compelled to restore to the owner industrial or mixed fruits of the thing can demand compensation for expenses and labor, which is to be determined according to the estimation of a prudent man; or on the contrary, after this compensation has been deducted, he can pay to the owner the price of the fruits: thus, for example, if he gathers crops, with the usual price for the lease of the fields paid;

d) he who in good faith bought a stolen thing at a cheaper price and sold it at a dearer price can consider the increase as a fruit of industry alone if it can be attributed to labor and skill; on the contrary, as a natural fruit of the thing, if it proceeds from the thing itself, for example, if a calf grows or grain becomes dearer because of the market price.

C. As to expenses. Besides usufructuary expenses necessary for perceiving the fruits, which must be paid by the owner if he obtains the fruits (a. 548), the possessor of good faith can deduct:

1. necessary expenses without which the thing would have perished or been made worse, such as repairs made to a roof or the food of animals: for the owner himself also would have had to make these;

2. likewise useful expenses which render the thing better and increase its value, such as plantations and constructions, at least insofar as they do not exceed the increase of value; otherwise the owner would become rich from another's thing;

3. not, however, merely pleasurable expenses which are made for the sake of ornament or pleasure, without the value of the thing being increased: such as paintings, statues, fountains, etc., generally are; nevertheless he can take these away, if this can be done without detriment to the thing (a. 1381, and 1634, and 555).

300. What if another's thing has passed successively from one person to another or to several?

A. If this happens by an onerous title and:

1. there is place for eviction, so that the owner can demand the thing from the holder without recompensation, and the latter has no means of defending himself: this last holder is bound to render it to the owner; but he has recourse against others, namely, against the seller, and he against the one from whom he bought, and so afterward, until one arrives at the first unjust

holder; — unless, however, the holder restored spontaneously to the owner, without consulting the seller, and thus was the cause that the seller could not defend himself from eviction (a. 1640 French, a. 1497 Italian);

2. if there is no place for eviction, because, namely, the owner cannot obtain his own thing at all (for example, when it has been consumed, the possessor has disappeared, or by civil law he cannot obtain it unless by paying the price[2]): the first seller is bound to refund to the owner the price of the thing insofar as he has been made richer from it, because this is the equivalent of the thing; but the other possessors are bound to nothing, because they were neither made richer nor inflicted damage. And the same seems to be said if the thing perished for the buyer, because by buying he took this danger upon himself,[3] and the seller is considered to have conducted the business of the true owner. Some, however, say that in this case the price can be kept by the seller and that this is to be attributed to good fortune; and others say the same in the case in which the thing has been consumed, or the possessor disappeared; but this does not seem equitable nor just. No one ought to be enriched from another's thing with loss to him.

[2] From French law, which present-day laws have generally imitated, the owner must refund the price if the holder bought a movable thing at a market, public sale, or from a merchant selling things of the same species (a. 2080); by German law a possessor of good faith acquires dominion of property even in certain things taken by theft, namely money, monetary titles, and all things bought in public auction; but not in other stolen things (a. 985).

[3] Unless it perished from a redhibitory defect: then the price would have to be restored to the buyer, because the sale would be null.

B. If by a gratuitous title a thing was transmitted from one to another, for example, by donation or succession, previous possessors who in good faith gave another's thing are bound to nothing, since they were not made richer from another's thing (unless otherwise they would have given from their own), but the last possessor must restore either the thing, if it exists, or that from which he has been made richer if he spared his own, unless the thing was legitimately prescribed.

C. If first by an onerous title and then by a gratuitous title, as if someone gives a thing of another which he had bought, he is bound to nothing, even if otherwise he would have given his own thing, because he is not richer; nor is the donee bound, because he succeeds to the rights of the buyer: then the first seller must furnish restitution.

This can also be proposed in this way:

A. Another's thing: 1) if someone received it gratuitously and gave it away, he is not bound to restore, unless otherwise he would have given from his own; but the last possessor is bound to restore;

2. if he afterward sold a thing received gratuitously, he is bound to restore the price, and indeed to the owner, if the latter paid the price to the buyer in order to recover it, or if he cannot have it or it has been consumed; — on the contrary, to the buyer, if the owner does not pay him the price, or if the thing perished by an intrinsic redhibitory defect.

B. A thing of another bought or received by another onerous title:

1. if someone sold it, he is not bound to restore the price, unless he is compelled to this by a judge, in which case he has recourse against him from whom he bought. But if he obtained a greater price, this can be considered as a fruit of industry, unless, however, it greatly increased from extrinsic circumstances, because then it would come to the owner;

2. if he afterward gave away gratuitously a thing bought, he is in no way bound to restitution.

In both cases the first seller is bound to restore.

301. Is a thing licitly returned to a thief, if this is necessary for recovering the price?

Resp. 1) If the owner demands his own thing before it is returned to the thief, the buyer is bound to restore it, for the thing cries out for its owner; unless, however, it has been otherwise determined by civil law.

2. If the thing bought has not yet been handed over by the thief, the buyer can rescind the contract and leave the thing to the thief. For he does not yet detain the good, and therefore he is not bound to take care of it.

3. If the owner has not yet demanded his own thing, according to some it must be restored to the owner, not to the thief, because the thing cries out for its owner; according to others, however, it can probably be returned to the thief, if the price can be recovered only with difficulty, because the contract can be rescinded and no one ought to harm himself that he may profit another; nevertheless, then the buyer is bound to warn the owner, and indeed, as it seems, from justice, insofar as each person is bound to impede that unjust damage be caused to another from his own action.

4. If the thief does not wish to rescind the contract and return the price, the buyer cannot consume the thing or sell it to another, because he cannot use another's thing; but he is bound to restore it to the owner, even if he is going to receive no compensation from him, or is going to undergo loss of money, because the thing cries out for its owner. Nevertheless he has recourse against the thief.

Article III: On Unjust Taking Together with Detention of the Thing

302. A possessor of bad faith is one who culpably detains a thing which he knows belongs to another. Hence by a twofold title he is bound to restitution, insofar as he is the unjust possessor of another's thing, by reason of the thing received, and insofar as he has inflicted damage, by reason of unjust taking. Therefore he must not only restore the thing itself with its fruits, but also compensate all damages following from his unjust action.

303. The general principle is: A possessor of bad faith is bound to restore insofar as he has damaged; whence the measure of restitution is the quantity of damage inflicted. In particular:

A. As to the thing itself: 1) As the unjust possessor of another's thing, he must restore to the owner the thing itself, if he has it, or an equivalent thing, and hence everything in which he has been made richer from it, and as soon as morally possible, unless the owner would be unreasonably unwilling to the delay; because no one ought unjustly to be enriched from another's thing.[1]

[1] Nor is recourse given against the seller for recovering the price, because the buyer knew the thing belonged to another (a. 1629).

But if another's thing has successively been possessed by several with bad faith, first of all restitution must be made by him who detains, consumed, or lost the thing; failing him, the robber is bound; and when these fail, the rest are bound according to the rules of restitution in solidum, concerning which in the following article.

2. As an unjust damager, he is bound to repair all detriments which he foresaw at least in confusion would follow from the unjust retention, even if he has been made richer in nothing; because he is the cause of all these.

Hence a) if the thing has been consumed or has perished, even without his fault but by fortuitous chance, he must restore its price, at least if the thing would not certainly have perished with the owner at the same time;

b) if the thing was made worse, while with the owner it would have remained whole, he is bound to compensate the damage;

c) if the owner has undergone some emergent damage, because, for example, he had to buy another thing at a higher price, this also must be repaired.

B. As to fruits, he is bound to restore 1) all fruits (natural, industrial, civil), expenses being deducted, perceived from another's thing, even if the owner would not have perceived them, even if they have been consumed, although from them the possessor did not become richer. For the thing bears fruit for its owner;

2. all fruits which the owner would legitimately have perceived, although the possessor did not perceive them, because he was the unjust cause of this damage; nevertheless this is not to be repaired entirely, but according to the proportion of the probability of the ceasing gain, or of the hope of obtaining it, according to the condition of persons and business affairs (q. 62, a. 4);

3. all fruits perceived by others, if they have not restored them, because he is the cause of this damage by cooperation.

But fruits of the person or of industry alone, which were perceived only on the occasion of the thing, are not to be restored, as being fruits not of the thing but of one's own labor. Thus these need not be restored: hens from the eggs of another, trees taken by theft and planted in one's own field, profit from trading or gambling with deposited money, although one acting thus sinned; but generally it suffices to pay the price of the eggs, of the small trees, of the legal increase, unless, however, further damage was caused.

C. As to expenses, he can deduct 1) necessary and useful expenses (a. 1381); but not pleasurable expenses (a. 1635). But ornaments which can be removed with the substance of the thing preserved and without detriment to it, he can retain for himself.

Thus unless civil law determines otherwise, such as the law in England and in the United States of America, according to which the owner need not refund expenses made by a possessor of bad faith.

304. What if the thing would have perished at the same time with the owner? — Resp.:

1. If the thing certainly would have perished at morally the same time and by the same cause as it perished with the thief, for example, by the same fire, earthquake, shipwreck, incursion of enemies, or from an intrinsic defect of the thing, as a horse from old age, the thief is not bound to restitution of the thing, because he is not the efficacious cause of the damage, nor was the condition of the owner made worse, although nevertheless other damages following from unjust detention are to be repaired.

2. If the thing certainly would have perished at the same time but not by the same natural cause, for example, if two ships perish at the same time, or if the thing perishes by fire with the thief while it would have perished by water at the same hour with the owner, probably it need not be restored, because the owner suffers no damage from this as to the thing; just as neither is he bound to restore who consumed the thing in the same place and around the same time at which, from a natural cause, it would certainly have perished, as from fire, because neither is he the cause of the damage.

3. If, however, the thing would have perished at the same time with the owner from the injustice of another, the thief is bound to restore its price, because the owner suffers damage from the theft: for if the thing had not been taken away, another would have contracted the burden of restoring, and from this other the owner could have recovered it.

4. If the thing would not have perished at morally the same time, the thief is bound to restitution, even if he rescued the thing from danger: for then the thing was unjustly detained for some time by the thief. Thus if someone saves a thing which otherwise was going to perish by fire or waters, he is bound to restore it; he could have not saved it, but, if he saves it, he saves it not for himself but for the owner.

By French civil law (a. 1302, in force among many nations; Italian, a. 1298; Spanish, a. 457), a possessor of bad faith is bound to restitution of the price of the thing in whatever way the thing has perished in his hands. Nevertheless this disposition, insofar as it adds to natural law, can be regarded as a penal clause, whence it does not obligate before, but only after, the sentence of a judge.

305. What must be restored, if the thing during the time of unjust detention had a varied value?

R. Per se the highest value is to be restored, which certainly must be done if the owner is unjustly deprived of this increase, namely: 1. if he himself, since he is vigilant, would have sold the thing at the highest price; 2. if he had to buy another equivalent thing at the highest price; 3. if the unjust possessor became richer from it, for example, because the thing grew in itself, as if a calf matured, for the thing grows for its owner; or 4. on the contrary, if the thing was made worse and would not have been so with the owner.

In practice, however, it will often be difficult to determine whether it is so. In doubt, restitution is to be urged only according to the price of the thing at the time of theft, or according to the greater price for which the owner had to procure another for himself.

306. A possessor of doubtful faith is one who, from a grave and truly probable reason, doubts whether the thing which he detains is his own or another's; whence a negative or very slight doubt

does not render a possessor of doubtful faith. Doubtful faith can be antecedent, if it preceded the very receiving of the thing and the possessor received the thing in doubtful faith; or supervening or subsequent, if the possessor began to possess the thing in good faith, but after the receiving of the thing a doubt arose.

A possessor of doubtful faith must diligently investigate the thing; and according as he acts justly or unjustly, he is reduced to a possessor of good or bad faith.

307. In the case of antecedent doubtful faith:

1. if someone occupies a thing occupied here and now by no one, he is bound to inquire concerning the owner and to act in the same way as was said concerning lost things; but if he neglects to inquire, he becomes a possessor of bad faith, and nothing can be retained, but the whole must be handed over to pious causes;

2. if by a doubtful title he takes away a thing and despoils a possessor who is not of bad faith, for example, probably judging that he has a right to part of an inheritance, he is assimilated to a possessor of bad faith and must restore the whole thing to the possessor; because in doubt the condition of the possessor is better. In the case, he ought to have recurred to the judge;

3. if by a legitimate title (for example, donation or purchase) he acquired a thing from a suspect possessor, doubting whether the latter is truly the owner, he is bound to restore at least according to the proportional part of the doubt (that is, according to the weight of reasons) to the probable owner, and failing him to a pious cause: he cannot retain the whole because he began possession without good faith and exposed himself to the danger of possessing another's thing; nor is he probably bound to render the whole, because it is not certain that the thing belongs to another.

Exception: a) if he acquired the thing from a possessor of good faith and after due inquiry an insoluble doubt remains: for then, although perhaps he sinned because of doubtful faith in acquiring, nevertheless he can consider himself as one possessor with his predecessor, so that the possession can be said to have begun in good faith, and the doubt is considered as supervening;

b) if he bought or received the thing with the intention of inquiring concerning the owner and rendering the thing to him as soon as he can be found: for then he begins to possess with good faith, and he can detain the thing until the owner appears. But if he culpably neglected to inquire concerning the owner, and because of the neglected inquiry it is now impossible to solve the doubt, he is now equated with a possessor of bad faith, and according to the proportion of the doubt, that is, according to the weight of reasons, he must restore to the probable owner or to a pious cause, in the same way as was said above.

308. In the case of subsequent doubtful faith: when a doubt has arisen, he is bound from justice diligently to investigate the truth, with that diligence which is proportioned to the value of the thing and the gravity of the doubt; otherwise he becomes as a possessor of bad faith. But he must:

1. before the inquiry is finished, not alienate nor consume the thing, but preserve it;

2. after diligent inquiry has been made, a) if it is certainly or almost morally certainly established that the thing belongs to another, he must restore it in the same way as a possessor of good faith; b) if the doubt perseveres, he can retain the thing and dispose of it, because in doubt the condition of the possessor is better. Therefore he again becomes a possessor of good faith; whence he can use the thing and consume it, as was said concerning a lost thing, indeed sell it, provided that he warn the buyer concerning the doubt, lest the latter be deceived;

3. if he has omitted the inquiry from grave negligence, he becomes a possessor of bad faith and is bound thereafter because of damage perhaps arising, and therefore:

a) if the owner is afterward found, he must repair the whole to him;

b) if because of the neglected investigation it is now impossible to solve the doubt, he is bound to restore according to the proportion of the doubt, when the doubt concerned a right which some determinate man perhaps had in that thing: for then that man is thus deprived of some probable hope of obtaining that thing; but this hope, according to greater or lesser doubt, can be estimated at a price by prudent judgment.

Generally St. Alphonsus thinks that then the quantity to be restored is much less than half the value of the thing, since possession had been begun in good faith. Therefore this restitution must be made to that man (or to his heirs), if he is known; but if he cannot be known, it must be made to the poor or to a pious work.

It is said: if the doubt concerned the right of some determinate man; for if the doubt was not concerning someone determinate, but indeterminately, sin indeed has been committed because of the neglected investigation, and more commonly they judge that even then restitution must be made to the poor; which therefore is to be counseled, for the possessor is in some way in bad faith. Nevertheless the matter is not altogether certain, since some judge that then damage effectively inflicted is not established, since possession was begun in good faith and there is no one who can contend against the possessor concerning the thing possessed.

Article IV: On Unjust Cooperation

S. Th. II-II, q. 62, a. 7.

309. Unjust cooperation is a concurrence given to the unjust action of another; it is direct and positive if it is done by a positive action, indirect and negative if it is done by omission of the action of one who can impede the injustice and is bound to this from justice. This can be done in nine diverse ways, as St. Thomas shows, art. 7:

One is bound to restitution not only by reason of another's thing received, if he detains another's thing, but by reason of injurious receiving; and therefore also whoever is the cause (physically or morally) of an unjust receiving is bound to restitution. And this happens...:

A. directly, when someone induces another to receive... a) either on the part of the receiving, by moving to the very receiving, which is done by commanding (1), counseling (2), expressly consenting (3), and praising someone because he receives another's thing (4); b) or on the part of the receiver, by recourse (5), because, namely, he accepts him and gives aid; c) or on the part of the thing received, because he is a participant and as it were an associate of the injustice (6);

B. indirectly when someone does not impede, though he can and ought to impede: either the silent man, who withholds a precept or counsel which would impede the injustice (7); or he who does not obstruct, who withholds aid by which he could oppose it (8); or he who does not manifest it, who conceals it after the fact (9).

Not all these modes obligate equally to restitution: "It must be known... that five of the foregoing always obligate to restitution: 1) command, because, namely, he who commands is principally moving, whence he himself is principally bound to make restitution; 2) consent, in that case, namely, without which robbery cannot be done; 3) recourse, when, namely, someone is a receiver of thieves and gives them patronage; 4) participation, when, namely, someone participates in the crime of robbery and in the booty; 5) he who does not obstruct is bound, when he is bound to obstruct... But in the other cases enumerated, someone is not always obligated to make restitution: for counsel, or flattery, or anything of this kind, is not always an efficacious cause of robbery. Whence then only is the counselor, or the flatterer, that is, the adulator, bound to restitution, when it can probably[1] be judged that an unjust receiving followed from causes of this kind."

[1] Understand in the strictly scholastic sense, as uniquely probable.

310. Principle I. Those cooperating are bound to restitution insofar as they efficaciously influence the damage, because the whole obligation of making restitution arises from an influence upon damage (C. Civ., a. 1382; C. Pen., a. 59-63, a. 73); and therefore they are bound to the reparation of every and only that damage of which at some time they were the unjust, efficacious, and culpable cause (prop. 39 condemned by Innocent XI; Rom. I, 32). Whence:

1. To induce the obligation of restitution, it is not necessary that the act of cooperation be a condition *sine qua non* of the existence of the damage, so that, if the cooperation had been lacking, the damage would not have existed, but it suffices if the action of cooperating has an influence upon the effect produced. Therefore, from the fact that even without some cooperation the damage would have been inflicted by the executor, it does not follow that the cooperator is exempted from the obligation of making restitution.

Hence a) if two agree in cooperating, they are bound to restitution, even if with one alone acting the injustice would have been or would not have been committed;

b) a cooperator who in reality influences the injustice is not excused from the obligation of making restitution from the fact that, if he were lacking, others would have been cooperators.

2. On the contrary, a cooperator is not bound to restitution if in fact he does not influence the damage, although of itself his action was apt to produce this influence, for example, if he to whom he gave counsel of stealing was in no way moved by that counsel, since he was already determined to act by himself or by others: for then the counsel stands merely concomitantly; and although the one giving that counsel sinned against justice, nevertheless he inflicted no damage nor in fact cooperated in the damage, and therefore he is not bound to make restitution for anything.

From these things it follows: a) if one cooperating moves only to the mode of injustice, he is not bound to make restitution unless from this modality a new damage arises; in which case he is bound

only for the excess of damage;

b) if someone by his vote concurs in damage to be unjustly inflicted, he is not bound to make restitution if his vote accedes to damage already caused by others, but he would be bound if sufficient votes of the others had not preceded.

3. He who by his cooperation contributes a concurrence not to the whole damage but to only part of the damage, by partiality of effect, is bound to restore only that part.

Thus he who, while others are already robbing or setting a house on fire, also steals something or sets another part on fire.

311. A mandans (*mander*; *bevelen* or *gebiederi*) is one who commits to another a business to be carried out in his own name; in the case, one who by his express or tacit mandate moves another to inflict damage in his own name, namely, in favor of himself, that is, of the mandator: whether he does it by commanding or by asking, whether he has authority or not.

It can happen either explicitly: by command, threats, entreaties, hope of reward, or another positive act by which another is moved to harm his neighbor; or implicitly: by some sign, word, or deed, by which someone manifests his will, as if he complains that no one will avenge an injury done to him, as Henry II, king of England, complained that he could not have peace in the kingdom with one priest (whom all understood to be Thomas of Canterbury); but it is not enough that someone merely ratify damage already inflicted beforehand in his favor, or that he not impede another prepared to inflict it, because he is by no means truly a mandator and positive efficacious cause of the damage.

A. Toward the person damaged, the mandator is bound to repair all damages which the mandatary inflicted on the neighbor by force of the mandate, or which were morally connected with the execution of the mandate and therefore at least in confusion were foreseen, as if mutilation follows from blows with cudgels, or if, with the barn of an enemy being set on fire, the barn of a neighbor also is burned. For the mandator is the principal and primary cause, which perpetrates the damage through another; the executor is only the secondary and ministerial cause which acts for the mandator.

Nevertheless the mandator is not bound concerning damages inflicted but not by force of the mandate; namely:

1. if they were inflicted beyond the limits of the mandate from the malice of the mandatary or from error, provided the error, because of the difficulty of the thing mandated, does not as it were follow from the mandate itself: for in these the mandatary acted in his own name, but did not act in the name of the mandator. Thus, for example, if in place of a beating he inflicted death, or in place of Peter he killed Paul;

2. if the mandate has seriously and efficaciously been revoked, so that the revocation became known to the mandatary before the damage was inflicted: for by such revocation the mandate is extinguished, whence the mandatary, inflicting damage, now perpetrates it in his own name, but not in the name of the mandator. And therefore the latter is now not bound to restore as mandator, indeed in no way, unless he also was a counselor or one not obstructing: for then he would be bound under another quality.

But a) if the mandate can no longer be revoked, the mandator is bound from justice, even with at least equal damage, to use some other means to impede the damage, for example, by warning the owner, because from justice he is bound to impede it as much as he can;

b) if the revocation did not become known or another means cannot be employed, the damage truly follows from the mandate and is to be repaired;

c) if some third party maliciously impeded the revocation, he owes the mandator compensation for the restitution.

B. Toward the mandatary, the mandator *per se* is not bound to repair damages incurred by him: for he who entirely freely, and especially with an agreed wage, undertakes some business to be carried out, assumes in himself the perils of the execution. *Per accidens* the mandator is bound concerning damages:

1. if he has expressly obligated himself to furnish that indemnity;

2. if he morally coerced the mandatary by force, fear, fraud, or another unjust means, and the damages have a connection with the execution of the mandate; therefore excepted are those damages which the mandatary incurs from imprudence or rashness: for these he ought to impute to himself.

312. The counselor and the flatterer. - A counselor (*conseiller*; *raderi*) is one who moves another to inflict damage upon his neighbor in his own name; whence he is distinguished from a mandator by this, that he does not move another to act in his own name: for if he does this in his own favor, by that very fact he is a mandator. Hence the executor of counsel acts in his own name, the executor of a mandate in the name of another; and therefore, while the mandator is a primary cause, the counselor is a secondary cause; whence he is bound only secondarily to repair damages.

One counsel is doctrinal, another impulsive. Doctrinal or theoretical counsel is concerning the truth or licitness of an action, by which, namely, it is declared licit if it is illicit, good if it is bad, or bad if it is good, valid if invalid, or invalid if valid, etc. Impulsive or practical counsel abstracts from the truth or licitness of the action, but, cutting off from it, indeed with the injustice of the action supposed, nevertheless moves another to it by which damage may be inflicted.

Each is clothed or qualified, or naked or simple. The first at the same time suggests motives or means of harming: motives, namely, from which it may appear that the action is licit, honorable, easy, excusable, useful, necessary; or means by which damage can be inflicted certainly, easily, safely, by which, for example, poison is prepared, abortion is procured, a house can be invaded; the other simply induces one to harm by persuasion, entreaties, blandishments, promises, or other exhortations, for which ordinarily mere example does not suffice, which of itself alone is an occasion and not counsel, unless it is given professedly by way of teaching or invitation.

A flatterer (*louer*; *prijzen*) is to be equated with a counselor: he is one who by praising or by blaming incites another to inflict damage on a neighbor or not to repair it.

It is committed by adulation, praise, reproach of idleness or pusillanimity, exaggeration of a contumely received, mockery, whispering, etc., by saying, for example, "you are idle if you suffer this," "it is unbecoming to your state," "you lose honor if you do not take vengeance." The flatterer exercises

the same influence as one offering impulsive counsel; and consequently he must repair the damage inflicted in the same way; nevertheless, he who approves damage already inflicted is *per se* not bound to restitution, unless the approval induces new injuries or efficaciously impedes reparation from injury.

A. The counselor by doctrinal counsel:

1. if by reason of status or office, or for another cause, he publicly professes expertise, as a physician, advocate, notary, confessor, etc., and gives harmful counsel, whether a) from vincible ignorance, or b) from gravely culpable negligence, or c) from bad intention, he is bound to repair every damage arising therefrom, both to the one consulting and to a third party: for he who seeks counsel from one who is in office or professes expertise has a strict right not to be deceived by the ignorance or malice of the one consulted, with damage to himself or to a third party; whence in the case the counselor is the unjust, efficacious, and culpable cause of both damages;

2. if a merely private person gives counsel, he is bound to repair the damage inflicted on a third party, because he is its voluntary cause, insofar as he foresaw it at least in confusion; but he is not bound to restore to the one seeking counsel, unless he deceitfully affects special expertise: for he who seeks counsel from an unskilled person spontaneously exposes himself to the peril of damage and deceives himself, and whatever damage he may suffer, he ought to impute to himself and to his own imprudence;

3. each is bound from justice to retract the counsel given: with grave inconvenience indeed if he gave harmful counsel from grave fault, otherwise without grave inconvenience; but if he neglects to retract it, he is bound to restitution.

B. The counselor by merely impulsive counsel, or the flatterer, is bound to repair the foreseen damage which from the counsel was inflicted on a third person, because he unjustly harmed him; but not the damage which comes upon the one seeking counsel, because injury is not done to one who knows and consents.

Hence 1) if wicked counsel is given to him who is already sufficiently determined to inflict damage, there is no obligation of restoring, because the damage was not inflicted from the counsel which was not its efficacious cause.

2. When the other is already determined to inflict damage, if the counselor only persuades the mode of doing it, or another circumstance of place, time, etc., he is not bound to restitution; unless *per accidens*, if he has thus increased the damage, as if by indicating a mode he persuaded greater damage, in which case he is bound concerning this excess, or if he procured it more certainly or more safely, as if he warned that it must be inflicted sooner because otherwise it would have been impeded, in which case he is bound concerning the whole damage.

3. He who counsels a lesser evil to him who is already determined to inflict a greater one is not bound to restitution, if the damage is inflicted on the same person, because then he is not the efficacious cause of that damage but only of its diminution; on the contrary if he said that a

lesser damage should be inflicted on another person determined in particular, because then he is the true cause that damage was inflicted on this one, nor is it licit to impede the damage of one with the injury of another. Nor let it be said that such a one is unreasonably unwilling against such counsel, for no one is bound with great inconvenience to yield his right, in order to avoid the greater damage of another; and even if he were bound to this, it would be from charity alone, not from a strict debt, which does not suffice to remove the nature of injury from the action (n. 246).

4. If two or more together offer wicked counsel, all are equally bound to restitution *in solidum*, as efficaciously influencing the damage.

5. He who, before the damage is inflicted, has efficaciously revoked the counsel (or adulation), so that the revocation became known to the one seeking counsel,

a) is not bound to restitution if the counsel was simple, which is destroyed by a simple retraction;

b) even if the counsel was clothed or attended by reasons, provided he has brought contrary motives equally efficacious or stronger, such as reasons sought from faith: for then if the other does not wish to yield to these motives and change his mind, the damage will have to be attributed to this one's malice, but not to the revoked counsel;

c) but if the counsel was clothed with an indication of the mode or means of perpetrating the damage, the counselor from justice is bound not only to revoke the counsel, and by valid reasons to induce the other not to use the counsel; but also, if he cannot turn him away from the unjust purpose, to warn the owner that he take care for himself, or in another way to impede the execution as much as he morally can, as was said concerning the mandator; otherwise he will be bound concerning restitution on account of the damage.

As to the flatterer, it should be noted that an influence is removed with more difficulty from blame than from praise.

313. One consenting (*consentir*; *toestemmen* or *behagen*) in general is everyone who approves a deed, but then he does not influence the damage except *per accidens*; but in the present matter there is understood one who by his consent exteriorly manifested, namely by words or other signs, *per se* influences the damage to be inflicted.

Consent is also favor, approval, sentence, or vote, whether of election or of resolution; but vote is twofold: merely consultative, which belongs to cooperation by counsel; and decretory, which has the force of a precept or law, and constitutes a special mode of cooperation, as in senators or deputies who by vote establish an unjust law, in judges or jurors who pass an unjust sentence, in collators who make an unjust conferral of office, in electors who promote an unworthy person, all of whom act in almost the same way as mandators.

One consenting is bound to restitution when his consent was an efficacious and culpable cause of damage unjustly inflicted. Hence:

1. if there are several consenting, and all together give an unjust vote, whether by putting in a secret ballot or by rising, all equally concur in the damage and are bound to restitution;

2. if from mutual conspiracy they give wicked votes, all are likewise bound;

3. if they give a vote successively and by living voice, a) certainly those are bound to restitution who cast their vote earlier, until the number necessary for the wicked sentence is completed, even if they foresee that those who would furnish consent will not be lacking, because they truly influence the sentence and consequently the damage; b) but those who, after the sufficient number has been completed, give a vote, are also bound if the votes are revocable, because the damage is not yet consummated; probably they are not bound if the votes are irrevocable, because the damage has already been accomplished and consequently they are not its efficacious cause, unless sometimes *per accidens*, insofar as they could be a cause, after the manner of one counseling, that the decree be entrusted to execution more easily or revoked more difficultly;

4. if, before the sentence is passed, they efficaciously revoke the unjust vote, they are immune from restitution, because no efficacious cooperation is now present;

5. those who give a vote unjust of itself, but concerning a thing not intrinsically evil, when it is the only means of impeding a greater damage, can be freed from injustice and from repairing the damage; especially if it is publicly known that it is done in this way only to avert a greater evil.

In doubt whether someone gave his vote after the sufficient number of votes had been completed, he is bound to restore, at least pro rata and according to the measure of the doubt, because, although he has not certainly caused the damage, nevertheless he certainly caused uncertainty about the author of the damage, insofar as he brought it about that, on account of the exceeding number of votes, some are not certain who are bound to restore *in solidum*; and thus he has now made worse the condition of him who suffered the damage, in relation to reparation of the damage.

314. A receiver or one furnishing recourse (*receler*, *verhelen*; *proteger*; *beschermen*) is one who furnishes to another security, convenience, protection, custody, so that unjust damage may be inflicted or so that damage already inflicted may not be repaired. He is, namely, one who in bad faith, by receiving another's thing or by protecting the author of damage, whether in person or in the instruments of his wrongdoing, impedes restitution, or even induces to harming.

Therefore someone can be a receiver in two ways, either by real recourse or patronage, when he receives, buys and sells, guards, or changes another's things which have been taken away; or by moral recourse or patronage, while he furnishes refuge or security to a malefactor as such: for one who would not receive him as a malefactor, but by title of blood relationship, friendship, mercy, or by reason of office, for example, of innkeeper, or of necessity in order to avoid inconvenience, and who did not intend to furnish aid to him, would not properly be a receiver.

One receiving is bound to restitution insofar as he renders the malefactor more secure in inflicting unjust damage or is the cause that a good unjustly taken away is not restored; and indeed, if he is an unjust possessor of the thing, he is bound in the first place by reason of the thing received, otherwise after the author of the damage, because he too was its efficacious cause, but a secondary one.

Receivers are and are obligated to restitution:

a) Those who before the deed offer malefactors their house as an asylum, or after the deed receive them, even as tavern-keepers, and hide them lest they be captured, or deliberately guard and hide their instruments and thefts.

b) Merchants and innkeepers who hide or accept as a price money or things taken away from parents or masters by sons of families or servants.

c) Dealers in old wares who indiscriminately buy at a cheap price all things brought to them, although they can easily suspect that they are stolen things.

d) Princes and military leaders who favor or protect soldiers or subjects exercising thefts, robberies, exactions, rapes.

e) Those who furnish aid to a malefactor, by watching and warning if perhaps those should come upon him who are about to denounce or impede the crime.

f) Advocates who patronize manifestly unjust civil cases, or unjust accusers in a criminal case; but not those who only defend malefactors so that they may be freed from punishment or from so great a punishment, since according to the law these can or even ought to have a defender.

315. A participant (*participer*; *mededeelen*) is so either in the thing unjustly received, or only in the unjust action or unjust receiving: the first must restore by reason of the thing received and consequently in the first place, in the same way as the receiver of another's thing; the other by reason of physical and strictly so-called cooperation toward another's damage.

By reason of intention, participation is formal if the participant consents not only to the unjust action but also to the unjust intention of the principal agent; or material, if from another intention he concurs in the unjust action. Thus he who hands over the keys of the house to a thief so that he can steal cooperates formally; but materially if he does it from the sole end that he may avoid damage to himself.

By reason of the mode in which concurrence is furnished, participation is immediate or mediate. It is immediate if someone with another posits an action by which, with no other action interposed, damage is inflicted on a third party, for example, if someone breaks open the door of a house with a thief, or removes another's thing by carrying it with him; mediate, if someone posits an action from which damage to a third party follows through the subsequent action of another and through the malice of another, for example, if someone hands over the keys of a house to a thief or supplies other means to another which the latter abuses for perpetrating injustice. These things having been posited, the following principles hold:

A. He who formally participates with another in an efficaciously unjust action is bound to restitution: for since he intends to do injury and in reality does it as co-executor or as mandatary, he is the truly unjust, efficacious, and culpable cause of the damage inflicted.

B. He who materially participates in an unjust action can be excused, provided that the action by which he cooperates is not intrinsically evil, and there is present a proportionately grave cause, as is established from the general doctrine concerning the morality of cooperation in evil (I, n. 489).

The principle *per se* and regularly holds of mediate cooperation alone, which consequently on account of a grave reason can quite easily be licit; but not of immediate cooperation, which generally is

intrinsically evil. Hence:

1. it is never licit immediately to participate in the killing of an innocent person, since such an action is intrinsically evil;

2. it is not licit immediately to participate in the mutilation of an innocent person, unless for preserving his health or life, because in this case alone mutilation is licit;

3. it is not licit immediately to participate in calumny or in positive unjust contumely, because the actions are intrinsically evil;

4. generally it is illicit immediately to participate in another unjust action, unless probably on account of a most grave cause, for example, for avoiding death or a wound, in theft or injustice toward the external goods of fortune: for then the owner is judged to consent to this, because he would not be reasonably unwilling.

Yet this must be understood with the due restrictions necessarily to be added.[2] For:

[2] Cf. Waffelaert, *De Iustitia*, t. II, n. 300; Theol. Mechl., *Tr. de Iure et Iustitia*, n. 45, q. 2.

a) You cannot without sin concur toward damage to the goods of another so that you may preserve yourself unharmed in your own goods of the same order, unless you do this with the intention of compensating the damage; otherwise the owner would be reasonably unwilling.

b) Nor, for avoiding damage simply grave in reputation, can you cooperate in inflicting grave damage on another in fortune, unless under this condition, that you can and wish afterward to repair it, or that the same damage would equally be inflicted by the principal author without you.

c) Even if there is question of damage to be inflicted for avoiding death, mutilation, or a similar extreme evil, it does not follow from the fact that cooperation is licit that restitution ought not to be made, once the necessity has passed, by that cooperator, when he can. For those things which are taken for meeting extreme necessity are to be restored by him who is rich in hope.

316. Negative cooperators: the silent, the non-obstructing, the non-manifesting. - The silent one (*niet berispen*) is one who, before damage has been inflicted, is silent, when by word or sign, by shouting, reproving, warning, forbidding, he can and ought to impede it, as a leader of soldiers being silent when he sees damage to be inflicted by the soldiers, a guard of a house who, when a thief approaches, does not shout. - The non-obstructing one (*niet beletten*) is one who, while damage is being inflicted, does not impede it, when he is bound to this, as officers who do not prohibit an unjust aggressor from killing an innocent man, guards who do not drive thieves away, an advocate who according to his office does not defend his client, a magistrate who permits crimes to rage. - The non-manifesting one (*niet overdragen*) is one who, after damage has been inflicted, does not denounce the malefactor, while he can and ought to furnish this, as guards of a house who do not warn the owner concerning a theft committed, guards of taxes who say nothing about those things which defraud taxes.

Negative cooperators must restore when 1) from commutative justice or from office or pact, they are bound to impede damage, and 2) they can impede it reasonably without graver inconvenience, and 3) in fact they do not impede it.

It is necessary a) that they can and ought to impede it, otherwise cooperation is not voluntary and culpable; b) that, though they can, in fact they do not impede it, otherwise cooperation is not efficacious; c) that they are bound from commutative justice, and not from charity alone, piety, or legal justice, otherwise cooperation is not strictly unjust nor does it induce an obligation of restoring, since commutative justice alone obligates to restitution. But this obligation of justice can arise from an explicit or implicit pact or contract by which they freely undertook it, as with guards of forests or taxes, or from an office undertaken by force of which they are bound to prohibit damage, as with military leaders, tutors, judges. Yet these regularly are not bound to impede damage with graver inconvenience to themselves, say with danger of life: for no one is judged to wish to obligate himself when this cannot be done without grave detriment to himself, unless this was brought into the pact explicitly or implicitly, or unless it is necessary for the public good, as with soldiers.

Negative cooperators are and are bound to restitution:

1. Public officials upon whom, from a special office, it is incumbent to watch over public tranquility or the indemnity of citizens, as to damages which, because of culpable negligence, they do not avert from citizens.

2. Tutors and administrators of goods who do not impede damages impending over pupils, minors, and others whose goods they administer.

3. Counselors, electors, deputies, etc., who, abstaining from a vote from grave fault, do not impede a wicked sentence, election, law, if from special office they are bound to avert the damage following therefrom.

4. Guards of mountains, vineyards, forests, fields, fishponds, etc., who from grave negligence do not impede damages or do not manifest those done, unless they are of lesser moment, or the consent of the owner can be presumed, or they are permitted in a certain measure by legitimate custom; likewise prefects of taxes who permit these to be defrauded or do not denounce those defrauding them, unless in matters of lesser moment, or in those for which by received usage the tax is not customarily exacted so rigorously. - Nevertheless they are not bound to pay fines not yet imposed, to which those damaging or defrauding would have been condemned, because the treasury does not have a right to them except after the sentence of a judge.

5. Servants who, in those goods which are committed to their special care or custody, do not impede thefts or damages, whether inflicted by domestics or fellow servants or by strangers, because they are bound to guard those goods from contract and therefore from justice; but not as to other goods not specially committed to them, for they do not seem bound to guard these, whether against fellow servants or even against strangers, except from charity.

6. Owners who from grave negligence do not impede damages inflicted by animals of which they have ownership or custody; but if there is present only juridical fault, they are not bound except after the sentence of a judge.

7. In the same way, fathers of families who do not impede damages inflicted by sons who are not yet masters of themselves; but parents, teachers, superiors are not bound to restore damages of sons or subjects who have sufficient use of reason, because from the office of justice they are not bound to protect the goods of others. Unless their silence were equivalent to approval or protection and positively moved to inflicting damage: for then they would be bound as those consenting or counseling, or as patronizing or furnishing recourse. But if by civil law they are sometimes more obligated, or on account of juridical fault, as to these they are not bound in conscience except after the sentence of a judge.

8. Generally, he who culpably impedes a neighbor wishing legitimately to avert damage, if he has used an unjust way, or if the other ought from justice to avert the damage; but not a confessor who from grave negligence merely omits warning the penitent concerning restitution to be made or concerning injury not to be inflicted, because, by force of his office, the confessor is bound from justice to provide for the spiritual good of the penitent, but not to avert the temporal damage of others, although he can be bound to this from charity. Unless the silence in the circumstances is equivalent to positive counsel, just as also when the confessor gives a positive unjust response: for then he is a positive cooperator and is bound as a counselor from office.

It should be noted that he who has accepted money for not denouncing is bound to restitution, both if the money is stolen, in which case he is one receiving, and if he ought to denounce from office, in which case he is a negative cooperator; but not if he is not bound from justice to denounce, because just as he can be silent because of the prayers alone of the thief without injustice, so he can do the same because of gifts. Unless, however, in this way he would furnish greater security to the one damaging, as can more easily happen if the money was accepted before the damage is inflicted: for in this case he would be a positive cooperator after the manner of one patronizing or furnishing recourse.

317. Principle II. Cooperators simultaneously inflicting damage on someone can often be bound to integral restitution *in solidum* or solidarily, so that one, in default of another, must restore the whole. - This solidarity is the obligation incumbent upon individual cooperators, in default of the others, of repairing the whole damage which was inflicted by several together; yet by this law, that if reparation has been made by one, the others are no longer bound toward the injured party, with recourse nevertheless preserved for the one restoring against those who are obligated equally or before him. Now:

I. Individual cooperators are bound to restitution *in solidum* whenever they have had an influence upon the whole damage, so that the whole can be morally attributed to each one. For each one is bound to repair the whole damage of which he is the truly unjust, efficacious, and culpable cause.

But such are:

1. He who was the principal cause of the whole damage, as a mandator, or a thief who sought others as associates for taking away a stolen thing: "principally," says St. Thomas, a. 7, ad 2, "he is bound to restore who is principal in the deed."

2. Those each of whom was a necessary cause for inflicting the whole damage, as those giving a vote without which an unjust sentence is impossible, or two thieves taking away another's thing which one alone could not have taken away: physically indeed they cause partially, but morally the whole proceeds from each. So also those who ought from justice to avert the whole damage, and while they can, do not impede it; because morally they are accounted a necessary cause.

3. Those who, from a common conspiracy properly so called, were the cause of the whole damage, whether by mutual persuasion, by entering upon a plan, by common abstention, etc., as robbers who enter upon a plan of killing an enemy or plundering a house, and mutually incite themselves to this, or guards who agree about not impeding an injury: for they are the moral cause of the whole damage; but not those who without mutual influence simultaneously inflict damage, for example, set fire to the same house, or sink a ship, or snatch away the goods of the same person, because their influence is only partial.

4. Also those each of whom was a sufficient cause of the whole damage, as if two, discharging a firearm at the same instant, inflict a lethal wound on the same person, or, simultaneously giving evil counsel, move an agent to a damaging which the counsel of one would sufficiently have provoked.

II. On the contrary, cooperators are not bound *in solidum* to restitution, but only according to the proportion of influence, whose damaging action a) was neither necessary, b) nor sufficient, c) nor proceeding from conspiracy. For they are only the cause of part of the damage.

Thus he who, as a soldier in war, while others are doing damage, also caused some damages, is bound to repair only the part of the damage which he himself inflicted; or he who, while two are perpetrating theft in a house, comes up as a third and also steals; or he who sets fire to buildings which others have already efficaciously burned.

318. Principle III. Order among cooperators is to be observed, whether they caused the damage in the same grade or in a diverse grade. Hence there is a twofold rule:

I. If cooperators have concurred in the damage in the same grade and mode, each is equally and indiscriminately bound to restore, each one his own part, and if someone does not restore, those who are bound *in solidum* must restore this part proportionately.

Thus if of five all are equally mandators, or counselors, or participants, and the damage is 5000 fr., each one is bound to restore 1000 fr.; but if one does not restore, the others besides must each pay 250 fr., but they have recourse against him who did not pay his part.

II. If cooperators have concurred in the damage in a diverse grade, ordinarily they are bound in this order: 1. he who now detains another's thing; 2. the mandator; 3. the executor; 4. the other positive cooperators; 5. negative cooperators. - It is said: ordinarily, for exceptionally the order can be somewhat inverted. The principle is: he ought to restore first who in fact principally or more greatly influences.

Therefore 1) he who detains the thing, or the participant in the thing, is bound to restitution: he is bound by title of the thing received, which is the greatest obligation of all, because the thing cries out

for its owner; but if the thing now does not exist, he is judged the detainer who before the others had profit from it, or who, after he detained it in his own name, unjustly consumed it; - 2) the mandator, who is the principal cause comparatively to the executors; to whom the counselor is equated a) if he induced the other into invincible error, for example, the one mandating him; b) if the damage following from the counsel was useful to him, the counselor, and not to the executor; - 3) the executor, who is principal in the deed, and after the mandator has the chief parts; but if among several executors one is principal, who acts in his own name and mandates the others, he is bound before the rest, not so if he acts in the name of all the others; - 4) the other positive cooperators, among whom of themselves there is no order, because there is no principal cause, so that they are bound equally; unless they are *per accidens* subordinated among themselves, for example, one persuading one person to persuade another; - 5) finally negative cooperators, who of themselves are accustomed to influence less than the others; among whom nevertheless perhaps he is bound first who is more strictly obligated to avert the damage.

Thence the corollary follows: if the superior damagers restore, the inferior are liberated; but on the contrary, if the inferior restore, the superior are not liberated; thus:

a) If the principal cause has restored or has obtained condonation from the legitimate owner, all secondary causes are now bound to nothing; on the contrary if a secondary cause has restored or obtained condonation of his part, the principal cause is not therefore liberated, nor are the other secondary causes for their part.[3]

[3] Yet see C. C., art. 1284 and 1285.

b) If one of the secondary causes has restored, the principal cause is bound to recompense him; and if this one fails, the other secondary causes are bound to compensate him according to the proportional part.

c) If one of the negative causes has restored, the positive cooperators according to order are bound to restore the whole to him; and if they fail, the other negative causes are bound to pay him their part.

When the detainer restores, the others are bound to nothing; when the mandator restores, the detainer must restore to him; when the principal executor restores, first the detainer, and in his default the mandator, must compensate the executor; when a secondary positive cooperator restores, first the detainer, then the mandator, third the principal executor, is bound to restore the whole, and in their default, the other positive cooperators for a proportional part; when a negative cooperator restores, the positive cooperators are to restore in the same order; but if these fail, the other negative ones, their part.

319. Practical observations. - 1. Conjectural signs of efficacious cooperation are handed down in Theol. Mechl. n. 39, q. 5: a) if the one inflicting damage uses the means suggested by the cooperator; b) if he has done some things which the cooperator suggested and which otherwise he would not easily have done; c) if the cooperation was apt to move the executor and the damage followed, unless the contrary is drawn out from the circumstances.

2. One doubting a) whether he was the total cause of the damage is not bound to restitution *in solidum*, unless by his action he rendered the thing uncertain; - b) whether the principal cause has restored, if after inquiry has been made it is probable that restitution has been made, is not

to be compelled to restitution; - c) whether cooperators of the same grade have restored, and this is probable, is not to be compelled except to restore his own part.

3. In practice cooperators are not always to be urged to restore the whole, even if they are bound *in solidum*. As St. Alphonsus says, *Th. M.*, l. II, n. 579: "it must nevertheless be noted that the uneducated, although they are bound *in solidum*, rarely is it expedient to obligate to the whole; since these with difficulty persuade themselves that they are bound to restore the part taken away by associates. Indeed, it can sufficiently be presumed that the owners themselves, to whom restitution is owed, consent that they restore only the part taken away by them; since otherwise it is greatly to be feared that they will restore nothing if they are obligated to the whole." To these the confessor should say that they restore what they judge themselves to owe according to the dictate of their conscience.

4. Sometimes in positive law (as in art. 50 of the Belgian Penal Code) the obligation of restoring *in solidum* is established much more generally than is really present in the forum of conscience. Therefore this disposition of law, insofar as it extends beyond the obligation of natural law, obligates only after the just and correct sentence of a judge, and from legal justice only, because it has the nature of a penalty.

Question Three: On the Circumstances of Restitution

Article I: On Him to Whom Restitution Must Be Made

S. Th. II-II, q. 62, a. 5.

320. General principle. - Restitution *per se* is to be made to him whose strict right was injured, and, he being deceased or having disappeared, to his heirs or to those having charge. For by restitution there is made a reduction to the equality of commutative justice, which consists in the equalizing of things; but this cannot be had unless what is lacking is supplied to him who has less than his own. For this it is necessary that restitution be made to him from whom it was received (q. 62, a. 5).

Whence if restitution has been made to another than the injured person, the obligation of restoring remains, unless the thing was without fault in the possession of the one restoring and has passed over.

321. If the injured person is certainly known, generally restitution is to be made to him himself, namely, to him who was legitimately possessing the thing and who here and now has the right of possessing it: thus as often as it can be done without great inconvenience. For the thing cries out for its owner; that is, not for him who has the bare dominion of property, but for him who here and now legitimately exercises dominion, or for the legitimate possessor (a. 1239). Whence if a thing has been taken away from a depositary, lessee, or curator, it is to be restored to him to whom injury has been done, but not to the proprietor. Yet there are exceptions:

1. If a grave reason is present, restitution can be made to another: thus a thing can be returned to the owner, whenever he could recover it from the possessor only with difficulty or trouble, or if the possessor himself wished to use it for harming; and if it has been stolen from a son of a family, it can be returned to the parents lest it be squandered by the son.

2. If the thing has been received from a son of a family, a pupil, a madman, a religious, from those goods whose administration does not belong to them, it will for the most part have to be restored to the father, tutor, curator, prelate, etc. (a. 1241).

3. If the injured person has died, restitution is to be made to the heirs or those having charge; nor can the goods be distributed to the poor or for Masses for the deceased,[1] unless the heirs consent or there are none at all.

[1] S. Poenit., 7 Feb. 1899.

4. If the owner has made a cession of all goods to creditors, restitution must be made not to him himself but to the administrator of the goods, as civil law also prescribes; unless for those goods which are necessary to the owner for sustenance if he is in grave necessity.

5. If a community or society has been injured, restitution is to be made to its administrators, not to individual members, even if the society pursues some accidental evil ends or expends goods for evil uses, because the society as such has suffered the damage. Unless, however, it is essentially evil and pursues only an entirely wicked end, as a Masonic sect or idolatrous community: then restitution will have to be made not to the society itself, which cannot have the right of possessing, but to the individual members,[2] or, if this cannot be done, to the poor.

[2] S. C. de P. F., 10 Feb. 1795 and S. Off., 21 Sept. 1842, ad 4.

6. If damage has been inflicted on an insurance society, restitution will have to be made to it, whether it belongs to the treasury, or is a private society, even if because of a pact of reinsurance for greater damages it is impossible to know what society in fact suffered the damage. In this last case several theologians say that restitution is to be made to the poor or to pious causes. But, as Vermeersch notes,[3] this is not the practice of the Sacred Penitentiary. Whence Genicot:[4] "Practically it seems to suffice that restitution be made to the administrators, when the injured person cannot be better detected, and if this is regularly done, a certain compensation exists among the various societies." Nevertheless, he does not seem to be disquieted who in good faith has already restored to the poor.

[3] *Th. M.* II, n. 494.

[4] *Th. M.* I, n. 658, VII. It is better nevertheless to warn several of the administrators or even associates, lest the restitution made be defrauded by an unfaithful administrator.

322. If the injured person is doubtfully known or uncertain, first of all inquiry must be made with diligence proportioned to the value of the thing. But if the doubt remains:

1. If it is among a few, the thing or its price is to be divided among them in the better way by which it can be done, nor can it be given to the poor: thus, for example, money found, lost or taken away from one of four or five persons.

2. If it is among many persons distant from one another or easily changing domicile, as easily happens in great cities, so that there is no probability that it can be restored to the true owners, restitution is to be made to any pious causes.

3. If it is among several of the same place, restitution is to be made to them, if it can be morally done; but otherwise to the poor or to pious works of that place where the injustice was committed. Thus merchants defrauding in weight, measure, or quality of wares must restore by increasing the weight and measure, or by bettering the wares or diminishing the price if the same buyers are accustomed to return; otherwise they should restore to the poor of the same place, according to the presumed consent of the owners.

Nevertheless, although profit has come from fraud, provided that no buyer must be supposed gravely injured, he would sin only lightly who repaid the whole to the poor, especially of the same place; indeed the one restoring is excused even from light sin if he acts thus from a reasonable cause, for example, if without notable danger or damage to himself he cannot render to the clients, or if there are very needy poor to whose relief the injured owners are judged more easily to consent.

323. If the injured person is entirely unknown, even after diligent inquiry has been carried out:

1. If the thing has been received in good faith, it is not to be restored, as was said concerning the possessor of good faith and concerning lost things, unless to the owner if he appears before prescription.

2. If the thing has been received in bad faith or from delict, restitution is to be made to works of mercy or pious causes, that is, to the poor, good works, Masses for the souls of purgatory, etc., because it is repugnant to natural law that someone can be enriched from another's thing through injustice; or also because the damage which through injustice was inflicted not only on the owner but also on human society, is to be repaired as far as possible by restoring to good works for the assistance of society. This by ecclesiastical law has been expressly established for simoniacs and usurers, and by the custom of the law of nations has been universally confirmed, so that a private person cannot do otherwise. Hence:

a) In restitution of debts toward unknown persons, the Pontiffs, as curators of pious causes, for a grave cause grant condonation or reduction.

b) If the unknown owner appears after restitution has been made to the poor, if the one restoring sought the owner with the required diligence, since he was of good faith, probably he is bound to nothing further, unless the thing still existed among the poor, in which case it would have to be repeated and handed over to the owner; if he was not diligent, as a possessor of bad faith he must compensate the damage inflicted on the owner.

c) If the debtor himself is poor, he can keep a proportional part of another's thing if it is necessary for relieving his poverty; as some say concerning one who is so poor and burdened with debts in such a way that it is not foreseen that otherwise he can free himself from debts. But this is not to be extended as a general rule to other cases, because the general reason always holds that no one ought to carry away advantage from his own malice. This is altogether true if the poor person deliberately committed injustices toward unknown persons so that he might become rich from them, or if he now omitted restitution in fraud so that later he could retain it for himself. In practice, however, poor persons are often excused from restitution on account of inability, if they are truly poor; for some allege poverty as a pretext.

Article II: On the Order of Those to Whom Restitution Must Be Made

324. Principles. - 1. If the debtor can certainly satisfy all debts, no order is to be observed, provided that payment is made to each at the due time.

2. If he cannot pay all, but some must be without payment totally or partially, and therefore he makes a cession of goods, the order prescribed by law is to be observed, at least from the moment at which the cession is juridically declared:

a) Real debts are to be preferred to personal debts. Whence another's things: stolen, deposited, leased, lent, found, etc., if they still exist in themselves, must be restored whole to the owner, because the thing cries out for its owner, who has in it an absolute right in the thing; on the contrary, if the thing exists only in an equivalent.

b) Among personal debts, before all come privileged debts which from a special reason are to be preferred to the rest, for example, judicial and funeral expenses according to the condition of the deceased; the stipends of physicians and all expenses made in the last illness and the wages of servants (for a year); debts for food (for six months), and many others according to the order established by law.[1]

[1] A thing sold, the price not having been paid, can be reclaimed within 8 days from delivery, and if it is not reclaimed, the price will be privileged (a. 2102; a. 20 § 5, Belgian law of 16 Dec. 1851).

c) Then come hypothecary debts, to which also there is given a right in the thing, but conditioned; they are to be paid according to the order of inscription, so that those come first which were inscribed first, which in our law is understood according to the day, in accordance with what is to be said in n. 609.

d) Afterward all merely chirographary and common debts, which are equal by law: in these, however, debts from an onerous title are to be paid before debts from a gratuitous title, if this can be done conveniently and without injury to a third party; likewise certain debts are to be preferred to uncertain debts; but not debts to the poor.

These things are to be understood thus: to those who come in the first place satisfaction must be made integrally before creditors of the following order receive anything; but to those who come in the same order, payment is to be made to each for a proportional part proportioned to the debt. Whence if payment is made in another order with notable damage to other creditors, restitution is owed to these who have been damaged.

3. Before a cession of goods has been made, another's things which cry out for their owner always excepted, *per se* no order is to be observed among creditors; nevertheless, privileged creditors, those prior in time, or those asking first, if they ask legitimately, can be preferred.

325. What things must be observed in conscience concerning the order of debts?

R. 1) After a cession of goods: the prescriptions of civil law, as determinative of the right of property, obligate in conscience even before the sentence of a judge.

2. Before cession, in many regions it is established by civil law that a payment made is invalid not only after the juridical declaration of cession, but also within a few days before this declaration,

lest, namely, the debtor unjustly favor certain creditors before others. This also holds in conscience, at least after the sentence of a judge.

Thus according to the French and Belgian Code, payments made within ten days.

3. Outside the cases determined by law, a creditor who knows the debtor to be unequal to paying all can exact by legitimate means that which is owed to him: for laws profit the vigilant. Nor is the debtor prohibited from satisfying the creditor asking first, even if he foresees that others will suffer damage therefrom, provided that the fixed time at which the debt is to be paid is already present: for then the creditor has a strict right to the thing owed.

4. A debtor who, knowing himself to be unequal to paying all, without a just legal or moral cause offers to one an integral payment or a greater payment than that which the others equal in law will have, sins against charity, and more probably against justice, because he injures the right of the others that satisfaction be made to them at least for a proportional part. Besides, here there is not parity with the preceding case: a) because the creditor asking does not have to watch over the goods of the rest, but the debtor must watch that all his creditors receive the proportional part; b) if the matter is now public, the law ought not to favor some, because vigilance is now lacking.

Article III: On the Mode by Which Restitution Must Be Made

326. General principle. - Restitution is to be made in that mode by which violated justice is repaired to equality, that is, in a mode apt that the thing arrive into the hands of the owner or creditor: for then the end is attained, namely equality. Therefore no special mode is prescribed, but it can be done:

a) openly, or also secretly and with the owner unaware; unless, however, scandal given by the injury must be repaired, namely, if restitution is owed from a public delict, or in restitution of reputation publicly injured and therefore to be publicly repaired;

b) immediately by oneself, or mediately through another worthy of faith. To this office a confessor is sometimes chosen by the penitent, who can accept, provided he acts prudently lest the seal be injured or other inconveniences arise. To avoid this he will be able to restore through the mediation of another priest or to transmit money from another place; and also to render the penitent more certain or to obtain testimony concerning the restitution made, so that every suspicion may thus be avoided;

c) directly, under the very form of restitution, or indirectly under the species of labor spontaneously and gratuitously undertaken for the utility of the owner, or of thrift, or of a truly useful donation, in which case, however, the debtor should take care lest the creditor repay another gift of almost equal value.

327. Questions. - A. What if the owner to whom restitution has been made under the species of donation again himself repays a gift to the one restoring?

R. 1) If it is established that the restitution made was the sole motive cause of this donation, the gift cannot be kept, because there is no donation which is made from error concerning the chief motive of the donation;

2. if it is established or deservedly presumed that the owner would have conferred that gift even without that restitution, the gift can be kept, although that restitution moved him somewhat to the gift;

3. sometimes, even if the gift cannot *per se* be kept, the debtor is excused from restoring it, for example, if the thing given is of slight value or cannot be returned without offense to the giver; yet generally the value of the gift can be restored secretly.

B. If someone, forgetful of a debt, gives something to a creditor, does he by that very fact satisfy the obligation of restitution?

R. If someone has an express and in every way complete will of donating, then by the donation the obligation of restoring is not extinguished; otherwise, as prevailing, the will of implicitly restoring can be considered, because he is judged to have willed to pay debts before lavishing gifts, whence he also probably would have had this will explicitly if he had been conscious of the obligation of restoring.

Whence, if restitution is to be made to the poor, a great part of the alms given can be considered as restitution, provided they were donated not before but after the obligation was contracted.

328. In what way must those things be restored which have been taken away from the State or municipality?

If a legal and sufficiently safe mode is prescribed, so that what is restored certainly reaches the public treasury, that mode is to be employed.

But if a legal mode is not prescribed, but is sufficiently safe, it can be employed.[1] Or it can be done directly in another way through official administrators or prefects of taxes, provided enough care is taken that they do not retain it for themselves, for example, by warning several.

[1] In Belgium a mode was indicated, although not prescribed, by the letters of the minister of the treasury, 10 Mar. 1837: "The payments (of voluntary restitutions) will be received at the registration offices... The receiver will deliver to the person who makes the payment a receipt in triplicate... One... will be preserved by the person who has made the payment. The other two will be transmitted by him, one to the ministry of finances, the second to the Director of registration."

It can also be done indirectly, by destroying titles of public debt issued by the State or municipality, or postal tickets, provided that they belong to the government; but not by destroying bank notes, because they are only protected by the State.

Some say that restitution can be made to those who have been unjustly injured in goods by the civil power, such as religious or Catholic schools; but that means is not expedient because it easily exposes one to illusion, and because such injustice ought to be altogether undoubted toward a determinate institute, nor ought the injustice to have been condoned.

Others say that it can be made to the poor, whom it belongs to public society to assist; but that does not seem probable, because society satisfies this obligation in other ways, nor does it belong to private persons to dispose of public goods by private authority. Whence this means could not be employed unless no other way lies open by which restitution can safely be able to reach the public treasury.

Article IV: On the Place Where Restitution Must Be Made

329. The general principle is: Restitution is to be made in the place where the rights of the creditor are preserved, without graver inconvenience of the debtor. Whence:

1. A possessor of good faith must restore the thing in the place of possession, where it is at the moment at which he knows it to be another's; therefore it suffices that he make the owner more certain concerning the thing to be received by him, and he is not bound to undergo the expenses or perils of transmission: for an innocent person is not bound to suffer detriment from another's thing.

2. A possessor of bad faith or an unjust damager from delict must at his own expense restore the thing in the place where the owner would have possessed it, if it had not been taken away, yet deducting the expenses, if there are any, which the owner also himself would have made by carrying it away: for as damager he is bound to repair the whole damage which the owner has suffered.

If, however, the thing taken away could not be transmitted without great expenses, which greatly exceed the value of the thing, probably it would suffice to send the price, unless the thing were most dear to the owner.

330. What if a thing perishes by chance or by the fault of a third party before it has reached the owner?

R. The possessor of good faith is bound to nothing, because the thing perishes for the owner. But a possessor of bad faith or an unjust damager is not freed from the obligation, even if he follows the way prescribed in law, but again must take care that the owner be rendered indemnified; unless the owner has determined the mode of transmission, as if he himself or a judge has designated a messenger to whom the thing is to be entrusted: for then as soon as it has been handed over to the messenger it comes into the possession of the creditor, and if it perishes, it perishes for him.

331. On restitution by the help of a confessor. - Many moderns judge that he is immune from restitution who has handed over to a confessor money to be restored, in whose possession it perishes by chance or the fault of a third party. This indeed is not according to the rigor of principles, because a confessor *per se* is not a messenger designated by the creditor. Yet perhaps not improbably it can be judged thus, because the confessor, from the presumed consent of the creditor, can be held as a messenger, since often restitution cannot safely be made by another way without danger of infamy, and otherwise by office he is a messenger worthy of faith. Whence in practice, he who restores thus is not to be disquieted. Yet it will be better if the confessor asks condonation, which in the case he will obtain without so great difficulty.

Article V: On the Time When Restitution Must Be Made

S. Th. II-II, q. 62, a. 8 and q. 66, a. 3, ad 2.

332. Principle. - Restitution must be made at once, whether it is owed from a thing received or from unjust receiving, unless there is present a just cause of deferring or a delay is sought from him who can grant the use of the thing. The reason is that the owner has a right of possessing his own thing

and of enjoying it; but he is unjustly deprived of the use of both rights if restitution is deferred without cause: for it is not licit to retain another's thing when the owner is reasonably unwilling.

"To detain," says St. Thomas, "that which is owed to another has the same nature of harm as unjust receiving; and therefore under unjust receiving unjust detention also is understood... As to receive another's thing is a mortal sin against justice, so also to detain it; because by the fact that someone detains another's thing against the owner's will, he impedes him from the use of the thing, and thus does injury to him. But it is manifest that not even for a little time is it licit to remain in sin; but everyone is bound immediately to leave sin... And therefore everyone is bound immediately to restore, if he can, or to seek delay from him who can grant the use of the thing," q. 66, a. 3, ad 2, and q. 62, a. 8.

It is said: at once, and indeed physically if there is question of the purpose of restoring, which someone must conceive in that instant in which he knows himself to be liable to restitution; but as soon as morally possible if there is question of the act of restoring, namely, at the first opportunity given, where it can be done without excessive inconvenience, yet in such a way that all damages following from culpable delay must be repaired.

333. Delay of restitution constitutes a sin grave from its genus. - Whence a) he is gravely guilty who without a just cause notably defers restitution: for then grave damage for the owner from the nature of the thing and *per se* is present; b) likewise he who, being able to restore the whole, wishes to restore only by parts; c) on the contrary he is lightly guilty if he defers briefly and does not inflict grave damage on the creditor.

He who defers restitution:

1. If culpably, is bound also to compensate the damages which the owner undergoes therefrom, and which could have been foreseen, namely, ordinary damages commonly occurring in these circumstances; but not extraordinary ones, unless the debtor who is in delay has been sufficiently warned or has foreseen them.

2. If restitution is deferred without fault (for example, because one does not have the means for restoring), damages arising therefrom *per se* are not to be repaired, at least as often as the burden of restitution does not arise from delict or bad faith.

3. But if it arises from delict, there is controversy: the common opinion with St. Alphonsus affirms it, because such damage truly arises from unjust receiving which is a formally unjust cause; nevertheless certain persons hold the excusing opinion as probable, because, although the first cause of the damage was unjust, nevertheless the delay now is just and consequently the one deferring is not the unjust cause of the subsequent damage. Yet this reason does not hold, because he is its cause, if not immediately, nevertheless mediately unjust.

334. How must one act with those who wish to defer restitution until death, and especially with the sick who are burdened with the onus of restitution? - Resp. *Per se* they sin gravely and are not to be absolved who, without sufficient reason, defer restitution until death, not only because of the delay of restitution, but also because of the danger lest the heirs omit restitution; or who, doubting whether the thing is another's, defer resolving the doubt until death.

Therefore the confessor ought prudently to exhort penitents that they themselves before death restore as far as they can. In these cases, however, let the confessor take care lest especially the sick be fruitlessly disturbed from good faith: for it can happen that they do not attend sufficiently to those damages or dangers, especially when restitution is to be made not to the injured owners themselves but to the poor or pious causes. Wherefore for the sick:

1. if they are in good faith and there is not time remaining for prudently warning them, or there is not probable hope of a good effect, then they are to be absolved without warning (for this would be an action useless for the innocent owner, and harmful for the dying);

2. if they are in bad faith, or if the fruit of warning is hoped, then they are to be warned and helped to restore immediately;

3. if restitution cannot be made immediately and the obligation is hidden, let them commit the money to the confessor, or rather to another faithful man. But if the money is not had, let care be taken that restitution be made through the heirs, or through a written note to be transmitted to the creditor.

Question Four: On Causes Excusing from Restitution

S. Th. II-II, q. 62, a. 5, ad 1; a. 8, ad 2.

335. Causes excusing from restitution are of two kinds: 1) some excuse for a time, which suspend the obligation of restoring, so that while they endure it as it were sleeps, but when they cease, it again awakens and revives; 2) others excuse in perpetuity, which truly exempt or release from obligation and extinguish the obligation of restoring forever.

The causes excusing for a time are: ignorance - inability - one's own damage - another's damage; but the exempting causes are, besides the destruction of the thing, condonation - compensation - and legitimate authority.

Article I: On Causes Excusing for a Time

336. The causes excusing for a time, on account of which restitution can licitly be deferred, are:

1. Inculpable ignorance, whether it is of fact, as if you are ignorant that the thing is another's, or of law, as if you do not know that the debt, even with the creditor deceased, is to be restored to the heirs; ignorance does not excuse from material sin, but only from formal sin.

2. Inability strictly so called or absolute, which is placed in this, that the debtor has nothing from which he may restore, or not without being reduced to extreme necessity, for example, one who burns a house and is detained in prison: for no one is bound to the impossible, and in the case of extreme necessity everyone can take secretly and, *a fortiori*, preserve those things which are necessary for relieving that necessity; yet it is always necessary that there be present the will of restoring in the future, when inability ceases.

3. Moral inability, namely, grave damage to oneself, or grave necessity, unless the creditor would fall into the same necessity. Thus if restitution cannot be made: a) without grave danger to

salvation, life, health, reputation, or liberty; b) without a change of an honest state justly acquired; c) without damage grave in one's own temporal goods and much greater than is the damage of the owner or creditor from the delayed restitution.

4. Grave imminent damage to another, either to the creditor himself or to a third party: for then the creditor is not judged reasonably unwilling, and from charity the debtor is bound to defer restitution if this can conveniently be done, for example, if it is foreseen that the owner will soon abuse his thing for indulging drunkenness or lust; indeed sometimes from justice he must defer, if it can be done without graver inconvenience, when the owner by means of the restored thing would soon commit injustice, for example, if with a sword returned he would kill, because then the one restoring would be accounted as proximately cooperating toward inflicting damage on another. Yet it is necessary that delay in the case be an efficacious remedy: for if in no way it could prevent the evil effect, because the creditor would easily use other means for sinning or harming, there is now no reason for deferring restitution.

337. Corollaries. - Hence the debtor is excused from restitution to be made immediately:

1. if he is in grave temporal necessity, unless the creditor were in the same necessity; but if the debtor, by restoring, would fall into extreme or quasi-extreme necessity, while the creditor is only in grave necessity, restitution can be deferred, yet not if the creditor has previously come into extreme necessity, because then the unjust possessor could not appropriate the thing to himself;

2. if he ought to undergo damage of a higher order, whether of body or of soul, for example, if he himself or someone of his own would have to suffer loss of life, health, liberty, and *a fortiori* if he would be exposed to the danger of sinning, say if he would fall into despair, or a spouse or daughters would prostitute themselves, or sons would give themselves to robberies;

3. if he ought to undergo grave damage in reputation, at least regularly, because the good of reputation is of a higher order than the good of fortune; whence an adulteress ought not to reveal her crime lest legitimate children be injured in the division of goods;

4. if he ought to fall away from his own state justly acquired, even if by his own fault, gambling, drunkenness, he has incurred this necessity, for example, if a merchant or magistrate would lose his business or office or be reduced to servitude.

Nevertheless a) then there is incumbent on him the obligation of diminishing expenses and living sparingly and laboring diligently, so that he can restore as soon as possible; whence those are not to be absolved who change nothing in their state; b) he cannot use the aforesaid privilege who, in public estimation, acquired his state unjustly, as by robbery, fraud, usury, a supposititious testament, etc., because by restoring he does not fall away from a state but rather is reduced to a just state.

5. if he would suffer great damage in goods justly acquired, which notably (at least by double) exceeds the damage which the creditor suffers from the delay, for example, if the owner or merchant would have to sell his possessions or wares at a much lower price than they are

worth, or a worker would have to deprive himself of an instrument necessary for working; yet the mere privation of gain does not suffice.

338. Cession of goods. - One unable to pay all debts can make a cession of goods (*goederenafstand*). It is the abandonment of all goods which a debtor unequal to paying makes to his creditors for preserving his liberty.[1] One kind is voluntary, which is offered spontaneously and accepted by the creditors; another is judicial, which is imposed by a judge even when the creditors are unwilling. Moreover, each can be culpable or inculpable, according as the debtor has become unequal to paying debts from his own fault or fraud, or from mere misfortune. Now in the case:

[1] C. C., a. 1265-1270; Belgian C. Com., a. 535.

1. The debtor must hand over all goods and cannot retain for himself except those which are necessary for the honest support of himself and his own, yet living sparingly according to condition: for he can licitly defer restitution lest he fall down from his state. Thus from natural law; otherwise the tribunal itself is accustomed to provide for this necessity, and then the debtor is now bound sincerely to hand over all things.

2. Whence he sins gravely against justice who, besides goods necessary for himself and his own, conceals others and withdraws them from creditors, whether after or before cession (*verduistering*): whether by placing them elsewhere, or by selling them and placing the money obtained therefrom in safety, or by fictitiously selling so that he may afterward enjoy them, or by all other frauds. - Unless perhaps there were question of things of the family which, because of memory of parents or friends, are very dear to the debtor, but are held by others as of lesser price.

3. The debtor himself acting unjustly in this way, and the cooperators or participants in this defrauding, provided they are conscious of the injustice, are bound to restitution for the damage inflicted on the creditors.

4. Some have judged that the debtor is not guilty of injustice who would reserve for himself a few means by which he could afterward begin some small business. But this can be permitted only if the creditors are judged to consent to it, so that there may be greater hope afterward of obtaining integral payment; for the law is not accustomed to grant this.

339. Observation. - Is a debtor who has deferred restitution on account of a just cause bound to compensate the ceasing gain or emergent damage which the creditor has suffered therefrom?

R. 1) A debtor of good faith is not bound, if he has not been in culpable delay, because he is not the unjust and culpable cause of this damage; yet as soon as he knows the thing to be another's, he can no longer perceive the fruits of the thing, but from this moment he is bound to pay them to the owner;

2. a debtor from delict, or a possessor of bad faith or unjust damager, is bound to compensate all things, because the damage is unjust, since it proceeds from an unjust and culpable cause, as was already said above in n. 333, 3.

Article II: On Causes Exempting in Perpetuity

340. The causes definitively exempting from the obligation of restoring are:

1. The destruction of the thing owed in species without fault of the debtor of good faith, or, for a debtor of bad faith, if the thing would have perished at the same time from a natural cause with the owner: it exempts, namely, from restitution of the thing.

2. Condonation (total or partial) or remission of the debt made by the creditor, whether express, or implicit or tacit (for example, by deleting the chirograph), or legitimately presumed on account of a positive and solid foundation, as can exist for thefts of sons and sometimes for little thefts of servants, which can be conjectured from the love and liberality of the father or owner, the quantity and quality of the thing, and other circumstances (a. 1282-84).

Moreover, for legitimate condonation three conditions are required: a) that it be perfectly free, immune from error, fraud, fear, or force; whence it does not hold if it has been extorted by threat, or if the creditor errs, or is deceived concerning the quantity of the debt which he thinks much smaller, or the debtor feigns poverty; b) that it be made by him who has power, namely, who has actual dominion of the things and free administration, whence invalid is a condonation made by a wife concerning the goods of the husband or of the community; c) that the law not obstruct.

3. Compensation (a. 1289 sq.), by which a certain debt of justice is extinguished equally on each side, whether it has been made to the debtor himself if the creditor owes him as much, or made to the creditor through an equivalent donation, or made to the creditor's creditor, as if Paul owes 100 fr. to Peter, and John 100 to Paul, but Peter asks payment from John.

Yet this cannot be done except from a reasonable cause, if the creditor cannot obtain payment otherwise, or only with difficulty; because a personal right is injured and the order of law which the law orders to be observed is interrupted (a. 1239), which will not be licit except on account of a proportionate cause.

4. The legitimate authority of a superior, whether a) through prescription; or b) through the sentence of a judge, provided it has been obtained in good faith and without unjust means, in the case of juridical fault or doubtful matter: thus it happens that someone can retain what perhaps he owed, or another on account of juridical fault is bound to pay him; or c) through composition of the Supreme Pontiff, by which, with a just reason, the restitution to be made for ecclesiastical goods taken away, or for debts toward unknown persons, is partially or totally remitted: for the Supreme Pontiff is the natural administrator of ecclesiastical goods, indeed also of pious causes; but the part which is remitted can be supplied to the creditor in spiritual utility from the treasury of the Church.

But if afterward the owner appears, probably the debtor can judge himself liberated from every obligation.

341. Does not a cession of goods exempt from the obligation of paying debts integrally? - Resp.:

1. Cession of goods *per se* does not take away such an obligation but only excuses for a time, on account of the debtor's inability to pay all debts.

2. Whence, if someone culpably or fraudulently has become unable to pay, or makes a cession from bad faith, he is not exempted from the obligation of restoring the whole, because since he is an unjust damager, the creditors are not judged to condone, nor would the law establish this equally.

3. In the case in which someone from mere misfortune has become unequal to paying debts, a) if in the very contract of cession the creditors explicitly declare that the debtor either will be free or will remain obligated, that contract is to be observed. b) Likewise the law is to be observed, if it itself declares the obligation to remain, as happens in Belgian law (29 June 1887, a. 25; C. C., a. 1270; C. Com., a. 586) for compositions which merchants unequal to paying enter upon with creditors for preventing bankruptcy. c) But with the express disposition of creditors or of law excluded, the obligation of paying the remaining things is not extinguished but only suspended.

Nevertheless if somewhere a contrary persuasion commonly prevails, this can be admitted or tolerated: it is reported to be so in England, where businessmen are accustomed to receive a greater price on account of danger to capital from the foresight of such a loss, and therefore they more easily consent to it. But in many regions it is not so.

342. Observation. - He who enters religion is not on that account exempted from the obligation of restoring, nor yet does the religion contract that obligation, but he himself must restore as far as he can from goods if he has any, and afterward, with the consent of the superior, work and do other things fitting to his state, so that he can complete payment.

But by positive ecclesiastical law such a one is prohibited under grave obligation to enter (can. 542). But considering natural law alone:

a) if within a short time, for example, two years, he can satisfy the obligation of restoring at least for a great part, he is bound to defer entrance until restitution has been made;

b) but if there is no founded hope that he can restore within a short time, with a cession of goods having been made to the creditors, he can enter, especially if from a long delay a special danger of salvation threatens him: for because of money the person of a free man cannot be obligated, but only his thing (q. 189, a. 6, ad 3).

Section B: On Justice and Injustice in Involuntary Exchanges

S. Th. II-II, q. 61, a. 3.

343. Involuntary exchanges are those by which harm is inflicted on another against his will. This happens when someone uses the thing or person or work of another, while he is unwilling, whether secretly by fraud, or manifestly by violence: each is exercised either against one's own person, or against a connected person, or against any things whatever of another, both by deeds and by words.

Moreover there are four kinds of goods about which commutative justice can be concerned, and the injury which is opposed to it: the internal goods of life and body as to one's own person or that of

one's neighbor, the goods of marriage, namely, the internal goods of a connected person, the external goods of fortune, the mixed goods of reputation and honor.

Hence one must speak of injuries which are done:

A. by deed, 1) in the internal goods of life and body as to one's own person: both in the spiritual goods of the soul, and in the goods of the body by the killing of oneself or one's neighbor and by other harms in the bodily members;

2. in the goods of marriage, as to a connected person, by adultery and seduction;

3. in exterior goods, secretly by theft, manifestly by robbery;

B. by words, namely, 4) in reputation and honor, secretly by detraction, manifestly by contumely and by other things of this kind.

Chapter I: On Injuries in the Internal Goods of Life and Body

S. Th. II-II, q. 64.

Question One: On Injuries in the Spiritual Goods of the Soul

344. Injury can be done in spiritual goods. - Spiritual goods are understood as not only supernatural goods which are immediately ordered to eternal salvation, namely, the grace of God, infused virtues, the right to the sacraments, etc., to which the clerical and religious state also pertain, but also natural goods such as the use of reason and free will, natural sciences, arts, and other things of this kind. Concerning all these there can be injury, because for these to be increased, obtained by use, acquired, or not omitted, everyone can have a strictly so-called right, and therefore there can be an obligation of restoring, if restitution is possible.

Whence 1) he who by an unjust means (fraud, force, fear instilled) inflicts spiritual damage on another or impedes him from obtaining a spiritual good (for example, entrance into religion), is bound to repair the damage inflicted as much as is possible; namely, he must remove force, fear, fraud, if they still endure, repair goods taken away or impeded if this is possible, and make good real damages following therefrom and foreseen at least in confusion: for everyone has a strict right that evil not be inflicted on him by an unjust means.

Likewise 2) he who from justice, namely, from office, stipend received, or contract, is bound to instruct, warn, correct his neighbor, refresh him with the sacraments, and neglects this, is guilty of injury and is bound, as much as he can, to repair the negligence and make good damages following from it, for example, a pastor who has been negligent.

On the contrary 3) he who without an unjust means inflicts spiritual damage on another or impedes him from obtaining a spiritual good (for example, by bad example, counsel, illicit prayers), is bound not from justice but only from charity to repair the damage: for injury is not inflicted on one who knows and consents, and therefore there is no obligation of restoring, unless nevertheless someone is bound from office to draw him back from evil.

345. General conclusions are easily deduced from the foregoing:

A. Generally as to all internal goods of the soul:

1. He who, by poison, medicine, or other means, deprives another not consenting of the use of reason, memory, free will, is guilty of grave injury and is bound to employ means, if there are any, by which the use may be recovered, and to repair damages following therefrom and foreseen at least in confusion.

2. Similarly if someone by force, fear, fraud, turns someone away from the study of letters or arts, or does not allow him to use acquired knowledge or art.

B. As to the intellect:

1. If someone teaches a practical error from which some evil besides the error follows for someone, he is bound to revoke the error, and to compensate the whole damage which has arisen therefrom for the one deceived or for a third party and was in some way foreseen.

2. If the error is merely speculative, for example, concerning the number of the stars, *per se* there is no obligation of restoring, because it is against truth alone, not against justice; nevertheless an exception is made:

a) if the error inflicts damage, as if it is concerned with dogmas of faith, especially principal ones, or with a very fundamental or universal principle from which many false conclusions arise in a matter of great moment, because such an error would pervert the intellect;

b) if the one deceiving is a teacher from office, or from contract, indeed even if without stipend and voluntarily he has undertaken the office of teaching.

In these cases he must withdraw the error.

C. As to the will:

1. If someone by force or fraud induces another to sin or draws him back from obtaining a special good, for example, from religious profession, from frequenting the sacraments, he is bound from justice to restore, that is, to remove the unjust means and to recall the other to the good, if the latter cannot of himself return to the former state: for although the other consented by sinning, nevertheless the consent is not full because he did not consent to the deception and violence employed.

2. He who without an unjust means (by bad example, persuasion, prayers) induces to sin, does not sin against justice, but against charity alone, because injury is not done to one who knows and consents. Whence there is no obligation of restoring, unless someone from office is bound to draw him back from evil (for example, a superior), or induces him to sin against justice, because then he is unjust, not toward him whom he induces to consent, but toward the third party whom he affects with injury, since he cooperates with the sin.

3. If there is question of material sin to which by force or fraud someone induces another, it does not seem *per se* to be a sin against justice, although *per accidens* it can be, if it inflicts grave detriment, as if it causes a habit of sinning or infamy.

346. Special conclusion as to the religious state.

1. If someone by force or deceit impedes another from entrance into religion, or draws a novice out of religion, he is bound from justice to restitution, by removing the force and deceit, retracting what he falsely said, compensating the spiritual or temporal damages which have arisen; but once force or fraud has been removed, no obligation of justice exists.

2. But if by force or fraud he draws a professed person out of religion, he is bound to restitution also toward the religion itself.

3. Those who without any motive refuse profession to a novice sin against justice, because, by admission into the novitiate, the novice acquires a right to profession, from the implicit contract by which the religion obligates itself to admit him if he is found worthy and duly performs the required offices.

4. A novice who in bad faith, namely with the intention afterward of going away and not professing, enters religion, is bound when leaving to compensate the food which he received, the value of useful works which he furnished being deducted.

347. Danger for the use of reason and liberty, as also for morals, is apt to arise from hypnotism.

Its origin was animal magnetism, which first, in the year 1774, Dr. Mesmer (+ 1815), a Viennese physician, set forth doctrinally. He thought that he had found a marvelous means of healing in a subtle fluid which, similar to magnetic force, is supposed to flow from the bodies of animals, indeed to pervade absolutely all bodies, and to be able to be transmitted through suitable means, and that by it diseases are healed.

The effects are: a sweet heat, deeper sleep, general or partial insensibility, somnambulism. It is produced by gestures of the hands, magnetized substances, a simple nod of the will expressed by words. It gave rise to rotating tables, and gradually degenerated into diabolical superstitions by which women see, hear, speak, know hidden, distant, marvelous things which otherwise are unknown to them. Hence *per se* it is not illicit; but *per accidens*, as to preternatural phenomena or superstition (S. Off., 28 July 1847 and 4 Aug. 1856). Braid attributed the phenomena produced to suggestion, and thus hypnotism was born.[1] [2]

[1] [§347] Yet there is, as Prummer testifies, a difference: in magnetism the use of reason and liberty is never lost, which happens in hypnotism.

[2] [§347] Concerning hypnotism, among others, the following can be consulted: Mercier, *Psychologie*; Bernheim, *De la suggestion et de ses applications a la therapeutique*; Franco, *L'hypnotisme revenu a la mode*; Masoin and Lefebvre, *Rapport et discussion sur l'hypnotisme a l'Academie de medecine de Belgique*; Guibert, *Essai sur l'hypnotisme*; Moreau, *L'Hypnotisme, etude scientifique et religieuse*; Surbled, *La morale dans ses rapports avec la medecine*; Lescoeur, *La science et les faits surnaturels contemporains*; Meric, *Le merveilleux et la science*; Coconnier, *L'Hypnotisme franc*; Imbert, *L'Hypnotisme et la Stigmatisation*; Lapponi, *Hypnotisme et Spiritisme*; Castelein, *Les phenomenes de l'hypnotisme et le surnaturel*; Schneider, *Der Hypnotismus* (French trans.); Grasset, *L'Hypnotisme et la Suggestion*; Dr. Joire, *Manuel d'Hypnotisme* (German trans.); Van Velsen, *Hypnotisme, suggestion, psychotherapie*. Among theologians: Tanquerey, *Th. M. fundamentalis*, n. 133 sq. and 916.

Hypnotism is customarily defined: the induction of a peculiar state, analogous to sleep, which is called hypnosis, in which state a man constituted in it marvelously undergoes the suggestions of the

hypnotizer. It is induced by most diverse means, which nevertheless probably are all reduced to one, namely, the suggestion of sleep; but it has several grades from simple drowsiness to perfect somnambulism.

To it are attributed effects of three kinds:

1. Phenomena proved by clear experience which are produced among persons either of healthy or hysterical condition: by suggestion arise paralysis and rigidity of members, and on the contrary ceaseless movement; insensibility, exaltation of the senses; illusions and hallucinations, both positive, by which they sense what is not, and negative, by which they do not perceive what is; defect of memory (partial or total) and pseudo-recollection of a fictitious event; and in subjects disposed before others: suggestions to be fulfilled after a long time and fulfilled with marvelous precision; the assumption of an alien, double, or multiple personality; blistering or exudation of a little blood.

2. Phenomena proper to hysterical persons, in whom the three states of lethargy, catalepsy, and somnambulism are produced successively and regularly, and certain other marvelous things, not indeed by suggestion but by physical means.

3. Phenomena altogether marvelous and extraordinary: clear vision of an object altogether hidden, transposition of the senses, instantaneous acquisition of an unknown science or language, reading of thoughts, knowledge of hidden and future things, etc. These are produced rather on the occasion than by force of customary hypnotism; whence they are more to be ascribed to magnetism, occultism, or spiritism.

Now it seems scientifically most probable and morally certain that phenomena of the first and second kind are natural, although learned men dispute about their interpretation; concerning effects of the third kind generally there is no certainty, and they are not customarily produced by men skilled in the hypnotic art; whence they are either fictitious, or produced by fraudulent arts, or finally, if sometimes they are real, they pertain to spiritism: in which case not all can be attributed to unknown forces, but some would have to be ascribed to the intervention of the demon.

348. Is the practice of hypnotism licit? - In the present matter we are not treating effects of the third kind (concerning which we shall speak where we treat superstition and spiritism), but customary and properly so-called hypnotism, which in itself is not superstitious. Its practice, however, will often be illicit for other reasons, namely whenever it is employed unjustly or without grave cause and great caution. For:

a) The one hypnotized is deprived of the ready use of reason (and of dominion over the lower powers), which ordinarily by his own powers he will recover with difficulty without the nod of the hypnotizer; he hands himself over to the will of the hypnotizer, by whom he can quite efficaciously and often invincibly be led to perpetrating illicit and unjust things, and ordinarily can be reduced into the same state even while resisting.[3] Such privation of the use of reason, and abdication of liberty, involving of itself grave danger for morals, is prohibited whenever a proportionately grave cause and cautions for removing the danger are lacking.

[3] [§348, p. 349] Yet Fr. Vermeersch notes (*Th. M.* I, n. 101) that this permanent dependence can be avoided by the suggestion of liberty or independence, added in the final command. Yet hypnotizers are not accustomed to act in this way.

b) Hypnotism, unless it is employed with great prudence, exposes the health of soul and body to grave harm; whence the removal of such danger is required, or at least a founded hope of obtaining a greater good.

c) But if someone through abuse of hypnotism subjects a non-consenting person to his commands, or exercises the art in circumstances in which it is harmful, he commits grave injury and from justice is bound by suitable means to render that person his own master and to repair all damages.

d) Finally other inconveniences can accede from the public exhibition of hypnotism (harmful excitation of the nerves in those looking on, and occasion given to common people of knowing hypnosis and abusing it for evils), from a dishonorable mode of inducing hypnosis, from an occasion of lust, etc. Whence deservedly the spectacle of hypnotism was prohibited by severe penalties in the Belgian law of 30 May 1892, and the exercise of hypnotism upon minors and the insane was circumscribed within certain limits.

A sufficient cause is not the cause of recreation or of gain alone, but sometimes the cause of scientific investigation (S. Off., 26 July 1899), provided that the expert selects a person to whom hypnosis appears not harmful but rather profitable; more often a cause of medical treatment, whether for quieting the senses in a surgical incision, or for curing a disease of the nerves or rheumatism;[4] also a cause of removing or diminishing evil propensities (for example, to suicide, drunkenness, lust, theft, etc.) when in an extraordinary case[5] they almost take away liberty or weaken the will. Then also caution will have to be employed: let no one be employed except a very skilled and prudent and entirely faithful physician, who uses only honorable and harmless suggestions and only for the intended end; let a faithful witness also be joined (who remains at least nearby) on account of the good of the hypnotizer himself, but especially of the one hypnotized.

[4] [§348, p. 349] It should be noted that now the salutary effects of hypnotism are already being more restricted or called into doubt.

[5] [§348, p. 350] For the ordinary means of formation, education, and dominion of oneself is the exercise of one's own reason and liberty. Besides, suggestions ordinarily weaken the will more than they strengthen it.

Question Two: On the Killing of Oneself

S. Th. II-II, q. 64, a. 5.

349. The killing of oneself is an action or omission apt to cause death; one kind is direct, another indirect. Direct is that which is intended in itself as an end or means, whether explicitly or implicitly, as when an action or omission can tend immediately to no other end; indirect is that which is not intended in itself, but is foreseen as likely to follow from some action or omission: thus a soldier about to fight foresees that death will probably follow from battle. Certainly one thing is to kill oneself or to inflict death on oneself; another is only to expose oneself to death or to its danger, or to do something else with danger of death, which, namely, can draw death along with itself. Now that indirect killing of oneself is licit, certain conditions being given and from a proportionately grave cause, there is no one who doubts; but there also have been those who have tried to legitimate direct killing of oneself or suicide itself properly so called, not only among the Greek philosophers, especially Stoics or Epicureans, considering it as an act of virtue, or as a means of fleeing the

bitternesses of life, but also among more recent men, especially among positivists and materialists. From this it has happened that, faith decreasing, suicide has grown stronger day by day, the more so because in books and theaters its apology is undertaken. Catholic doctrine contradicts this.

350. Thesis I. Direct killing of oneself, intended in itself and by one's own authority, is a sin of itself grave from the whole genus, as being harmful not only to the individual, but also to society, and injurious to God.

It is said: a) by one's own authority, so that the case may be excluded both of him who, with God inspiring him, would kill himself, which certainly is licit, and of him who would do this because of a crime committed, with public authority commanding it, which we would not dare to condemn as certainly illicit;

b) grave of itself, because *per accidens* it can happen that someone in good faith judges there to be certain motives on account of which it would be licit to take away his own life;

c) from the whole genus, as being...: for by its nature it is always grave on account of a threefold motive, because it is harmful not only to the suicide himself, but also to society, and moreover injurious to the right of God. Under the first aspect it is not against justice but against charity toward oneself, under the second directly against legal justice, under the third against commutative justice.

But it is most strictly prohibited not only by natural law, but also by divine and ecclesiastical law.

It is proved directly: 1) It is against the natural law.

a) For it is harmful to the individual. Life is the greatest temporal good and the condition of all other goods, not only natural but also supernatural: the condition of merit for eternal life, the condition of progress in charity, the condition of penitence, the condition of progress and evolution in the moral and spiritual life; whence he who kills himself acts against love of self and against the natural inclination by which every being tends to the conservation of itself.

b) It is also harmful to society, which does not have dominion over our life but custody of it for its own utility. A part belongs to the whole, and every part, that which it is, is of the whole; but every man is part of society, into which he is inserted as a useful member, and thus that which he is, is of society; therefore he who kills himself deprives society of this utility of himself, while it is unwilling, and thus inflicts injury upon it.

c) Finally and especially it injures the right of God. For God is the author and therefore the owner of our life and body, and He has reserved this dominion to Himself, and has conceded to us only the use, after the manner of a deposit, according to His will, with the burden of guarding and preserving life. Therefore life is a certain good divinely given and subject to the power and judgment of God. Whence he who kills himself injures the right of God.

2. It is against divine law, which a) explicitly decrees: You shall not kill, which is to be understood not only of the killing of one's neighbor but also of the killing of oneself, since man ought to love his neighbor as himself. Whence Augustine, book I *De Civ. Dei*, c. 20: "It remains that we understand of man that which was said: You shall not kill. Not another, therefore not yourself. For he who kills himself kills nothing other than a man"; b) it also indicates the foundation of the precept, Deut. XXXII, 39: I will kill and I will make alive; and Wis. XVI, 13: You are, O

Lord, who have power of life and death; hence c) it concludes: because as to life and death we are under the dominion of God, we must live and die for the Lord, according to that of the Apostle, Rom. XIV, 7-8: "For none of us lives to himself, and no one dies to himself. For whether we live, we live to the Lord; whether we die, we die to the Lord. Therefore whether we live or whether we die, we are the Lord's."

3. It is against ecclesiastical law, according to which suicides are deprived of sacred burial and liturgical suffrages (can. 1240, 3°); yet these penalties are not incurred if sufficient use of reason was lacking in them or perhaps was lacking, if they gave signs of repentance, if there is doubt whether death arose from suicide, if the crime was entirely hidden, lest the reputation of survivors be violated. But those who have attempted suicide are irregular from delict (can. 985, 5°), are barred from legitimate ecclesiastical acts, and incur other penalties if they are clerics (can. 2350, § 2).

351. There is no assignable cause on account of which it is licit to kill oneself, but all the excuses which are brought forward are vain pretexts.

For a) the misery of this present life does not hold: the happiness for which we are destined is to be obtained only in the future life, for which the misery of the present age provides an occasion of greater merit or penitence; and it would be irrational, in order to avoid lesser miseries, to inflict on oneself the greatest, namely death. Nor b) intolerable disgrace to be undergone: killing is not a suitable means of recovering reputation or honor, and because of evil unjustly inflicted by another, it is not fitting to inflict a greater punishment on oneself. Nor c) virtue, especially chastity, to be preserved: the integrity of the flesh surely is not a good proportioned to death; but the integrity of the soul can be provided for otherwise, since, as temptation increases, resistance from the grace of God can increase. Besides, evils are not to be done so that goods may come about. Nor d) a useless life or one burdensome to others to be ended: everyone can be useful to others by laboring, helping, building up by good examples, or praying; but if he has been harmful to a private person or to society, he ought by the honesty of life to repair scandals or injustices.

These things St. Thomas already refuted in his own time, q. 64, a. 5, ad 3: "Man is constituted master of himself through free will; and therefore man can licitly dispose concerning himself as to those things which pertain to this life, which is ruled by man's free will. But the passage from this life to another happier one is not subject to man's free will, but to divine power; and therefore 1) it is not licit for man to kill himself, so that he may pass to a happier life. 2) Similarly also not so that he may escape any miseries of the present life, because the ultimate and most terrible of the evils of this life is death... And therefore to inflict death on oneself in order to escape other miseries of this life is to assume a greater evil for the avoidance of a lesser evil. 3) Similarly also it is not licit to kill oneself because of some sin committed, both because in this he harms himself most of all, because he takes away from himself the necessary time of penitence, and also because it is not licit to kill a malefactor except through the judgment of public power. 4) Similarly also it is not licit for a woman to kill herself lest she be corrupted by another, because she ought not to commit in herself the greatest crime, which is the killing of herself, in order to avoid the lesser crime of another: for it is not a crime of a woman violated by violence if consent is not present... But it is established that fornication or adultery is a lesser sin than homicide, and especially homicide of oneself, which is most grave,

because it harms oneself, to whom one owes the greatest love; it is also most dangerous, because no time remains that it may be expiated through penitence. 5) Similarly also it is not licit for anyone to kill himself because of fear lest he consent to sin, because evils are not to be done so that goods may come, or so that evils may be avoided, especially lesser and less certain evils; for it is uncertain whether someone in the future will consent to sin: for God is able to free man from sin in whatever temptation supervenes."

From these things again the Catholic thesis is indirectly confirmed.

352. Thesis II. Indirect killing of oneself is illicit, unless there accedes a just and proportionate cause, that is, a greater good which follows immediately from the action itself and not by means of the killing.

It is proved. For it is illicit by one's action or omission to cause an evil effect, unless four conditions are verified: a) that the action or omission in itself is not evil; b) that equally immediately from it there follows also a good effect, and that this is not obtained by means of the evil; c) that the good effect is proportionate to the evil; d) that only the good effect, not the evil, is intended. Therefore indirect killing of oneself will not be licit unless 1) the action or omission from which it follows is not evil in itself; 2) another effect, a good one, follows equally immediately, and this is not procured by means of the killing; 3) the good effect is greater than or equal to the danger of life and thus compensates it; whence it must be greater in proportion as that danger is greater, more certain, nearer; 4) death is not intended, but only the good effect.

The proportionate compensating good is threefold:

1. A public good, for the common good is preferable to a private good.

Thus even with proximate danger of death priests, physicians, and others upon whom it is incumbent can take care for the salvation, life, or security of others; soldiers can refuse to desert the assigned place, or burn a ship or blow up a citadel for submerging or destroying enemies, or lest the enemy obtain it with grave detriment of the republic; but not for avoiding captivity, since the public good does not require this.

2. The spiritual good of virtue, or of science and art, or the progress of culture.

Thus aviators or navigators with danger of life seeking new routes or exploring unknown regions. Likewise for the sake of faith, missionaries, even with danger of life, can preach the Gospel, if utility is hoped therefrom; and the faithful can not only bear death bravely, but even not flee, indeed present themselves before judges, if this is judged useful for confirming others in the faith, unless, however, greater evils are feared. Likewise from charity someone can expose himself to danger of death or offer himself to the blow of an assailant, or not take care for his own safety (for example, yield a plank in shipwreck), or not defend himself, in order to preserve, if it is hoped, the life of parents, spouse, friend, neighbor, *a fortiori* for their eternal salvation (indeed this can be a precept); but not cast himself into the sea or a river even for baptizing an infant, because evils are not to be done so that goods may come. Likewise from love of justice malefactors can offer themselves to be condemned and killed: for death is not from the omission of flight but from the sentence of the judge. And for protecting chastity a virgin, upon whom violence is actually being inflicted, can by fleeing throw

herself down from a high rock or from a window with only danger of death, while there is some hope of escape; but not with certain death, because then it would be direct killing, which would be chosen as a means for avoiding another evil. But she can permit herself to be killed rather than violated, although she is not bound to this.

3. A bodily good resulting from the fact that a more certain danger of death or a more cruel kind is avoided.

Thus it is licit to cast oneself down from a tower for fleeing, not indeed captivity, but a certain capital sentence or a more atrocious death which malefactors are actually about to inflict; or to leap from a window for fleeing flames actually burning: provided, however, that there is hope of escape; otherwise it would be direct killing which would be chosen as a means for avoiding a greater evil, in the same way as the taking of poison. Namely, one thing is to expose oneself to certain danger of death, even proximate, another to incur certain death.

353. Corollaries. - From the doctrine set forth it is concluded:

1. for incurring a danger of death not certain, but probable or remote, a lesser cause suffices, yet always a grave one, especially if necessity is present; for example, it is licit to serve those laboring under a contagious disease, indeed from charity to visit them, even with great danger of contracting the plague, likewise to exercise a dangerous art (for example, to climb roofs) for the support of oneself and one's own or the utility of others;

2. for incurring a danger of indirectly shortening life even by several years, a less grave reason suffices: thus for the sake of exercising virtue it is licit to do moderate penances by fasts, vigils, mortifications; for the restraint of concupiscence presents compensation; likewise for one's own support or for the progress of an industrial or mechanical thing, it is licit for workers to blow glass, gild metals, handle fire daily, and exercise other arts shortening life, although as far as possible one must try that works committed to craftsmen be rendered less dangerous;

3. nevertheless, for incurring a danger of death a futile reason does not suffice, for example, to fight because of vain glory, bear extraordinary burdens, let oneself down, or prolong a very long fast for the sake of a wager alone;

4. *a fortiori* it is not licit to procure the utility of others or one's own gain from a sought-out danger of death, but only to expose oneself to danger, by doing an act useful otherwise and of itself.

Hence they sin gravely a) who for light causes throw themselves into danger of death, as any rash tightrope walkers, gladiators, body-tumblers, bullfighters, showmen who tame wild beasts or take poisons, unless by long experience or suitable preparation they are certain concerning their dexterity or the efficacy of the remedies;

b) who gravely harm health or notably hasten death for themselves by gluttony, drunkenness, immoderate passion of lust, by abuse of morphine, cocaine, opium, or by immoderate penances;

c) who refuse to take ordinary means for recovering health or preserving life safe; but not those who are unwilling to employ extraordinary, refined, unusual, more costly, very difficult means, as to leave one's country and seek a healthier region, to undergo a very laborious or dangerous operation, or a notable amputation: for the law of prolonging life does not obligate with so great an inconvenience. Today, however, several operations which formerly were considered difficult and dangerous are accomplished very easily and safely, and thus have already become ordinary means;

d) *a fortiori* those who abstain from taking necessary foods, even for an excellent end, for example, the liberation of the fatherland. For this is direct killing, for, as St. Thomas says, q. 69, a. 4, ad 2: "not to take food... would be to kill oneself." And the good is hoped for from an evil means; but evils are not to be done so that goods may come.

354. Observations. - 1) The principles are clear and there is no difficulty in them; but in fact, in the application of principles, namely, whether in a case such killing is direct or indirect, there can be room for doubt or even subtle consideration, because *a priori* it is not always easy to determine this. But the various modes indicated among authors (cf. Tanquerey, n. 304 sq.; Billuart, diss. X, a. 3) can be held as only indirect killing, or at least are not certainly proved to be direct killing; and consequently in practice they can be considered as licit, because probably and from the common apprehension of men they are only indirect killing. But if to someone they evidently seem to be direct killing, from this he could not extend the principles and say that direct killing is licit also in other similar cases; but he could only conclude that the application of principles is not being made rightly, and in the case the killing action is also direct and therefore illicit.

2. The desire of one's own death is not necessarily unjust toward God, because he who wishes death for himself can await it as to be inflicted on him by God. Indeed such a desire can be ordered and in conformity with reason, if it arises from a motive of obtaining a good which is better than life, or of escaping an evil which is worse than death. Hence the desire:

a) is licit if it arises from the motive of a better good, for example, of desiring conjunction with God, of loving God more perfectly, of sinning no more, etc., as in the Apostle, Phil. I, 23;

b) is illicit if it arises from a wicked motive, for example, because with rebellion against the divine will someone wishes death or from impatience does not wish to tolerate the ordinary troubles of the present life. This of itself is gravely evil if it is done from perfect deliberation; often, however, it is not sufficiently deliberate because of disturbance or anger, or is not seriously willed;

c) of itself it is not sinful if someone so abhors a grave earthly evil, for example, grave disease, hard imprisonment, a very hard state of life, troublesome vexations and snares, that he would prefer death, because, as Scripture says (Ecclus. XXX, 17), death is better than bitter life; nevertheless it is imperfect, because man, by patiently tolerating most grave evils, will obtain a precious reward which by premature death he loses.

Question Three: On the Killing of One's Neighbor

S. Th. II-II, q. 64, a. 2, 3, 4, 6, 7, 8.

355. The killing of one's neighbor, like the killing of oneself, is distinguished as direct and indirect. Direct killing is not just, except from public authority, toward malefactors, and toward harmful

enemies in a just war, but not toward the innocent, nor for merely private persons; nevertheless indirect killing can be licit, even for merely private persons, for the sake of just defense or preservation.

The unjust killing of a man is called homicide, that is, the slaughter of a man; but this is simple, or qualified, that is, involving a specially sinful circumstance to be declared in confession, for example, sacrilegious homicide (by reason of a sacred person), parricide, fratricide, killing of a spouse, infanticide or the slaughter of offspring, regicide, robbery perpetrated from the will of plundering, assassination or homicide done from compact or from ambush.

356. Thesis I. From natural law, supposing the natural fact of society, the supreme civil authority can punish by capital penalty malefactors fully convicted of a most grave crime, as often as the public good requires this.

Thus against the Waldenses and Anabaptists, and against certain modern philosophers, who unduly restrict that right to the crime of sedition or even assert that it is altogether useless and unjust, because an aggressor is indeed justly killed while in act, but one captured is no longer able to harm; or because authority is derived from the social pact, but individuals reserve for themselves the right to life, which they cannot renounce: thus among others Cesare Beccaria, Jeremy Bentham, Ch. Lucas, Spedalieri, Ahrens, Holtzendorff.

It is certain from the profession of faith by Innocent III against the Waldenses: "Concerning secular power we assert that without mortal sin it can exercise the judgment of blood."

It is proved 1) by reason: To the supreme social power there belongs the right and office of defending laws by efficacious sanctions and of efficaciously deterring malefactors from crimes: for this is necessary to the good of the republic. But for the most part it could not sufficiently furnish this, unless it threatened capital punishment and inflicted it, as is established by experience: both historical experience, from the common estimation of all times, and psychological, because many men are found who are not sufficiently moved by other penalties of exile or detention, even perpetual, whether laborious or solitary, but for whom the penalty of death is the one remedy which of itself efficaciously detains them from every crime. Therefore the supreme social power has the right of inflicting capital punishment.

And indeed: a) Supposing that in society there is present the power of punishing, as cannot be denied, it is required that the moral order violated in the republic be sufficiently repaired, and crimes be punished by proportionate penalties. But some crimes are so grave that they can be expiated only by capital punishment and abscission from human society; therefore.

b) Right reason dictates that a part is to be amputated if it harms the whole. As St. Thomas teaches, q. 64, a. 2: "Every part is ordered to the whole as the imperfect to the perfect; and therefore every part naturally is for the sake of the whole. And on account of this we see that if the cutting off of some member is expedient for the health of the whole human body, say when it is putrid or corruptive of other members, it is laudably and healthfully cut off. But each singular person is compared to the whole community as a part to the whole. And therefore if some man is dangerous to the community, and corruptive of it because of some sin, he is laudably and healthfully killed, so that the common good may be preserved."

Briefly: experience teaches that the one remedy which efficaciously draws back from crimes is capital punishment; without it neither are crimes sufficiently vindicated nor is society sufficiently protected.

2. Revelation also recognizes this. For the old law established: "You shall not allow malefactors to live... He who strikes and kills a man, let him die by death" (Exod. XXII, 18; Lev. XXIV, 17), of which the universal reason is indicated: "Whoever sheds human blood, his blood shall be shed" (Gen. IX, 6). Whence it holds not only concerning the power instituted among the Jews in the Old Law, but also in the New Testament concerning the supreme power among pagans, as the Apostle testifies (Rom. XIII, 4): "But if you have done evil, fear; for he does not bear the sword without cause: he is the minister of God, an avenger unto wrath against him who does evil."

But it is said: a) it belongs to the supreme social authority: for no one except public power can inflict the penalty of death, because malefactors can licitly be killed only for the common good. "To kill malefactors," says St. Thomas, a. 3, "is licit insofar as it is ordered to the safety of the whole community, and therefore it belongs only to him to whom the care of preserving the community is committed; just as it belongs to a physician to cut off a putrid member, when care of the health of the whole body has been committed to him. But the care of the common good is committed to princes having public authority; and therefore it is licit for them alone to kill malefactors, but not for private persons." Besides, then greater evils would arise for society and perpetual conflicts. Whence it is licit neither for the people (lynching), nor for a father or husband, to kill malefactors, even in the very moment of the crime committed, from indignation, or to kill an adulterer or a daughter or adulterous wife caught in the act of delict; but if civil law sometimes tolerates this, it does not make it licit in conscience but only intends not to punish in the judicial forum, as St. Thomas testifies, IV Sent., d. 37, q. 2, a. 1: "The civil law accounts it as quasi-licit that he kill her (the wife) in the very act (of adultery), not as commanding it, but as not inflicting the penalty of homicide, on account of the very great incitement which the man has in such a deed toward killing his wife. But the Church in this is not bound by human laws... And therefore in no case is it licit for a man to kill his wife by his own authority."[1]

[1] Hence the proposition condemned by Alexander VII, 19: "A husband killing by his own authority a wife caught in adultery does not sin."

b) fully convicted of a most grave crime. Whence it is required that the crime be very grave, morally certain, so indeed that regularly it be judicially established concerning it, and that before death time be given to the guilty person so that he can provide for conscience and eternal salvation. Therefore officers who could not capture or guard a criminal cannot kill him, although they can discharge a firearm into the legs of one fleeing so that he may be captured, even if from this he could accidentally be killed.

c) insofar as the common good requires this. Hence it is not always required that the sin in itself be very grave; it suffices that it greatly harms the republic. "Whence," says Billuart, diss. 10, art. 1, "military laws are not to be called unjust, although they decree the penalty of death for faults light in themselves, say, for brief sleep, for deserting a post, neglecting guard, slight disobedience, a small theft, because from delicts of this kind, however light in themselves, most grave evils would follow for the republic if they were not most severely restrained."

357. Corollaries. - 1. Once the necessity of capital punishment has been proved, by that very fact it is proved that God has conceded such a right to Society. For since He is the author of society, consequently He willed to confer upon it all things necessary; and otherwise we know this positively from revelation.

2. By that very fact also it is proved that the right of society overcomes the right of a private person to life. In the subordination of rights, the right of society is to be preferred to the right of the individual. Whence the right to life ceases in certain circumstances, and just as society, when the common good urges, can obligate with danger of death, so also can it impose the penalty of death.

3. A penalty which inflicts irreparable damage, such as the penalty of death, cannot be inflicted unless there is certainty of the delict. Yet infallibility is not required for this, but that certainty which suffices in human acts, so that the delict is morally certain, just as also it suffices for performing a surgical operation. Besides, we are accustomed to do many things which do not infallibly exclude every danger of death.

4. Nor, in order not to impede the amendment of the delinquent, is the penalty of death always to be omitted. For as St. Thomas notes, *C. Gentes*, l. III, c. 146: "But that evil men, as long as they live, can be amended, does not prohibit their being able to be killed justly; because the danger which threatens from their life is greater and more certain than the good which is expected from their amendment. They also have in the very article of death the faculty that through penitence they may be converted to God. But if they are so obstinate that even in the danger of death their heart does not recede from malice, it can be judged sufficiently probably that they will never recover from malice." Amendment indeed is a secondary end of penalties; the primary is the common good to be vindicated.[2]

[2] Cf. I-II, q. 87, a. 3, ad 2; q. 95, a. 1.

5. Therefore penalty can be viewed in two ways: before infliction, in threat, and thus it has influence toward deterring from crime; after infliction, in execution, and thus it avails for repairing the order injured in the evil example given to others, and at the same time for impeding new crimes of the guilty person.

358. Observation. - In a just war, from the supreme social authority, on account of the good of the republic, it is licit to kill enemies officially fighting, but not those already captured, or those laying down arms, nor inhabitants unless they exercise acts of hostility. Thus from legal justice (n. 274).

359. Thesis II. Direct killing of the innocent is a most grave sin, injurious not only to God and society, but also to one's neighbor. - It is proved: For by its own nature it contains a threefold injustice:

a) against God, whose dominion it violates, since He is the owner of human life and of the human body; whence it is never licit directly to kill an innocent person, unless God commands;

b) against society, which it unjustly deprives of the utility of one of its members, while it is unwilling;

c) against one's neighbor, whom, while unwilling, it deprives of the use of the greatest temporal good, which is the foundation or condition of every other good.

Whence also it is prohibited by divine law: Exod. XX, 13: You shall not kill; or more explicitly, XXIII, 7: "The innocent and just you shall not kill, because I abhor the impious."

Hence it is unjust: 1) to kill lethally wounded persons, old men, the sick, the dying, lest they suffer longer, or directly to hasten their death; likewise to kill madmen, lest they harm others, unless here and now they cannot otherwise be restrained, for then they are unjust aggressors; or also in shipwreck to cast some companions into the sea so that the rest may be saved;

2. to kill a mother placed in extremities, so that the infant can be baptized; but she herself, if her life can be hoped for, must undergo the operation so that the infant may be baptized;

3. to kill ambassadors or hostages, even if the enemies who sent them have not kept given faith, indeed have killed other hostages: for they are innocent;

4. to kill infants or directly hasten their death from whatever motive;

5. to ask for or perform puncture of the heart upon a deceased person, namely, to puncture the heart or open an artery in him who is reputed deceased, lest perhaps he be buried alive if death is not entirely certain, because this is to expose oneself to the danger of killing a man.[3]

[3] To the question whether it is licit, by mandate of public authority, directly to kill those who, although they have committed no crime worthy of death, nevertheless on account of psychic or physical defects can no longer benefit the nation, and are judged rather to burden it and to obstruct its vigor and strength, the Holy Office recently responded: In the negative, since it is contrary to natural right and positive divine right (27 Nov. - 2 Dec. 1940).

360. Thesis III. Indirect killing generally is not licit, unless from a just and proportionately grave cause, that is, from a greater good which immediately follows from the action and not by means of the killing.

It is proved: For it is not licit to cause an evil effect, the death of another, unless the cause also immediately produces an effect so good that it compensates the evil; as was said in qu. 2, n. 352.

Hence 1) it is not illicit: in a just war to direct engines of war against a besieged city, although many innocent persons perhaps are killed, provided that it is an efficacious means for attacking the city; to give a necessary medicine to a pregnant mother, although perhaps abortion and the death of the fetus follow; to pierce through an innocent child whom an unjust aggressor has placed before himself lest he be wounded, because the unjust aggression redounds upon the child, indeed, according to some, to flee through a narrow way, while an enemy is pursuing, with danger of trampling a child (if that child has been baptized); but otherwise if the danger of death were from a just cause or from a natural cause such as fire.

2. On the contrary it is illicit for a physician, for the sake of experiment, to use a new remedy or perform a dangerous operation, when a more efficacious and less rash remedy is at hand; likewise to throw a child before pursuing wolves, who otherwise would devour several others, or to cast some into the sea for lightening a boat otherwise to be sunk, unless those who were

last to go down into it are the cause why it is to be sunk: for these alone are harmful; the rest are innocent.

3. It is licit, for sparing a city, to hand over an innocent person whose life a tyrant or enemy demands, indeed even to command him himself to hand himself over for the common good; but not to kill him, even if he consents.

361. Thesis IV. The killing of an unjust aggressor, at least indirect, is licit for defending life or an equivalent good, with the moderation of blameless defense being observed.

It is said 1) *licit*, and not obligatory, because generally no one is bound to defend himself in this hard way, but he can, from a motive of virtue, permit his own death, unless he is very necessary to his family or to the common good, or unless he distrusts his own state of grace;[4]

[4] Let it not be said that he who offers his life for his neighbor is always in the state of grace, because he performs an act of heroic charity; for that is true only if he so acts from the motive of perfect love of God.

2. *the killing of an aggressor*, that is, of one who actually brings force to bear, or at least in some way has begun the work and morally is already invading, as if he displays signs of an imminent aggression (by drawing a sword, seizing a firearm, etc.), or has altogether determined to attack and is now seeking the occasion of aggression and this is established from some present indication; but in doubt there would be place for caution or for interrogation, not for defense.[5] For to kill before the aggression would be to forestall it, not to defend oneself against it; and when the aggression has ended, it would no longer be defense, but vengeance;

[5] Hence Alexander VII condemned proposition 18: "It is licit to kill a false accuser, false witnesses, even a judge, from whom an unjust sentence is certainly imminent, if in no other way can an innocent person avoid harm."

3. *unjust*; therefore it is illicit to defend oneself against the just action of ministers of justice or of officers, but licit against a materially unjust aggression attempted by a drunken man or a madman, unless that man certainly is in the state of sin and the one attacked is certainly in the state of grace;

4. *at least indirect*: we say this because some, such as Lugo and Waffelaert, think that in the case the direct killing itself is licit, provided that it is not intended as an end but chosen as a means; nevertheless we judge it more conformable to truth, with St. Thomas, that bloody defense is nothing except indirect killing;

5. *for defending life or an equivalent good*, whether one's own or another's, so that there is present a good effect proportionate to the death of the aggressor; but an equivalent good is the integrity of members to be preserved, or sensation or the use of reason not to be irreparably lost: whether another good can be judged equivalent is left aside for now;

6. *with the moderation of blameless defense*, that is, so that no more be done than is necessary for defense; whence it is illicit to kill if it suffices to wound, illicit to wound if it suffices to shout, or if it is possible to flee without dishonor, but not if it would be done with great detriment: a soldier or nobleman cannot always flee without dishonor; a cleric, a man of the common people can; indeed a soldier or nobleman can before a madman or a drunken man.

It is proved: It is licit to posit a cause of a double effect, one good, the other evil, when certain conditions are present (n. 352). But this is verified in the case. For a) the indirect killing of an unjust aggressor is an action not evil, since it is nothing except to repel force by force and just defense; b) from it there equally and immediately arises the good effect, namely the preservation of life, just as the evil: the death of the aggressor; c) the good effect is proportionate to the evil, because the life of the innocent one attacked is worth the life of the guilty aggressor, and it is not otherwise to be preserved; d) only the good effect is intended in itself, not thus the evil, since if it could be done otherwise it would not be inflicted. Therefore it is licit.

This was solemnly consecrated by the Law, as Innocent III relates: "Although all laws and rights permit force to be repelled by force, nevertheless, because this must be done with moderation of blameless defense, not for taking vengeance but for driving away injury..."[6]

[6] Cf. French Penal Code, a. 328; Belgian, a. 416; German, a. 53; likewise English law.

Let St. Thomas be heard, q. 64, a. 7: "Nothing prohibits there being two effects of one act, of which one only is in the intention, while the other is outside the intention... Therefore from the act of someone defending himself a double effect can follow: one indeed, the preservation of his own life; but the other, the killing of the attacker. Therefore an act of this kind, from the fact that the preservation of one's own life is intended, does not have the character of the illicit, since this is natural to anyone, that he preserve himself in being as much as he can. Yet some act proceeding from a good intention can be rendered illicit if it is not proportionate to the end. And therefore if someone, for defending his own life, uses greater violence than is fitting, it will be illicit. But if he repels violence moderately, the defense will be licit, for according to the laws 'it is licit to repel force by force with the moderation of blameless defense.' Nor is it necessary for salvation that a man omit an act of moderate defense in order to avoid the killing of another, because a man is bound to provide for his own life more than for another's life. But because it is not licit to kill a man except by public authority on account of the common good..., it is illicit that a man intend to kill a man in order to defend himself, unless he is one who has public authority; and he, intending to kill a man for his own defense, refers this to the public good, as is clear in a soldier fighting against enemies, and in a minister of a judge fighting against robbers, although even these sin if they are moved by private passion."

362. For protecting what goods is bloody defense licit? - Theologians have disputed whether such indirect wounding or killing of an aggressor can be licit for defending other lesser goods of oneself or of another: goods of fortune, chastity, reputation and honor. Now:

1. Many have said that it is licit for defending goods of fortune.

But this certainly does not hold a) for goods to be possessed and for a right to the thing, as moreover is established from the condemned proposition 32 by Innocent XI,[7] but at most for goods actually possessed and for a right in the thing; b) nor for goods of lesser moment, for example, formerly for one or another gold coin,[8] or now for 500 lire or 1,000 francs, even of gold value, but at most for goods of great value; but a matter of great moment would be to fall from one's state, or to suffer great detriment in it, whence it must be considered not only absolutely but relatively; c) nor for those things which could also be recovered otherwise... For goods of great moment, already possessed, whose loss would probably be irreparable, this can be sustained as probable, because it pertains to

public security and to the common good that violent robbers should not be able to snatch goods of this kind with impunity, without incurring danger to life. Yet this is not certain, because, as others say: it is not licit as punishment, because punishment does not belong to private persons; nor as defense, because proportion is lacking between the fortune of the attacked one to be preserved and the very life of the attacker.

[7] "Not only is it licit to defend by lethal defense the things which we actually possess, but also those to which we have an inchoate right and which we hope that we will possess."

[8] Proposition 31 condemned by Innocent XI: "Regularly I can kill a thief for the preservation of one gold coin."

2. A fortiori many have held it licit for defending chastity.

But this also is very doubtful. For the integrity of the flesh does not seem of such value that it can be equated with life. But the integrity of the soul can be preserved otherwise, by not consenting to sin.

3. Some also have held it licit for defending reputation and honor, which are esteemed more than goods of fortune, indeed more than life.

But this last is true of the foundation of honor, namely, of virtue, which is worth more than life, not of honor itself, which is a very fragile thing. Moreover reputation and honor cannot be defended by the wounding or killing of one defaming or dishonoring. For after the fact, it would not be defense but vengeance by private authority: for if a nobleman who has unjustly received a slap or an insult strikes back, this certainly does not avail for defending honor thus taken away, but for obtaining from vengeance a new and false honor. But before the fact, it would be prevention, not defense; nor is that necessary, because the loss of honor and reputation is not irreparable, since by other means it can be preserved or at least recovered (for example, by verbal retort, by judicial way, or by goodness of life), and the wounding or killing of the attacker is of itself an inept means for conserving or recovering such a good, since it is rather defamatory. Therefore this was deservedly condemned.[9] Besides, violent defense of honor or reputation would afford an entrance to countless slaughters and enmities with great detriment to the common good.

[9] Proposition 30 condemned by Innocent XI: "It is lawful for an honorable man to kill an attacker who endeavors to bring calumny upon him, if otherwise this disgrace cannot be avoided; the same also must be said if someone gives a slap or strikes with a staff, and after the slap has been given or the blow of the staff flees." And proposition 17 condemned by Alexander VII: "It is licit for a religious and a cleric to kill a calumniator threatening to scatter grave crimes about him or about his religion, when another way of defending is not available; as it does not seem to be available if the calumniator is prepared publicly and before very grave men to impute the aforesaid things either to the religious himself or to his religion, unless he is killed."

All the aforesaid things are to be understood of these goods *alone*; but it would have to be said otherwise if at the same time there were an aggression against the *person*, especially if bodily integrity came into danger or an aggression against life could deservedly be feared. For someone can defend his own things (or chastity) even by force, and if the aggressor resists and seriously threatens mutilation or death, he can kill him by necessity of defense. And if one attempts to strike with a slap or a staff, the other can impede him by force; and if he who has struck is prepared to continue the injury, the one attacked can repel force by force (if there is no place for flight), even with the killing of the aggressor when he threatens death.

363. Corollaries. - 1. Especially illicit are embryotomy and the direct procurement of abortion, namely, a) to kill the fetus in the womb in order to save the mother; b) to cast the fetus out of the womb, for that reason soon to die; c) to divide the fetus into parts. - For it is directly to destroy human life, or at least directly to impede it in a subject which is not an unjust aggressor.[10] This, for the same reason, holds concerning ectopic or extrauterine fetuses.[11]

[10] Holy Office, 19 Aug. 1889, 24 July 1895, 31 May 1884. - Cf. our *Questions on Embryology* A, q. 4 and 5; B, q. 2 and 3. Some at one time judged feticide licit, such as Ballenni, Avanzini, Constantini, or abortion, as even Lehmkuhl himself.

[11] Holy Office, 4 May 1898 and 5 May 1902. Cf. *Questions on Embryology* A, q. 7; and B, q. 4. Some try to elude the responses of the Holy Office.

For it is a question of the life of an innocent person, which is equally sacred in a little infant and in an adult mother; whence no reason making the act honorable is present: neither the social power of protecting the common good against crimes, nor legitimate defense against aggression, nor the extreme necessity of the mother.

As Pius XI most recently sanctioned in the encyclical *Casti connubii*, 31 Dec. 1930: "What cause could ever avail in any way to excuse the direct killing of an innocent person? For this is what is at issue in this place. Whether it is inflicted upon the mother or upon the offspring, it is against the precept of God and the voice of nature: You shall not kill. For the life of each is an equally sacred thing, for the crushing of which there can ever be no faculty, not even to public authority. a) Most ineptly, moreover, is this repeated against the innocent from the right of the sword, which has force only against the guilty; b) nor does any right of bloody defense here prevail against an unjust aggressor, for who would call an innocent little child an unjust aggressor?; c) nor is there present any right of extreme necessity, as they call it, which could reach even to the direct killing of an innocent person."

2. On the contrary, abortion indirectly procured can be licit, if a) there is present in the mother a lethal disease, b) the means employed is immediately efficacious for curing the mother even when not pregnant, c) no other remedy is present, and d) provision is made for the Baptism of the infant. A fortiori, acceleration of birth can be licit if the infant can live outside the mother's womb, and a grave reason is present.

An action, namely, one bringing danger of death and directly affecting the fetus itself, or some organ or element pertaining to it, such as the placenta, the membranes enveloping it, or the amniotic fluid, cannot be legitimized by the fact that it is necessary for saving the mother, because it immediately harms only the offspring and procures the good of the mother only by means of the evil of the offspring, and thus is directly harmful and lethal; - on the contrary an action which is exercised not directly upon the fetus, nor upon any instrument or element of it, but upon the mother or an organ of the mother, say upon the uterus or tube, can be licit, provided that a) it directly procures the good of the mother, b) it is necessary here and now for saving her life, c) the danger does not proceed from the fetus alone.

3. Concerning accidental homicide, St. Thomas teaches, art. 8: He who posits an action from which, accidentally and not of itself, frequently and probably, death follows, is not guilty of homicide, provided that he has used ordinary solicitude: thus a hunter, by employing due diligence, accidentally kills a man. On the contrary, per accidens he can be guilty of homicide "who does not remove those things from which homicide follows, if he ought to remove them."

This happens in two ways: a) if he is guilty of negligence, not employing due diligence, for example, by imprudently playing with a firearm, and then he sins gravely or lightly according as the negligence is grave or light: thus imprudent pregnant women, and physicians negligent in caring for the sick; b) if the action of itself is unjust and includes danger of homicide, for example, by striking a pregnant woman, or by employing dangerous materials or machines from which the life of workers is placed in great danger.

364. Remarks. - 1st. As with the killing of oneself, so also with the killing of an innocent person, in practice it is not always easy to determine whether it is direct or indirect; whence here also the first remark made in the preceding article, n. 354, 1st, must be applied.

2nd. For practice we note that the probable doctrine concerning the killing of an unjust aggressor against chastity or goods of fortune is not to be publicly proposed to the people, on account of the abuses which would easily follow from it. In fact, that doctrine can very rarely be brought into practice, because a thief can ordinarily be repelled by other means, and because a thing seized can often be sought back by judicial way.

Besides, our Penal Code (arts. 416 and 417) does not recognize a right of defense unless the aggression is in some way judged to be directed against the person.

3rd. Charity does not require that one abstain from killing a culpable aggressor in order to avoid his eternal damnation. Charity indeed obliges even to exposing one's own life if one's neighbor is in extreme spiritual necessity. But a culpable aggressor is not in extreme necessity, since he voluntarily exposes his salvation and, by giving up the unjust aggression, can escape unharmed.

4th. Just as someone can protect himself by bloody defense, so also from charity he can, for the defense of his neighbor, do what that person can do for himself; but he could not thus defend goods which the neighbor voluntarily renounces, for example, the chastity of a woman who consents to sin or does not resist. Yet no one is bound thus to defend his neighbor, unless a special office obliges him to this, as officers, or piety or the common good urges, for example, for the life of a father or of a person who is altogether necessary to the republic.

5th. It is illicit to kill a legitimate prince, though a tyrant by regime and oppression, because no one can, unless he has public authority, kill a malefactor however distinguished; - unless the people, in establishing the king, reserved to itself this power of punishing in this way, or unless it is a question of necessary defense against an actual unjust aggression.

But a usurper or tyrant by title, who has not yet become the legitimate king, can be killed, apart from the case of just defense, by the authority of the legitimate prince or in an act of war of the republic against him, if he does not yet possess the kingdom peacefully; but if he now possesses it, this can be done only from the authority of the legitimate prince commanding it. - In practice, however, it will not be licit unless certain conditions have been posited, namely, a) that the tyrant certainly does not have a right to the kingdom; b) that there likewise is no superior to whom recourse can be had; c) that the republic does not contradict the killing of the tyrant; d) and that from his killing more or greater evils are not to be expected.[12]

[12] Thus Billuart, diss. X, a. 2.

Question Four: On Dueling

365. A duel, among moralists, is a singular combat (monomachy) entered into between two or more persons, from a pact or agreement, with arms suited to killing or gravely wounding. Whence three things are required for it:

a) a *singular combat*, which generally is entered into between two, sometimes between several equal in number, with whatever intention it is done, whether for the sake of exercise, or of vengeance, or of repairing honor, or of showing fortitude, or of proving a right;

b) *entered into from a pact*, in which, namely, the adversaries agree concerning the time, place, and arms: but if two, under a movement of anger, immediately come together, or one attacks another and the latter defends himself, it is not a duel properly so called;

c) *arms suited to killing or gravely wounding*, so that it is by no means necessary that in fact death or a grave wound follow, but it suffices that of itself a grave wound can be inflicted, which, namely, would be matter of grave sin. Thus a fight which is done with the fist, a rod, a staff, or a sword with blunted edge, so that of itself neither is gravely wounded, is not a duel, although it can be a mortal sin.

One duel is public, which is entered into from public authority on account of the public good; another is private, which is undertaken in a private name.

A public duel can be licit if it is done for the common good, to weaken enemies, or to end a controversy or war between two peoples, with less damage, lest the blood of many be poured out; - not always, however, but provided that it favors the common good or at least does not harm it:[1] for if a whole army, for defending the common good, can fight against another army, even the leaders can agree that one or a few should fight against one or a few. Yet on account of a particular good, from the authority of a judge, such a duel would not be licit for vindicating an injury or manifesting the truth, because it is not a means necessary for these ends, since other means are present, nor is it done, as in the prior case, for impeding greater violence.

[1] Three cases are indicated in Billuart, *On Charity*, diss. 7, a. 5: The first case is if he who wages a just war feels himself inferior in forces to the enemy, and that one must either fight and succumb or duel; he can both accept and offer a duel, because he defends the common good in the better way in which he can, and chooses the lesser danger. The same, for the same reason, seems to have to be said if he is doubtful concerning victory, and there is no hope of restoring the army in the case in which it is routed. The second case: if the leaders, considering the inconveniences of war, the detriments of goods, the deaths of many, etc., judge it more useful for the republic to settle the controversy by duel than by war; for then the duel is judged licit by many on the part of him who wages a just war, provided, however, that the victory is not made more doubtful than in war. The third case is if, from the fact that the duel offered by the enemy is not accepted, the enemy becomes bolder and more powerful, the other cast down and more timid; then also it is the opinion of many that it can be accepted. And in a similar case David seems to have fought against Goliath.

But a private duel is always a grave sin, as the doctrine of the Catholic Church holds.[2]

[2] On dueling M. Gierens, *Ehre-Duell und Mensur*, can usefully be read.

Among the ancients there were no duels except public and solemn ones between the leaders of armies or certain soldiers, for putting an end to war. At Rome indeed there existed bloody fights of gladiators between captives and slaves; but they were not duels properly so called, since those men were compelled to the fight, and did not freely agree upon it.

In the Middle Ages, there were private singular combats, among the Gauls and Germans, for vindicating to oneself a determinate right or good; from this usage judicial duels or ordeals seem to have arisen, for the sake of ending a controversy, which, borrowed from the Germans and Lombards, existed widely diffused: when full proof was lacking, under the authority of a judge, a duel between litigants was in use for proof of the truth, which thus was left to the judgment of God, whom they supposed to intervene in favor of justice. But tournaments held among knights differed from duels, not indeed with a hostile mind, but for the sake of exercise and of showing fortitude; although nevertheless at times they degenerated into duels or were entered into with danger of life.

From these tournaments and from the suppression of ordeals, in the sixteenth century there arose, first in France and Italy, duels, according to the manner of speaking today, more strictly so called, held, namely, for the sake of vindicating honor. When reputation or honor had been injured, nobles and military leaders thought that this could be vindicated only by arms and washed with blood: for they judged that they did not carry swords in vain. This custom first prevailed among nobles and soldiers, then also among men of the gown and political men.

366. Principle. A private duel is of itself and intrinsically and always gravely evil and unjust. - It is proved:

A. From the doctrine and legislation of the Church, reprobating the duel as a grave crime and punishing it with grave penalties. After various decrees of Pontiffs, bishops, and particular councils, sanctions against the duel were enacted in the Council of Trent, sess. 25, c. 19, on reformation, and then, explained by Benedict XIV and renewed by Pius IX, are found confirmed in the new Code of Law.

Can. 2351: "§ 1. Those who perpetrate a duel, - or simply provoke another to it, - or accept it, or furnish any assistance or favor, - and also those deliberately watching it - and those permitting it, or, so far as is in them, not prohibiting it, of whatever dignity they may be, are subject ipso facto to an excommunication simply reserved to the Apostolic See.

"§ 2. But the duelers themselves and those who are called their seconds are besides ipso facto infamous." Hence they are irregular from defect according to canon 984, 5°, and if death has followed or grave mutilation, the duelers are also irregular from delict (can. 985, 4° and 5°).

Can. 1240: "They are deprived of ecclesiastical burial, unless before death they have given some signs of penitence... those dead in a duel or from a wound received from it."

B. By reason: A duel is intrinsically and gravely evil, because the dueler rashly and without sufficient reason exposes himself both to danger of his own death or injury, and to danger of killing or injuring another. Hence a duel includes:

1. the injustice of suicide toward God, the author and lord of life;

2. the injustice of homicide, also toward another;

3. an illegal injustice toward society, since it is born gravely to harm not only the very family of the dueler but also the public peace, and it is repugnant to social order: for it is not licit by private force and hand to vindicate one's own right, apart from the case of legitimate defense against an actual and unjust aggression, in the case of urgent necessity, as was explained above.

In the case of a duel it is manifest that the necessity of legitimate defense is not present, for

a) the aggression, if there was any, is not actually existing but already past;

b) recourse can be had to judges or other prudent men who are able to compose the matter;

c) recourse to arms is incapable of vindicating honor or reputation: "For although," says Leo XIII,[3] "he who, after receiving an injury, has appointed the combat departs victor from the contest, this will be the judgment of all sensible men: by such an outcome of the contest he is proved indeed better in strength for wrestling, or in handling arms, than the challenger, but not therefore superior in honor; but if the same man himself has fallen, to whom in turn would this manner of protecting honor not seem ill-considered, not plainly absurd?"

[3] In the apostolic letter *Pastoralis officii*, 12 Sept. 1891, to the bishops of Germany and Austria-Hungary.

d) similarly, a duel is not a means apt for proving innocence, or proving a right or the truth of an assertion; moreover, to suppose God's special intervention in favor of truth or justice in a duel is impious, and to demand or require this is nothing other than to tempt God Himself.

367. Corollaries. - 1. Hence those are not excused who accept a duel in order to avoid very grave evils, or lest they be held sluggish or cowardly.[4] Even for the best end, it is illicit to employ evil means. Therefore Leo XIII says: "If the duties of men were to be measured from the false opinions of the crowd, not from the eternal norm of the right and the just, there would be no natural and true distinction between honorable actions and shameful deeds. The pagan sages themselves both knew and handed down that the fallacious judgments of the crowd must be spurned by a strong and constant man." Moreover, one can propose something else, namely, an office of charity to be undertaken with danger of death.

[4] "A knight challenged to a duel can accept it, lest he incur among others the mark of timidity": proposition 2 condemned by Alexander VII.

2. Even to soldiers duels are not licit, so that by such exercise military virtue may be sharpened and an end imposed on the innumerable quarrels which arise among them. For, says Leo XIII, "the incitements of military virtue look to this, that the state may be more prepared against enemies. But will this be able to be effected by the aid of that custom which by its own nature looks to this, that, when a disagreement has arisen among soldiers, the causes of which are hardly rare, one or the other from the individual parts of the defenders of the fatherland is killed?" Besides, there are other means for composing disagreements, such as, for example, the judgment of arbitrators.

3. Less dangerous duels, in which the adversaries stop from fighting after a certain number of blows has been completed, or at the first light wound inflicted, or, as they say, at the shedding of the first drop of blood, are also true duels, since they are done with arms of themselves suited to gravely wounding and do not exclude grave danger, whence even in such duels a more unhappy outcome sometimes occurs. But how ridiculous it is to bargain for such a condition appears to one thinking even lightly, since no special force can be in the first little drops of blood so that it may vindicate the honor of the offended man. It is added that Clement VIII also prohibited non-fatal duels, and that this kind is born to create scandal and to furnish occasion for fatal duels.

4. Academic duels, as they are called, in which students, with certain parts of the body well covered, try to inflict a wound upon one another in the face with a lighter sword, in ecclesiastical law are to be equated with true duels, even if of themselves they do not bring danger of graver wounding, as is established from the declaration of the S.C.C., 9 Aug. 1890, which retains its force with the new code promulgated, as was said 10 Feb. 1923, and again was confirmed and illustrated 13 June 1925.

For they are a favor furnished to the duel and a preparation for it, as also a confirmation and propagation of the prejudices upon which the duel rests; whence they constitute grave scandal. Besides, they too are done of themselves with arms suited to gravely wounding.

368. Remark. - After the recent war the practice of dueling happily began to decrease. In some regions, however, perhaps it could still happen that a duel is sometimes imposed on soldiers by leaders. Although generally the doctrine of the Church concerning the duel is not unknown, nevertheless there can be soldiers who in the said circumstances, unwillingly and in good faith, undertake a duel, whether they are ignorant of the penalties annexed, or falsely persuade themselves that they cannot avoid such a fight. The confessor will have to attend to this good faith, so that in warning the penitent he may be prudent, lest altogether uselessly he disturb his conscience. Nevertheless, generally it is better that men know that every duel is condemned by the Church, and that scandal must be guarded against which would result from a duel accepted by a Catholic soldier.

Question Five: On Harms Which Are Inflicted upon the Members of the Body

S. Th. II-II, q. 65.

369. A threefold harm can be inflicted upon the members of the body; for in the goods of the body three things are considered in order:

1° the integrity of the bodily substance, to which detriment is brought, apart from killing, by mutilation, that is, the cutting off of a member, or an operation which suppresses its use or organic function; to this wounding closely approaches, which is the infliction of a wound or lesion in a member;

2° the delight or rest of sense, to which beating or striking is opposed, and everything which affects sense with pain;

3° the motion and use of the members, which is impeded by binding, incarceration, and any detention whatever.

370. Mutilation (and wounding) of oneself and of one's neighbor, even direct, is licit

1. if it is necessary for the bodily health of the whole, when otherwise the whole cannot be aided, namely, when the member is harmful to the whole body (whether from within, because it is putrid, or from without, as if someone would be burned or killed unless the member were amputated); and then it is licit for a private person to amputate it for himself or for another with his permission, indeed without his permission if he is not master of himself, but care for his health belongs to another and the amputation is an ordinary and prescribed means;

2. if someone has merited it on account of fault, and then it is licit for public authority, just as the killing of a malefactor also is licit for it.

The reason is because the part is for the sake of the whole, the member for the sake of the whole body, and the individual for the good of the whole community; and therefore the good of the part or of the private person yields to the good of the whole body or community.

Outside these cases direct mutilation is illicit, even for the good of the spiritual life, or for avoiding sin, because members from their nature are not ordered immediately except to the good of the body, not to the good of the soul, and because this can be aided otherwise; and therefore this is not judged to have been conceded by God.

This principle, as Catholic doctrine and at the same time as rationally certain, is solemnly confirmed in the recent encyclical *Casti connubii*, on Christian marriage, issued by Pius XI on 31 Dec. 1930:

"That private men themselves have no dominion over the members of their own body other than that which pertains to their natural ends, and cannot destroy or mutilate them or in another way render themselves inept for natural functions, unless when the good of the whole body cannot otherwise be provided for, this Christian doctrine establishes and it is altogether established from the very light of human reason."

Hence practical cases are understood:

a) Surgical operations are licit if they are truly useful for health; but if they are dangerous they must be very useful, and for knowing this it is expedient to take the counsel not of one only, but of two or more, since some, more than is fair, favor these operations for the sake of experiment or gain.

b) It is certainly illicit to mutilate oneself in order to obtain some gain or advantage for oneself, for example, to flee the burden of military service, to obtain more abundant alms, to preserve the voice by castration and obtain gain from singing: these things are not necessary for the health of the whole body, nor are they a proportionate reason.

c) Eviration or vasectomy is illicit for preserving chastity: for evils are not to be done so that goods may come about, and especially if it is not necessary; "but spiritual health can always be aided otherwise than by cutting off a member, because sin is subject to the will. And therefore in no case is it licit to cut off a member on account of avoiding any sin whatever" (St. Thomas, q. 65, a. 1, ad 3).

d) Likewise vasectomy is illicit, as also oophorectomy, for impeding generation. Each is a notable and grave mutilation; for this must be weighed not only by reason of danger or of the dimension of the member, but also by reason of the function, if it deprives one of a power or function of great moment, such as the generative function. And the same is to be said of the use of X-rays for procuring sterility, by directing them more intensely upon the ovaries or testicles. Such operations are licit in this case alone, when those organs are infected, and therefore would be necessary for the life or health of the whole body.[1]

[1] The Holy Office declared generally on 24 Feb. 1940: direct sterilization, whether perpetual or temporary, whether of a man or of a woman, is not licit and is prohibited by natural law.

e) Likewise it is illicit for public authority to impose vasectomy or atrophy of organs serving generation for the public good, whether for impeding the generation of infected or weaker offspring,

because society does not have direct dominion over the life, liberty, and members of innocent subjects, and because other means are not lacking for obviating this. This is now altogether certain from the mentioned encyclical of Pius XI, according to which public magistrates have no direct power over the members of subjects, nor for preventing future evils is there a right for them to lesion of the body (as St. Thomas says, q. 108, a. 4, ad 2), but only for punishing the crimes of the guilty, or also for preventing new crimes of recidivism in those who are already guilty.

f) Indeed, for punishing certain crimes, however much the power of punishing them by the infliction of vasectomy or sterilization could belong to public authority, - which point is expressly reserved by the Supreme Pontiff in the encyclical, - nevertheless generally it does not seem fitting, because it is not an apt punishment, as being little painful, much repugnant to the moral sense, and rather desired by many so that they may be able with impunity to be free for lust.

g) Illicit mutilation is a grave sin, yet it admits lightness of matter, as if someone uselessly removed one tooth from himself.

h) Indirect mutilation is not licit except on account of a proportionately grave cause.

i) Hence it is a sin not only positively to mutilate the body, but also negatively not to have sufficient care for it. The body is the instrument of the soul, which must be apt to serve the operations of the soul. And therefore for obtaining health and a good disposition of the body there is an office of employing ordinary means; and it is a sin by excesses in food and drink or by immoderate labors, vigils, austerities, gravely to harm health, notably to shorten life, or to render the body unequal to serving the soul. Moderate austerities, however, are licit for taming sensual inclinations and reducing the body into the service of the soul (I Cor. IX, 27), even if life is shortened somewhat; moreover, to avoid all causes of a certain shortening is impossible for man.

371. Beating or moderate striking without mutilation, for the cause of correction, discipline, and punishment:

1. is licit for each one with respect to himself, and for another with his permission;

2. without permission is licit, not for private persons (who do not have governing or coercive power over others), but for public authority; and also for private authority, namely, for a father with respect to a son, for a master with respect to a slave, or for those to whom they commit this, for example, for teachers with respect to students, because they exercise paternal power; - but not for a master with respect to a servant who is freely hired, nor generally for a husband with respect to a wife, who is a companion, not a slave, nor for an elder brother with respect to the others unless the father himself has mandated it.

For just as, for coercing and punishing by irreparable penalties, perfect power of coercing is required, which is in public authority, so also an imperfect power of punishing by lighter reparable penalties is in those who have imperfect private authority.

372. Incarceration simply so called, for a long time or for the whole of life, is illicit, unless it is done a) by public power, which alone disposes universally concerning the acts and life of another; b) according to the order of justice, as a penalty or safeguard against sin. Namely, the man who abuses

the power given to him merits losing it, and therefore incarceration is fitting for him who by sinning has abused the free use of his members.

Nevertheless 1) particular superiors, such as parents and teachers, can for some time detain or shut up children in their own house, for the sake of correction (cf. Belgian law, 15 May 1912, a. 16, 22, 30); 2) indeed every private person can detain someone for an hour from immediately perpetrating an illicit work, as when someone detains another lest he throw himself down or strike another.

373. Corollary. - He who inflicts the aforesaid injuries upon a person joined to certain others, as to a father of a family, or to a king, sins more gravely, other things being equal, than if he inflicted them upon a person joined to no one, because such an injury redounds upon several. Yet it can happen that according to some circumstances that which is done against a person joined to no one is a graver sin, either on account of the dignity of the person, or on account of the magnitude of the harm.

374. Remark. Since animals lack reason and personality and therefore are not their own nor a subject of right, but are totally for the sake of man, who is their lord as of other terrestrial things, man has no obligation toward them, and consequently does not commit an injury if he uses them by killing or in any other way, for example, by vivisection for promoting physiological science or medical art. From this, however, it does not follow that man always kills, tortures, or vexes them licitly, even apart from an honorable end or without sufficient reason, or more than is fitting: for to act without sufficient reason or not on account of an honorable end is never licit.

But if nevertheless he does this, he does not sin by a sin of injustice toward animals or toward God; but he sins toward himself, since he uses his own thing badly, and this sin of itself does not exceed venial sin (q. 64, a. 1).

Question Six: On Restitution for Homicide and Wounding

375. State of the question. - The obligation of making restitution arises from homicide and wounding committed unjustly, efficaciously, and culpably against one unwilling; hence:

a) He who kills or mutilates another by mandate of public justice, or in a just war, or for the sake of just defense and with the moderation of blameless defense, is held to no restitution.

b) Likewise probably he who in legitimate defense has exceeded just moderation rather notably, because the attacker is judged to take upon himself every damage which he can suffer from it, since he knows how difficult it is to preserve moderation in defense and knowingly exposes himself to this danger. St. Alphonsus, however, affirms that restitution must be made; which is certain in the case in which the judge has condemned him to reparation.

c) He who has killed or wounded another in a duel, whether he was provoked, or himself provoked, or both provoked each other mutually, is not held to restitution, because the other freely accepted the duel[1] and thus yielded his right, for to one knowing and consenting no injury is done. Nevertheless he is held, if by force, authoritative command, or grave threats he compelled the other to accept the duel, because he used unjust means for extorting consent and the other accepted only under compulsion and unwillingly; and outside this case, if the civil judge has condemned him to reparation, but then he is held from legal justice.

[1] Not so if the other was moved merely by human respect, because the provocation is an occasion of human respect, not a cause.

But a threefold damage can arise from homicide or mutilation: 1. bodily, for example, the loss of life or members; 2. spiritual, insofar as the one killed is deprived of the opportunity of doing penance, receiving the sacraments or meriting, or of suffrages which by testament he could have procured for himself; 3. real damage in external goods, which happens either to the one killed or mutilated himself or to others, such as members of the family, as expenses for curing the wound, profit ceasing on account of the death or mutilation or infirmity of the injured person. Now the question is what damages an unjust homicide or mutilator is held to restore.

376. Principles. - I. An unjust damager, of himself, probably is not held to repair bodily damages which cannot be recompensed in an equivalent; unless it is a question of a slave who is estimable by price for the master, or unless a judge has imposed compensation. In which case restitution must be made to the injured person, not to those joined to him or to heirs, unless the judge has determined otherwise. But the obligation of itself is personal and, excepting the case of a slave, does not pass to the heirs of the one unjustly damaging.

When no compensation is imposed by a judge, it is by way of counsel for the confessor to impose some compensation, for example, in alms or Masses.

II. An unjust damager is held, as far as he can, to compensate the spiritual damages foreseen to the injured person, and indeed in the same genus of goods. This can be done through prayers, Masses, and other spiritual works. Wherefore let the confessor warn concerning this obligation; indeed he will be able to impose some work by way of sacramental penance. The obligation is personal and does not pass to heirs.

III. An unjust damager is held to repair all real damages which he foresaw at least confusedly would follow of themselves from his action: for of these he is the unjust, efficacious, and culpable cause. And indeed:

a) As regards the injured person, there must be compensated 1. the emergent damage which he himself underwent on account of the wound, death, or mutilation, for example, by expenses made for his cure, but not for funerals, unless they were greater than if the injured person had died at home; likewise 2. profit ceasing but preceding death, namely, which would have come to the injured person for the time which preceded death, but now, for example, on account of cessation of labor or the infliction of the wound, did not come. This must be estimated with all circumstances of person, age, office, and labor considered.

b) As regards others, restitution must be made for their damage of which the killing or mutilation was the cause of itself; namely:

1. To necessary heirs, that is, parents, children, and spouse, for their suitable support or conveniences of life; but the compensation must be proportionate to status and expectation, and none is to be made if no damage has been inflicted, as if otherwise they have or receive that by which they may support themselves, for example, on account of the liberality of another or new marriages entered into. For other goods, of itself nothing is to be restored, because they did not yet have a right to them, and because the homicide is the cause of this damage per accidens; yet he is held to make restitution if a judge has condemned him to this.

2. To voluntary heirs, relatives, and friends, restitution must not be made, because the damager is only a cause per accidens of the damages which come to them; - unless perhaps some one of them had been received into the family of the deceased and held as a son, so that the deceased had strictly obligated himself from justice to taking care of him.

3. To creditors or to the society which insured life, nothing is to be restored, since the damage was inflicted on them per accidens, since it rarely and remotely follows from homicide: namely, it is per accidens that the injured man had creditors.

Restitution on account of damages directly inflicted upon the goods of the injured person must first be made to him himself, and after his death, to his heirs of whatever kind, as succeeding into the rights of the deceased; but in their defect, to the poor or to good works. As regards damages inflicted on others, restitution must be made to necessary heirs and indeed to them alone. In each case, the obligation of making restitution is real, and therefore passes to the heirs of the damager.

377. Corollaries. - 1. Greater restitution generally must be made for the life of a common craftsman than for the life of a nobleman exercising no art and applying himself more to convenience than to gain and labor. Unless, however, the nobleman, by prudence, knowledge, or the benevolence of a prince, would have gained more than a simple craftsman.

2. Nothing must be restored by the homicide, if the one killed was old or infirm, who could no longer acquire anything by his art, work, or industry, or if he was an inert and careless man, because then no damage truly followed after death.

3. In the case in which one lethally wounded, spontaneously and freely before death, remits to the homicide not only the injury itself but also all real debts, from strict justice the latter is not held to restitution, because debts are extinguished by condonation, and injury is not done to children in goods except insofar as they are injured in the father against his will. Thus, although the wounded man by condoning has injured charity, if his relatives need support.

4. Since it is often difficult to determine how much must be restored for homicide, in practice an amicable settlement is to be advised.

Question Seven: On the Obligations of Physicians

378. State of the question. - To physicians and surgeons there has been committed the office of protecting life and bodily health. Whence a) from justice they can be held to bodily care as from their proper office or from contract; - yet on the occasion of the exercise of this office, b) from charity they can be held to caring for the spiritual or temporal good of the sick, or also c) they can unjustly injure and damage in temporal things, namely by reason of expenses or harm. Concerning these things one must now speak specifically.

379. As regards bodily care, three principles must be attended to by physicians:

I. *That they have sufficient skill in their art,* at least ordinary skill, namely, for the cases which usually occur among them; otherwise they expose themselves to the danger of inflicting irreparable damage on the sick or wounded, and for that cause they can be obligated to restitution. From justice those are held to having knowledge and skill who have obligated themselves by a prior contract; but others are

held not to exercise their art without sufficient skill, unless in a case of urgent necessity, when another is lacking.

Hence 1) physicians who wish to fulfill their office faithfully should not cease to apply themselves to study, because medical science and surgical art progress much.

2. In more difficult cases, if they doubt concerning their own skill, they ought to call in a more skilled physician, taking care that the sick person or his family consent to this; indeed even at their own expense, if it were necessary and he himself were ignorant of matters to be known by ordinary knowledge.

3. Those who lack sufficient knowledge are bound under grave obligation to acquire it, and meanwhile to abstain as far as possible from the exercise of the art, or to invoke the counsel of one more learned.

II. *That they employ diligence proportionate to the gravity of the matter which is committed to their care.* A physician who has been hired from contract or from a stipend accepted or promised is held from justice; otherwise he can be held from charity, even under grave obligation, in a case of grave necessity, if another is lacking and he himself can help without grave inconvenience; but if he undertakes the care, he is now held from justice, as from a contract tacitly entered into. And indeed:

1. He who has been hired by contract or stipend a) must hurry morally as soon as possible at any hour of day or night, even with grave inconvenience to himself, unless he certainly knows that from delay no damage will follow for the sick person; b) even in time of contagious disease he cannot desert the sick person.

2. He who has undertaken care of the sick person without a prior contract, a) is held to help the sick person in the better and more certain way in which morally he can; b) nor can he desert him, even if the disease becomes contagious, unless another is found who will take care of him.

3. He who, in employing ordinary diligence proportionate to the gravity of the matter, is notably negligent, sins against justice and is held concerning damages.

III. *That they not use illicit means for procuring health.* From justice safer remedies are to be employed, namely certain ones if they can be had; otherwise those which are more probably less dangerous and harmful, and more and more quickly profitable.

Hence 1) it is illicit, secure means having been left aside, to try uncertain ones.

2. When certain means are lacking, doubtful ones can be employed, provided that they are harmless; and they must be employed if the safety of the sick person is despaired of.

3. Indeed, when other means are lacking, remedies doubtfully harmful but probably profitable can be employed, if the safety of the sick person is despaired of; otherwise, lest death be accelerated, the matter is to be committed to nature, which by no means rarely lifts itself up. In these cases, namely, there must be proportion between the harm which is feared and the

good which is hoped for; but even then a dangerous or extraordinary remedy generally is not to be employed without the consent of the sick person, at least presumed.

4. It is illicit to test a new remedy, even one that will profit others, with probable danger to health or life, not even with the consent of the sick person: for he is not lord of his life, nor are evils to be done so that goods may come to others. Unless perhaps there were only the danger of a lighter damage which could easily be repaired, and the consent of the sick person were added.

5. A physician must altogether abstain from illicit remedies and operations, of which kind are the direct procurement of abortion even to save the mother, - remedies of sterility even for preventing dangerous childbirth, - craniotomy, - the use of morphine, opium, cocaine, etc., in that way and degree in which these harm the body or mind, - imprudent or harmful use of hypnotism, - a dangerous operation done without a proportionately grave reason. In so great a proclivity as exists today rashly to perform whatever surgical operations and to employ doubtful and harmful remedies, especially in hospitals of the poor or of infants, physicians easily offend against justice, so that they are held to repairing damages.[1]

[1] Noldin, *Th. M.* II, d. 744.

6. Finally, a physician sins gravely who, without true necessity or manifest utility, inspects or touches the genital organs, especially of women, because he abuses his office; he also sins more gravely who gives to the sick counsels which are directly opposed to the law of chastity, such as of performing onanism, pollution, fornication.

380. As regards the spiritual or temporal good of the sick: By natural law and by the grave precept of charity, the physician is held, either by himself or through another, to warn a sick person in danger of death concerning the sacraments to be received at an opportune time and concerning temporal affairs to be arranged, at least if the warning is necessary: for from charity he is held to remove grave evil from his neighbor, if he can without grave inconvenience.

Hence 1) if others could not or would not warn the sick person, or if the sick person would not believe them warning him concerning the danger, the physician himself by himself is held to warn him.

2. Yet he would be excused from warning if he knew with moral certainty that the sick person was in the state of grace and already had arranged temporal affairs, or was so hardened in impiety that even warned he would not wish to be converted: this can only very rarely be affirmed with certainty.

3. The physician also ought to warn the family, so that provision may be made more safely for the spiritual and temporal good of the dying person.

Formerly by ecclesiastical law, namely by decree of Lateran Council IV (1215), afterwards again confirmed by Pius V (8 Mar. 1566), it was prescribed to physicians that they should not undertake the care of one dangerously lying sick unless by warning him concerning confession to be made, and, if he had not confessed within three days, they should abstain from visiting. Yet the law was never received everywhere, and where it was received, it is now abrogated.

381. As regards expenses: From justice the physician is held to beware of useless expenses and of excessive stipends to be demanded.

A stipend, according to justice, must not only be sufficient so that according to his condition the physician who exercises his art and gives his powers for the greater part to medical care can live; but it can be rather great, as is clear from the importance and utility of those things concerning which he has care, from the breadth of the knowledge and skill required which is acquired only by longer study and great expenses, from the great responsibility at the same time and the dangers to which he is sometimes exposed. But the stipend can be increased when an accidental circumstance is given: a) by reason of greater distance, longer time, multiplied visitation, or special care or operation; b) by reason of more excellent or extraordinary skill, which is not usually acquired except by increased studies and expenses; c) by reason of special danger, to which, in a more difficult case, the reputation of the physician is exposed.

But in determining the stipend, a double measure can be attended to of itself: for either the common estimation can establish it proportionately to services furnished according to those things which we have handed down here; or also it could have it not as compensation according to equality, but as a contribution to the honorable support of the physician, so that for the same care less would be paid by persons of lesser condition, more proportionately by those who are of better condition. Now even according to this measure a stipend is justly established, provided, however, that a price excessive is not demanded from the rich, nor the salary according to the other measure defined by an association of physicians or by common estimation: for no one is judged to wish to grant a price greater than is customary.

Hence 1) the physician sins who for the sake of gain institutes useless visits or prescribes superfluous remedies, unless the sick person desires it or it is necessary for procuring health by such suggestion; who without necessity calls in other physicians or prolongs treatment longer; who performs useless or too dangerous operations for the sake of gain; or demands too great a stipend.

2. A physician cannot demand a stipend greater than ordinary, with the circumstances of places and persons considered. But if extraordinary services are sought from him, such as a difficult surgical operation which supposes singular skill, he cannot demand whatever price according to his pleasure, but that which, with account taken of labor, difficulty, etc., has proportion with the stipend which the most skilled are accustomed to demand.

3. From charity he ought to care gratis for the poor constituted in necessity, namely, in extreme necessity even with grave inconvenience; in grave necessity without grave inconvenience; in common necessity, if he conveniently can, at least when others are lacking.

It is better that a physician abstain from all means little worthy or less right, which smell of cupidity, and easily furnish occasion for abuse.[2]

[2] He who desires more on these arguments should consult Salsmans, *Geneeskundige Plichtenleer, deontologie medica,* in which various practical cases are considered.

Chapter II: On Injuries in the Goods of Marriage

382. The goods of marriage, formally considered and in the strict sense, are spouse and children. In these someone can suffer injury insofar as harm is brought to their chastity:

1. in a spouse indeed through adultery, which is defined as the violation of another's bed, and is carnal copula with the spouse of another;

2. in one's girls, of whom one has custody, through *stuprum* strictly so called, which is the illicit defloration of a virgin living under paternal authority. Similarly

3. through *stuprum* broadly so called, which is carnal copula with an unmarried woman in some way unwilling, or the oppression of any honorable woman, even not a virgin or not a minor: injury can be inflicted on this woman by reason of future marriage and by reason of offspring perhaps to be born.

These sins, as being sins of lust, are explained in the treatise on chastity; yet because they contain a certain injustice, under this respect they are considered in the present place in order to restitution.

Question One: On Injury and Restitution from Stuprum

383. Stuprum is unjust or not, according as unjust means are employed or are not employed. In the present place, however, an unjust perpetrator of *stuprum* is considered as one who by an unjust means oppressed or seduced an unwilling honorable woman. It is required

a) that he has used some unjust means whatever, namely, force, fear, fraud, deceit, or deception. Whence by these words are understood not only violent oppression of the woman, whether in the state of wakefulness or in the state of sleep or drunkenness, but also threats unjustly inspired, very importunate prayers, for example, of a superior, on account of which from shame she would not dare to dissent, touches and kisses brought by force even if afterwards she consents, fear of infamy from the fact that the man would not wish to leave, deceptions or fictitious promises especially of marriage, and other things of this kind by which the woman, as if unwilling, is induced to copula; - but not flatteries, gifts, mere prayers or accustomed persuasions, because they contain nothing unjust;

b) toward an honorable woman, whether she is a virgin, or widow, or merely unmarried, provided that by public estimation she has preserved good reputation and is held chaste; otherwise no damage of itself is inflicted on her.

384. Principles. - I. An unjust perpetrator of *stuprum*

a) on account of the *stuprum* itself: of himself is held to restore nothing, unless the judge imposes compensation on him;

b) on account of temporal damage (inability or difficulty of marrying, defamation of the girl and dishonoring of the parents, syphilitic infection, etc.), if it was inflicted by him:

1. Toward the woman or also the parents: from justice he is held to repair all damages that have followed both to the woman, especially a virgin, and to her parents, provided that from such an action they come upon them of themselves and consequently are judged to have been foreseen

in confusion: for he is an unjust damager. But he ought to repair even by marrying the woman, if he promised even fictitiously, or if the damage cannot otherwise be repaired, and greater evils are not prudently feared; - otherwise by dowering her or increasing a dowry, taking care that she can marry according to her condition, concurring toward her support, etc., according as damage was inflicted and it is possible to compensate it. Therefore:

a) He is not held to marriage 1. from an invalid promise, by reason of the promise, but only by reason of deceit to be removed; 2. nor from invalid espousals as such, since they are void in both forums (can. 1017, § 1), but insofar as they were an instrument of fraud and deception; 3. nor if the girl had already been dishonorably corrupted, because to enter marriage with such a woman is esteemed much more than that which the perpetrator of *stuprum* received from her; 4. nor if she pretended herself a virgin and herself deceived; 5. nor if from the circumstances, as from the tenor of the words or too great inequality of condition, she could easily have understood that the promise was not serious, because then deception was not present but she deceived herself; - not however on account of a diriment impediment, in which dispensation is usually granted.

b) The obligation of marrying ceases: 1. if the woman has freely renounced her right or has fully condoned the injury; 2. if she has fornicated with a third party, because faith should be broken with one breaking faith; 3. if from the marriage greater evils would follow: enmities, scandals, an unhappy outcome.

c) Compensation is not owed if the woman in fact has suffered no damage, namely 1. if she has already married well according to her state; 2. if she has entered religion; 3. if she could not or would not have married; 4. if she has been defamed because she herself indiscreetly manifested the *stuprum*; 5. if she has already died by premature death. - Unless, however, an agreement has already been entered into; and therefore if the corrupted woman has already received something, she can retain it.

2. Toward offspring born, if the father is certain, he ought to provide from justice for the whole support and education, according to the condition of the mother, until the offspring can suffice for himself; - if the father is uncertain, because several have had copula, he is held to restore for the rate of doubt, at least if by common counsel or knowingly they acted thus, because he is a voluntary cause of the uncertainty of the father, which is already a great damage for the mother and offspring; otherwise it is not certain that he is held to restore anything, since the mother is rather the cause that it cannot be established concerning the father.

II. A perpetrator of *stuprum* who is not unjust:

1. Toward the girl or parents, of himself is held to restore nothing: not to the girl, because to one knowing and consenting no injury is done; not to the parents, because the daughter is not held from justice to impede this damage from her parents; - per accidens he is held concerning damage following from infamy, if he himself has manifested the delict.

2. Toward offspring born, if the father is certain, he is held from piety to half the support of the offspring, according to the condition of the mother, even if civil law prohibits inquiry concerning an illegitimate father; but he is held in solidum with the mother, so that, if she provides nothing, he ought to provide for the whole. But if there are several uncertain fathers,

he is held to half the support by proportionate part, at least if by common counsel or knowingly they acted thus; otherwise it is not certain that he is held to restore anything.

Thus considered under natural law alone. In some regions civil law, or a civil judge when asked, is accustomed to determine the quantity of support to be paid by the illegitimate father,[1] which then has force in conscience.

[1] Thus the German Code (a. 1708 sq.) establishes that the illegitimate father is held to furnish suitable support up to the child's 10th year. Cf. Austrian Code, a. 166-171; Spanish Code, a. 143; Swiss Code, 8. 317-319. The French Code imposed no obligation of support upon the illegitimate father, since it prohibited inquiry concerning the illegitimate father (a. 340); - but in Belgium, by the law of 6 Apr. 1908, this was changed somewhat; in France by the law of 16 Nov. 1912, likewise in the Netherlands in the year 1909 (Dutch Code, a. 344).

385. Remarks. - 1. From piety and charity there is an obligation of acknowledging the offspring, and of legitimating it through marriage, unless graver inconveniences stand in the way.[2]

[2] Cf. C.C., a. 331 and 334.

2. In the case in which the perpetrator of *stuprum* is going to compensate damage by money, it is expedient that he agree concerning the amount of the sum with those who have suffered damage and that he soon pay the whole sum, lest perhaps dangerous commerce be continued or payment of the debt be omitted.

3. Vermeersch wisely warns, *Th. M.* II, n. 633: "Before he declares the obligation of making restitution or advises the manner,... let the confessor weigh all things well... For crafty women know how to entice an inexperienced young man in such a way that he considers himself the seducer while he merely falls into a snare prepared by women. But when the sin has been committed, they complain that they have conceived from him, when either they are not pregnant at all or have sinned with several. Then the money which someone has given for impeding disclosure of the matter or for redeeming the vexation of accusers and barkers is easily converted into an argument of guilt, so that it furnishes occasion for long-lasting servitude."

Question Two: On Injury and Restitution from Adultery

386. Adultery, besides the malice of fornication by which someone approaches one not his own,

1. imports an injury inflicted on the other spouse, from the fact that someone approaches another's woman: this injury and disgrace and infamy, which the husband suffers, must of itself be repaired by satisfaction from justice as much as can be done, by seeking pardon, showing sorrow, furnishing favors, especially by honoring; nevertheless

a) if this would not be pleasing to the husband, or if the adultery has remained secret, it is better to omit this satisfaction, lest quarrels or graver things be caused;

b) if the husband is the adulterer, satisfaction does not seem to have to be made on account of the disgrace of the wife, because the wife is commonly judged to perceive no infamy and no disgrace from the adultery of the husband;

2. it imports besides temporal damage to be repaired, in the case in which offspring also has certainly been born from adultery, namely,

a) the expenses which the husband had in the birth, nourishment, and education of another's offspring, unless this offspring compensates by labor, because then there is no damage;

b) the gifts and inheritance of the father (or ascendants) handed over to this offspring, by which the legitimate children are unjustly deprived;[1] but if no legitimate offspring is present, restitution must be made to those heirs to whom the goods of the husband otherwise would fall. - Yet detriments which come merely per accidens are not to be restored, from the fact that other blood-relatives or friends give or leave certain things to the adulterous child which otherwise would have come to the legitimate children.

[1] The same holds of itself concerning the maternal inheritance, at least for the legitimate portion; unless civil law disposes otherwise. Namely the German Code, a. 1705, and Swiss Code, a. 324 and 461, concede to illegitimate offspring the right of taking inheritance from the mother and her blood-relatives; the Austrian Code, a. 754, only inheritance from the mother. More conformably to principles, the French Code, a. 762, and Spanish Code, a. 845, exclude adulterous offspring from every legal hereditary succession, and concede to him only support.

Thus if the offspring is morally certainly adulterous; for in doubt, offspring received in marriage is presumed to be from the legitimate husband, according to the axiom: the father is he whom the nuptials demonstrate. Nor must restitution be made as long as it is uncertain that the action was efficaciously damaging. But if the offspring was certainly conceived from adultery, it is asked to what the adulterer is held, whether he used unjust means or did not use them.

387. Principles. - I. The adulterer who by force, grave fear, deceit, or another unjust means has brought the wife to copula, from justice is held by himself alone to repair all damages which from this come of themselves to the husband and legitimate children, because he is the sole cause of these truly, efficaciously, and formally unjust.

II. The adulterer who has not used an unjust means, but who obtained consent from the wife altogether freely, from justice is held in solidum with the wife to repairing damages inflicted upon the husband and children; because both together are the unjust, efficacious, and culpable cause of them.

III. Several adulterers who, from copula had at a time apt for conception, can be the father of adulterous offspring, are held to reparation by proportionate part of the doubt, at least those who acted thus by common counsel or with advertence, because then they are the voluntary cause of the uncertainty of the father; - otherwise it is uncertain whether they are held to restore, since the mother is rather the cause that it cannot be established concerning the father.

Let it be noted that the adulterous woman alone sometimes is held to repairing damages which occur by reason of inheritance; namely, if she could easily have removed the child so that he would be nourished outside the family, for example, in a foundling home or hospice, and the adulterer did whatever he could to obtain this: for then he withdrew the cause of damage and did not sin against the family, and the adulteress alone efficaciously caused the damage.

388. The manner of restitution in practice often is difficult, on account of the danger of suspicion by which the peace of the family would be disturbed. Hence the following things come to be noted especially:

1. An adulterous man can make restitution by laboring for the family, or by giving to the husband or legitimate children, whether among the living or by testament, according to a prudent estimation.

2. An adulterous mother can make restitution: a) from her own goods if she has those of which she can dispose without prejudice to the husband; b) from the profit which she makes from her own labor, or by exercising a business or art; c) by diminishing accustomed expenses, caring more diligently for the family estate, and living more sparingly as much as can be done according to her condition, to which, when another means is lacking, she is even held; d) by applying to the adulterous offspring the alms which she can make according to her state, or by seeking an alms from the husband for a poor blood-relative; e) by secretly taking, as far as she safely can, from the goods which are going to come to the adulterous son or have already come, and by compensating the legitimate children with them; f) or also, by prudently giving to the illegitimate son the counsel of religious life.

3. If it is possible for the adulterous offspring to be educated in a hospice or foundling home without suspicions arising, care must be taken that it be done in this way, since thus the expenses of education are greatly limited and the division of inheritance is avoided. Nor is there an obligation of making restitution to the hospice, except in the case in which it is supported by the public expenses alone of the city and is destined exclusively for poor infants, and the parents are not truly poor.

4. Regularly, even if it is necessary for avoiding damages or for making restitution, the mother is not held to manifest her crime: she is not held, namely, with danger to life, - nor with danger of graver infamy, unless she is already suspected and has partially lost reputation, - nor with danger of great hatred on the part of the husband and blood-relatives and of graver discord, - nor without hope of fruit, when manifestation will profit nothing, whether because the son will not believe his mother, or because he will not make restitution since it is foreseen that he cannot or will not wish to do this. - Yet she would be held if those dangers of death, graver infamy, and indignation and scandal were absent, and the son were judged likely to believe the mother and to make restitution.

5. An illegitimate son is not held to believe his mother affirming his adulterous origin, even under oath, but can consider himself as legitimate, unless from circumstances or indications the testimony of the mother produces such certainty as suffices in judgment, as if the absence of the putative father at the time of conception is certainly proved. But if it is thus established, the son cannot retain the paternal inheritance, nor the gifts which come to him from error, unless meanwhile he has legitimately prescribed.

6. Damage which in reality has already followed must be repaired as soon as possible. As regards that which has not yet been inflicted but is to be inflicted, the guilty person ought to dispose matters in such a way that at the opportune time he may make restitution, for example, so that everything which the illegitimate child is going to acquire unjustly by inheritance may be returned to the legitimate children: for he is not held now to compensate this damage, because

it has not yet been inflicted and because it can happen that the illegitimate son dies before the putative father, and then no damage arises to the legitimate children.

Yet if the adulterer is near death, he is held to make restitution at once, by himself or through another, for the proportion of probability of the life of the illegitimate child, with account taken of his age and strength; - or, perhaps better, to commit to the confessor or another trustworthy man that he restore the whole damage from goods to be handed over to him, in such a way, however, that if the illegitimate child dies before the putative father, he dispose otherwise of the goods received, according as the adulterer has determined.

7. If a dying adulteress wished to commit to the confessor that after death he declare the offspring illegitimate, he cannot accept this, both lest confession be rendered odious, and because the offspring would not be bound to have faith in his words and thus the manifestation would be useless.

389. Remark. - If the husband consented to the adultery, the obligation of making restitution ceases, provided that necessary heirs are not frustrated of their legitimate portion.

Chapter III: On Injuries in the External Goods of Fortune

S. Th. II-II, q. 66.

390. Injury in the external goods of fortune is committed by theft. This sin supposes that external things are possessed by private persons as exclusively their own, so that dominion over them does not belong either to all in common or to the community in the name of all. Hence one must speak

1. of the right of privately possessing external things,

2. of the nature and gravity of theft,

3. of the causes excusing the taking of another's thing.

Question One: On the Private Right of Possessing External Goods

S. Th. II-II, q. 66, a. 1 and 2.

391. State of the question. - Man naturally is lord of external things, not indeed as regards their nature, which is not subject to human power but to divine power, to which they obey at will: for man cannot annihilate the nature of things nor immediately change it as he wills, but only use their powers and thus mediately bring about a certain transformation of things; - but as regards the use of things, possession is natural to man, because through reason and will he can use them for his own utility, since imperfect things are for the sake of more perfect things. And thus man not only has the power of using, or useful dominion, but also direct dominion or possession, but in order to the power of using.

We have already proved this where we treated the object of dominion. But from this it is not yet demonstrated that that right of dominion is to be exercised by a private man rather than by all together or by the community, so that it is licit for someone to possess things as his own. Socialists

deny this. But Catholic doctrine holds that in the present order, after original sin in the state of fallen nature, to possess things privately is legitimate and morally necessary.[1]

[1] Among other special works there can usefully be compared: E. de Laveleye, *Le Socialisme contemporain*; Thonissen, *Le Socialisme dans le passe*; Schaeffle, *Quintessenz des Sozialismus* (French trans.); Capart, *La Propriete individuelle et le Collectivisme*; Castelein, *Le Socialisme et le Droit de Propriete*; Bourdeau, *L'Evolution du Socialisme*; Winterer, *Le Socialisme contemporain*; Schrijvers, *Manuel d'Economie politique*; Antoine, *Cours d'Economie sociale*; Schwalm, *Lecons de Philosophie sociale*; Vermeersch, *Quaestiones de Iustitia*; Nicotra, *Le Socialisme*; Drijvers, *Eigendomsrecht*; Garriguet, *Introduction a l'etude de la sociologie*; *La propriete privee*; Deploige, *La theorie thomiste de la propriete*; Van Overbergh, *Les caracteres generaux du socialisme scientifique*, in *R. Neo-scolastique*, 1898; Pottier, *De Iure et Iustitia*; Cathrein, *Der Sozialismus*; Biederlack, *Die soziale Frage* (Dutch trans.); Sertillanges, *Socialisme et Christianisme*; Bourguin, *Les systemes socialistes et l'evolution economique*; Rutten, *Manuel d'Etudes et d'Action sociales*; *La Doctrine sociale de l'Eglise*; Horvath, *Eigentumsrecht*.

392. Socialism is opposed to individualism, and therefore etymologically designates every regime which favors association and intends the improvement of social conditions. Yet in a more restricted sense it is now customarily taken, and thus it is the complex of systems which intend to overturn the present order of society and to substitute for it another new order, in which dominion over temporal goods is exercised by all in common or by society itself, principally if not exclusively: thus by making a step from individual dominion to social dominion, namely toward a general renewal of the world, and not toward a merely economic one.

There is a threefold principal form of this: 1) communism, in which all temporal goods, even those destined for consumption, are common and to be distributed equally among citizens; - 2) collectivism, which distinguishes two genera of goods: some, which are called means of production or exchange, as lands, instruments of labor, railways, etc., and are to be retained by the community or State, whence industries and commerce are to be administered commonly;[2] others are means of consumption and remain under private dominion; - 3) State socialism, which while it retains private dominion even as regards means of production, introduces universal and continuous intervention of the State in all business, and thus too greatly restricts the activity and rights of private persons.

[2] Hence Schaeffle wrote: the alpha and omega of Socialism is the suppression of private capital and the substitution of one collective capital.

From these anarchism differs essentially, which pursues the overthrow of the whole of society, not its transformation.

For since man is good by nature, and has been made evil only by the institution of society and authority, hence all authority must be abolished and society overthrown. Men can indeed enter into free and private associations; but civil society itself is to be destroyed by all means, even violent ones.[3]

[3] Thus among others Bakounine, Kropotkine, E. Reclus, Cipriani, Malato, Seb. Faure.

Already in antiquity traces of communism are found: in the practical order, at Sparta in the time of Lycurgus; in the speculative order, in Plato, who in the work on the ideal Republic and on the Laws has communism as the best means of establishing concord in the city.

But among Christians, in the first centuries, certain Gnostics and Apostolics; in the Middle Ages, Albigenses and Waldenses introduced community of goods after the example of the primitive Jerusalem community; which the Anabaptists and certain other few among Protestants renewed.

But in the sixteenth century Thomas More (1478-1535) again proposed the system of Plato in the book *De nova Insula Utopia* (1516), yet by expunging it from many vices, such as from the community of wives; likewise in the seventeenth century Campanella in his work *Civitas solis*.

Yet these systems scarcely had moment in the history of the human race. But now from the nineteenth century Socialism has been propagated widely and has obtained innumerable followers.

393. The causes of present-day socialism are reduced to an evolution and profound change in the industrial matter, in the philosophico-political matter, and in the religious matter.

I. The evolution in the industrial matter, which Leo XIII describes briefly thus, in the encyclical *Rerum novarum*, 15 May 1891: "the new increases of industry and the arts going by new paths; - the changed mutual relations of masters and wage-earners; - the abundance of riches among a small number, poverty among the multitude; - the greater confidence of workers in themselves, and also a closer connection among themselves; - moreover morals turned for the worse, have brought it about that conflict broke out." The evolution began about the middle of the eighteenth century:

1. By the invention of more perfect instruments in manufactured things; from which a) greater industries were born and the separation of capital and labor arose; for since only the rich were able to acquire the new inventions, society was soon divided into two very distant orders: capitalists and masters who possess the instruments of labor; and proletarians or workers who labor not for themselves but for others. b) Moreover there followed a more intense production of things, or overproduction, no longer measured by the necessities of men, but ordered to a more abundant making, more than could be sold, of goods and riches. From these things it came about that workers depended more on masters, so that for the whole of life they would for the most part have to work in the workshops of others, could be driven away from labor at the nod of the masters, and, on account of unlimited production, would be dismissed for a time and reduced to poverty.

2. Hence the relations between masters and workers were fundamentally changed. Masters who preside over many hundreds or thousands of workers cannot care for each of them and their families and deal paternally with each; consequently difficulties and disputes that have arisen are not so easily composed, all the more because, on account of stricter dependence upon masters and the worse condition of poverty, workers have become readier for rebellion.

3. The distance between the conditions of capitalists and workers also has been much increased: the latter, often receiving a scanty wage, scarcely were able to support themselves and their own; the former, hiring the labor of many workers, became very rich and indulged in luxury. Hence, says Leo XIII, "the abundance of riches among a small number, poverty among the multitude..., the greatest part of men of lowest lot... are unworthily situated in miserable and calamitous fortune..." Which "has divided cities into two classes of citizens, an immense difference having been interposed between each: on one side a faction very powerful because very rich,... on the other a needy and weak multitude."

4. Hence the workers came together into one for their own defense. "The old guilds of artisans having been destroyed in the previous century, and no protection having been substituted in

their place,... gradually it happened that the time handed over the workers, solitary and defenseless, to the inhumanity of masters and to the unbridled greed of competitors. Voracious usury increased the evil, which, although more than once condemned by the judgment of the Church, nevertheless is exercised under another appearance by greedy and profit-seeking men in the same way (and is now tolerated by civil law). To this are added both the hiring of works and the commerce of all things reduced almost into the power of a few, so that a very few wealthy and very rich men have placed an almost servile yoke upon the infinite multitude of proletarians." Understanding this now, the workers entered new associations, deprived of the Christian spirit, by which they try to improve their condition through the radical transformation of the social order and the diffusion of socialism. Whence the workers' greater confidence in themselves, a closer connection among themselves, and a more intimate solidarity.

5. From all these things, morals were turned for the worse. The life of workers has been much changed: on one side, on account of the perfection of industrial machines and the division of labor restricted to one kind, they exercise their own talent much less; whence in many this has been blunted, whose intellectual life has suffered a certain atrophy; - on the other side the life of the family has been weakened: for since the husband, wife, and children often are forced to labor in various workshops, they can cohabit only for a few hours; the wife can scarcely attend to the domestic matter and the education of the children, the husband finds a sordid home and a domestic economy unhappily managed, and thus family life is overturned. Whence workers, lacking intellectual life and finding no happiness at home, have deserted the household hearths, have frequented taverns, and think of overturning the social order.

II. The evolution in the philosophico-political matter has pervaded the whole of Europe. With J. J. Rousseau especially as guide, a) they hold man to be by nature essentially good, but made evil by the present social order of things; b) all men to be equal by nature and endowed with the same rights; which the French upheaval reduced to the practical order, proclaiming the rights of man, with duties passed over in silence, and establishing the political equality of all citizens; c) from which the princes of the liberal economic school concluded that, as regards the manner of producing and pursuing riches, unlimited liberty must be left to the natural tendencies of men, from which necessarily and of itself there arises a social economic state, than which none better here and now is possible.[4]

[4] The liberals say: 1) In man there is a natural inclination to pursue without limit his own good and advantage and proper utility. But it is good to follow the inclination of nature, which is essentially good. Response: In man there is a natural inclination to pursue his last end, which befits rational nature, and the means necessary and useful for this end; but not to pursue without limit material and temporal goods, which cannot constitute the end of rational nature. And it is right to follow the inclination of nature as rational; but not of animal and sensible nature, except insofar as it is subordinated to rational nature and its end. 2) Happy is he who follows his inclinations. Response: if he is considered in the abstract and according as he is an individual, let it pass: for not all inclinations are good; if he is considered in the concrete, according as he is a social being, I deny it: for thus he ought to tend toward the social good, but this does not always agree with the good of man insofar as he is an individual. 3) Proper utility is the sole motive of acting for all. Response: Experience establishes that there are other motives, namely passions, the rational good and the good of virtue, indeed abnegation of self for a noble cause. 4) Unlimited economic liberty is the best means to the economic end: the production of riches. Response: Experience shows the multiple defects and evils which have arisen from unlimited liberty: these are among the causes of socialism, as has been said. Nor is the end of economy the sole unlimited production of riches, but their adaptation to the necessities of men and equitable distribution.

From this it is logically inferred that the right of property is to be abolished, as necessarily leading to the inequality of men; for equality is vain, and liberty is vain, unless all things are common. And indeed they concluded thus the more easily because, after Hobbes, they held civil law alone as the origin of the right of private property, or even with Kant, as the origin of every right.

Thus already Babeuf (1762-1797) wished all goods to be possessed by the State, - all citizens to be compelled to labor, - and fruits to be distributed according to the necessities of each one; thus many socialists after him. Whence socialism has arisen from liberalism, not by a certain reaction, but by logical evolution. For

a) in the speculative order of ideas, liberalism

1. falsified the notion of the last end, which it placed in earthly and material happiness;

2. falsified the notion of civil society and authority, since it derives all power from the people and founds right in external force;

3. falsely taught that economic value arises solely from labor, which alone can be the source of property: thus, among others, A. Smith, Ricardo, Bastiat;

b) in the practical order of facts,

4. it destroyed the old guilds of workers and established economic individualism, by which solitary workers would be left to the greed of masters;

5. by political institutions, founded on full liberty, equality, and suffrage, it established an efficacious means of socialistic organization.

III. An evolution in the religious matter likewise had place among many masters and workers. Unbelief from the eighteenth century invaded the minds of many, and faith in another life having been removed or diminished, they desire an earthly paradise in this life and an Eden of pleasures; from which harmful consequences have arisen:

1. "Not a few masters, whose desires are no longer moderated by the bridle of religion, not rarely regard workers as slaves, or instruments of production, use them and abuse them for acquiring riches more quickly, imposing more work than their strength can bear, and giving a wage which scarcely suffices for sustenance.

2. On the opposite side, many workers, who no longer expect an eternal reward, often indulge drunkenness and lust; and, since the wage furnished to them is unequal to procuring the pleasures which they desire, they denounce capitalists as guilty of injustice, and desire to divide their spoils among themselves."[5]

[5] Tanquerey, *Th. M.* III, *De Virtute Iustitiae*, n. 53.

394. The evolution of present-day socialism consists in three stages: the romantic phase preceded, the more scientific followed, finally the political and practical arrived.

I. The romantic epoch is of utopian imagining and of solitary and local action. It began in France.

1° Saint-Simon (1760-1825), father of modern socialism, not having gone beyond the sphere of speculation, taught that value flows from labor as from its proper and single source, that the first place in society ought to be occupied by workers, and that a common organization of industry under a paternal regime should be instituted. His disciples said that the right of inheritance, private dominion, and marriage were to be abolished, whence it would follow that there would be a free union of man and woman and the fruits of labor common, to be divided according to the works and merits of each one.

2° Charles Fourier (1772-1837) held the principle: that inclination to pleasure is natural and therefore good. But for common happiness and universal harmony he devised a certain form of communism, in which families would coalesce into economic societies, called phalanxes, which would not exceed 2,000 persons and would live together in a spacious common building, namely, a phalanstery; several phalanxes would form series, and the series multiplied throughout the world, under the regime of the supreme president, the omniarch, would procure the common good of humanity. In any phalanx, goods would be possessed in common, agriculture and the arts would be exercised, and all, even the lazy, would receive necessities, but the industrious would obtain more according to the merit of each one. But an experiment of the system made in the village of Conde-sur-Vesgre had an unhappy outcome.

3° E. Cabet (1786-1856) proposed a more radical Communism in the work *Voyage en Icarie*; according to which all goods would be constituted under the dominion of the republic; individual citizens, led by fraternal love, would labor with equal spirit; the fruits of works would be divided equally among the members of the community. An attempt to reduce the system to practice in the region of Texas, after some months, had an unhappy outcome.

4° Louis Blanc (1811-1882) followed a mitigated form of communism. Since to each man there is connatural a right to labor,[6] national workshops are to be instituted, in which work would be divided according to the powers of each one, fruits according to the necessities of each one: thus private dominions are gradually to be abolished and the State will be lord of all things.

[6] From the fact that man has a right to life, there is also a right to labor and the faculty of seeking labor and a right that he not be impeded in it; - but not a right of demanding labor from this or that master. And although this master can sometimes be held from charity, nevertheless not from justice.

5° Proudhon (1809-1865) on the contrary defended a system not unlike anarchism. [Original misprint: 1365.] He declared that the dominion of property is theft, that the State is to be abolished, that every authority is to be taken out of the midst. Citizens nevertheless can retain and transmit to heirs all those things which they are able to use personally, all other things being abandoned; but the fruits of labor are to be divided according to the time consumed in working.

6° Robert Owen (1791-1858), who proclaimed man's irresponsibility, in England was a supporter of mitigated communism, of which he tried certain experiments: he instituted a certain cooperative society in Scotland rather happily, but communist associations founded in England and America soon collapsed.

7° More recently E. Bellamy, in America, vividly depicted collective organization and happiness in two works: *Looking Backward* and *Equality*.

II. The epoch of scientific synthesis and international action had its origin in Germany. From the works of economists and predecessors they built a scientific system to which they gave as foundation historical materialism, according to which every human evolution, even intellectual and religious, is fatal and depends upon economic and material evolution.[7] Hence in fact they are atheists and have the sole religion of humanity, although the economic system does not depend essentially on this theory and can be conceived without this basis and is conceived by some.

[7] The materialistic conception of history is not proper to this socialism, but is found among others, as in de Molinari, who is of the liberal economic school. - The refutation of historical materialism can be seen in Vermeersch, *Quaestiones de Iustitia*, n. 181. Cf. also V. Falon, *Principes d'Economie sociale*.

The master of the school is held to be Jagetzow (1805-1875), who under the pseudonym Charles Rodbertus taught that all economic goods are the fruit of labor, and are not to be esteemed at more than the labor by which they have been produced and, as it were, created; and therefore that society must be transformed in such a way that no dominion now exists except that which has arisen from labor itself.

Marx and Engels perfected and propagated the system; in the year 1848 they published the program (manifesto) of the communist party.

Karl Marx (1818-1883) is the chief doctor of socialism, who in the work *Das Kapital* (1867) reduced all principles into one synthesis. Capital, he says, or whatever is preserved for the new production of goods, is nothing except the fruit of labor unjustly taken away from workers.

For a double value of things is distinguished: one merely personal and usual (*Gebrauchswerth*; *valeur d'usage*; *bruikwaarde*) which consists in the natural utility of the thing; the other commutative (*Tauschwerth*; *valeur d'echange*; *ruilwaarde*) which alone is economic and is estimated by the price of things. But the foundation of just exchange is equivalence between the things exchanged. Yet the useful qualities of things do not constitute this equivalence, since they are diverse and opposed. Therefore labor alone is the one cause of the economic value of things; not indeed labor in fact expended, but that which of itself and generally is necessary for making, discovering, or transporting the thing: value is labor incorporated in the thing and, as it were, crystallized.

Now capitalists, by hiring workers, buy their faculty of laboring for a determined wage, which does not equal the price of the things produced but the daily support of the workers. For workers produce more than is necessary for their own support; this surplus value (*Mehrwerth*; *plus-value*; *meerwaarde*) is retained by capitalists for the new production of things. And thus capital is born and grows from the spoliation of proletarians, that is, by theft at least material.

Marx did not invent these ideas: he borrowed the notion of value from Smith; the notion of surplus value from Thompson, and that capital is theft from Proudhon; but he himself ordered them into a new synthesis.

But by natural and fatal evolution, industries and capitals are increased daily and are converted into monopolies, by which they more and more oppress the multitude which is reduced to greater poverty. But the extreme evil brings the remedy: when very few shall have possessed all instruments of labor and riches, the expropriation of those men will seem necessary and collectivism will arrive. It is necessary to assist the evolution, so that the new ordering of society may happen more quickly; the apt means for this is the struggle of the social orders, which will bring on economic change.

Engels (1820-1895) described socialism in its evolution in the book *Die Entwickelung des Sozialismus*; Lassalle (1825-1864), who therefore is called the apostle of socialism, defended it among the people. He, borrowing ideas from Ricardo, expounded the so-called iron law of wages (*eherne Lohngesetz*; *loi d'airain*; *ijzeren loonwet*).

In the present economic order, by ineluctable necessity and as by an iron law, it happens that wages never for long exceed that which is necessary for one's own support and the sufficient propagation of the human species. For if wages are increased, a greater number of children is begotten, therefore there will be a greater influx of workers, and soon, by the ineluctable force of competition, less price will be paid to workers. Whence the economic system of competition leads to emigration, depopulation, and neo-Malthusianism, and condemns workers to a state of misery in which they have nothing except the necessities of life. Against this no valid or useful remedy exists. Therefore it is necessary to join capital and labor, and for this to institute cooperative societies of production, which will be the first stage of transformation.

To break the rule of capitalists and more quickly bring on the new order of society, Marx instituted the international society of workers (not political), which from the year 1866 held international congresses; but in the year 1873, on account of internal dissensions that had arisen, it was dissolved.

Engels, Bebel, Liebknecht, Singer propagated the doctrine of Marx; the things Lassalle taught concerning the iron law are with difficulty reconciled with the doctrine of Marx and were also abandoned by socialists. Bernstein and Vollmar, after the war De Man, subjected the principles and system of Marx to critique and softened them; others defended them, among whom Kautsky and Vandervelde.[8]

[8] *Zur Psychologie des Sozialismus*, Jena 1926; turned into French 1927: *Au dela du Marxisme*. A compendium of the work was made by P. Th. Trinon, O.P., *La Liquidation du Marxisme*, in the collection: *Etudes religieuses*, 1928. - Therefore a double diverse tendency is found among the disciples of Marx; nevertheless even the milder ones retain the struggle of the social classes and for the most part preserve the terminology (*Wortschatz*) but in a somewhat mitigated sense: they temper historical materialism, to which now a merely didactic value is attributed, and determinism and fatal evolution; they explain the reduction of the multitude to poverty as relative poverty because proportionately it is less enriched; the concentration of capitals will happen with less speed and evolution will proceed more slowly and more gradually, etc.

III. The political and practical epoch, or of the realization of reforms and of political and national action, began after the year 1873 and endures even to the present day. Now understanding that the total change of economy and society cannot be obtained at once, they prepare it by progressive effort and strive to bring it about; hence:

a) The so-called Reformists, by apt means, even by seizing political power and by intervention of law, try to make the condition of workers better, but that of capitalists worse, to impose progressive burdens upon the richer, to collect greater industrial enterprises and mines into social dominion, to oppose the federation of masters by confederated associations of workers, and slowly to bring their theories into practice.

b) Others, however, think that the better condition of workers can come about only by violent means, with every distinction between masters and workers removed, and they strive to prepare it.

Many cooperative and syndical societies were erected by socialists, and the more celebrated congresses, national and international, have been held.

395. The principal present-day forms of Socialism are:

1° State Socialism, which does not admit the collective dominion of all things, at least, but an excessively universal and continuous intervention of the State, from which it happens that the liberty of citizens and the right of private property are restricted more than is fair.

It was proposed by professors of universities, who therefore were called socialists of the chair (*Kathedersozialisten*). They contend that the solution of the present-day social question and economic reformation are to be expected almost solely from the intervention of the State, which would dominate the whole economic activity of the nation in every sphere. So that, with intermediate social organisms removed, the State would enjoy a certain quasi-omnipotence. This contradicts the natural institution of political society, whose mission is not to impede the activity of individuals and associations, but only to supply for their defect.

Thus many who favored democratic socialism in Germany, such as A. Wagner and Ebert, and those who are called radical-socialists in France. But now also those who glory in being called national socialists.

2° Agrarian Socialism was first proposed in Ireland and in the confederated States of America. It had H. George as its principal patron: he contended that not all means of production are to be possessed by the State, but only land estates, because land, like the sea and air, is not capable of private dominion, but ought to be common to all.

But lest public order be disturbed, possessors of fields will not be despoiled, but will pay a tax which corresponds to the price of lease and which is foreseen to be sufficient for paying all public expenses. Whence other taxes, which are unjust, are taken out of the midst.

Today the system generally is considered as unequal to solving the social question.

Even de Laveleye, who is among moderate liberal economists, admitted collective possession of land.

3° Collectivism or Marxism, according to which: a) the State or municipalities, or associations subject to the State, ought to retain in dominion all means of production: lands, workshops, mechanical instruments, money, etc. b) Their use and administration will be in the power of public authority, by which the production of things is to be ordered so that nothing useless is made, and nevertheless provision is fully and sufficiently made for the necessities of all citizens and of the whole of society. c) By public authority the fruits of labor are to be distributed among citizens: either, as some say, according to perfect equality; or, as seems equitable to others, according to the labor and merit of each one; or, as others prefer, according to the necessities of each one. But the goods which are received by each one are reserved for consumption, and cannot be employed for producing new things, lest capitalism revive under another form. d) But part of the goods is reserved for the necessities of the state for those things which are of common utility; besides which no taxes will be imposed. e) Since there will not be economic exchanges among citizens, the use of money does not subsist in this society; but labor tickets will be handed over by which citizens will be able to obtain in public workshops all things necessary for themselves.

Concerning the manner of reducing the system to practice, collectivists do not agree:

Some, the Possibilists or Reformists, and Evolutionists, reject violent means and wish to attain the end by legal means: by monopoly of the State in the principal industries, determination of the price

to be paid to workers, universal and obligatory insurance, obligatory affiliation to guilds of workers, etc. These do not differ much from the followers of State socialism, except in the end, namely, expropriation.

On the contrary, the Seditious intend that public authority is to be obtained, so that they may authoritatively and by public force seize and divide all means and fruits of production.

4° Seditious Syndicalists fear the tyranny of the State just as the tyranny of masters, and they wish the means of production to be handed over to guilds of workers. To this end the education of workers must provide, and the aid of experts must be obtained, so that the ejection of masters from industries and a new ordering of things may come about.

For attaining this, it is necessary to use even violent means, for example, a strike even general, by which sedition may be prepared, by which the new order will be established. Then State and municipalities will cease; the management of things will be among workers and associations of workers, municipal, national, international. And thus there will be rightly ordered production by which all necessities are abundantly provided for, and earthly happiness.

To seditious syndicalism also belong the Bolshevists, imbued with the principles of Marxism; who nevertheless, under the pretext of the necessity of the State, provisionally instituted the tyrannical power of the police and in practice rejected for a time the sole direction of the guilds of workers.

396. Thesis. The private, permanent, and exclusive right of dominion over external goods and over the land itself, circumscribed by just limits, flows from natural law, and therefore is legitimate, and in the present state morally necessary. - It is said:

1. *the private right of dominion*, i.e., dominion not only useful but full, belonging to individual men independently of the State, not to society itself: for although society can possess certain goods as its own, nevertheless the right of dominion belongs also to private persons, indeed primarily to them;

2. *permanent and exclusive*, in such a way that it is exercised not only transiently but in a stable manner and can be transferred to others, or also to natural heirs; and that it is so proper that the owner is able to exclude all others from his possession;

3. *over external goods*, whether movable or immovable, whether ordered to the new production of things, or to use or consumption;

4. *circumscribed by just limits*: that right is not absolute, but, like other rights, is limited by its immediate end. That end is that for which earthly things have been created, namely, that all may be able to live from them. But it is limited in three ways:

a) in a case of extreme necessity, each one can occupy that which is necessary for the support of himself and his own;
b) by reason of the common good, social authority can decree fitting laws, so that no prejudice be brought to the end of things, which is that all may be able to live from them; and at times it can restrict private dominion, or partially take it away if this is necessary for the good of the whole republic, though this last cannot be done without a grave cause, nor regularly without due

compensation;
c) charity toward one's neighbor demands that the rich give to the poor out of their superfluities.

This is the doctrine of St. Thomas, which Leo XIII made his own: "Concerning an external thing two things belong to man: one of which is the power of procuring and dispensing (dominion), and as to this it is lawful that man possess things as his own...; but the other... concerning external things is the use of them, and as to this man ought not to have external things as his own, but as common, namely, so that one may easily communicate them in the necessity of others."[9] II-II, q. 66, a. 2.

[9] Yet this necessity of the poor man is not a right, otherwise there would be an obligation of justice; but it is a title for obtaining that they be assisted from superfluities, because superfluities by natural ordination are destined for them, in such a way that the rich have a strict obligation of giving them generously from charity.

These obligations of owners can also proceed from legal debt, inasmuch as it pertains to the common good not only that in extreme necessity all be assisted and no one be deprived of necessary things, but also that there be a good use of superfluities in society and that from superfluities there be given to the needy.[10] - Whence human law, on account of the common good, can compel to this: for no one has superfluous goods except for their good use and good dispensation; and therefore society could take away the dispensation from one who does not use well, as from one unworthy. "Wherefore," says Pius XI, in the encyclical *Quadragesimo anno*, May 15, 1931, "what, with the reality of the common good considered, is lawful for those who possess, what is unlawful in the use of their goods, public authority, with natural and divine law always shining before it, can investigate more accurately."

[10] Thus conformably to St. Thomas, q. 118, a. 4, ad 2, and to the commentaries of Cajetan. This also P. Vermeersch conceded, his confreres dissenting, while the controversy stood which arose on occasion of the book of P. Horvath, O.P., *Eigentumsrecht*, and of certain writings by others, concerning which see *Theol.-Prakt. Quartalschrift*, Linz, 1929.

5. *flows from natural law, and therefore is legitimate*. For it is not a primary natural right, which belongs to nature considered in itself and absolutely; but it follows by way of conclusion from the consideration of human nature, and for this reason is legitimate.[11]

[11] The law of nature comprises those things which are required by the nature of things. If the nature of the things to be possessed is considered in itself and absolutely, the division of possessions is not required: there is not in them a requirement that they be possessed by one or by another, in common or in particular. Private dominion is neither required nor excluded; whence it is not against nature. Only this is required by the nature of things considered in itself, that the things to be possessed not be turned aside from their immediate and intrinsic end, which is that they serve the necessities of all men: the land does not cease, says Leo XIII, to serve the common utility of all, and there is no one who is not nourished from those things which it produces. Whence in a case of extreme necessity, private dominion ceases and all things are common: the division of possessions cannot prejudice such necessity, and from the human application of the law of nature the primary end cannot be impeded... But private dominion is of natural law according to something *which follows from nature and is concluded by reasoning*. Thus Pottier, o. c.

To this it is no obstacle that, according to St. Thomas and many scholastics, the right of private dominion arises from the law of nations. According to the ancients, natural law designates only that which is required by the nature of things considered according to itself and absolutely; the law of nations designates that which, not according to itself, but in order to a certain end, or in a certain supposition, is derived from the nature of things by reason, according to a certain utility, fittingness, and consequent moral necessity, as a necessary conclusion, not very remote, so that the nations easily agree in it (I-II, q. 95, a. 4). According to more recent authors, both are called natural law, namely, primary and secondary; and rightly, for according to St. Thomas, the law of nations has something of

its force from the natural law (I-II, q. 95, a. 2), and "natural reason instituted it" (II-II, q. 57, a. 3, ad 3). Whence *Ethics* V, lect. 2: "Whatever follows from the naturally just as a conclusion, is naturally just."

6. *in the present state morally necessary*. A state of things is possible in which common possession in a certain place or in a certain society would sufficiently provide for the necessities and happiness of men: thus in the state of innocence or original justice, among pastoral tribes, when men are not many. But in the present condition of things, in which men with their defects commonly seek only themselves, and have little care for their neighbor and for society, and given the state of present-day civilization, in which men cannot lead a pastoral life but, being greatly multiplied, need great labor to procure necessities for themselves, private dominion is now morally necessary for the happiness and perfection of citizens and for the peace of society, as will be clear from the demonstration of the thesis.

Therefore the division of goods has arisen not from civil law, as Hobbes, Bentham, Montesquieu said; - nor from a social pact, as Grotius, Puffendorf, Heineccius held; - nor from a merely human institution, or from theft as Proudhon proclaimed, but from natural necessity. Whence Leo XIII: "to possess things privately as one's own is a right given to man by nature"; and to divide the land and to possess it privately, "the universality of the human race... has found in the very law of nature the foundation of the partition of goods, and has consecrated private possessions by the usage of all ages, as things which most of all accord with man's nature and with peaceful and tranquil living together."

If, however, the nature of things is considered not in itself but in order to the necessities of men, and they are considered together with the very nature of man, which must be regarded not in a certain ideal state but in the concrete and actual condition and according to its proper psychology, then there arises a requirement for the partition of goods which positive law must determine from natural law.

Cf. St. Thomas, II-II, q. 66, a. 2, ad 1: "Community of things is attributed to natural law, not because natural law dictates that all things are to be possessed in common and nothing is to be possessed as one's own; but because according to natural law there is no distinction of possessions, but rather according to human agreement, which belongs to positive law... Whence the property of possessions is not against natural law, but is added to natural law by the devising of human reason."

It is concluded: "The division of goods and the appropriation of things... has proceeded not according to natural law, but rather from human agreement, which pertains to positive law. Whence the property of possessions is not against natural law; but it is added to natural law by the devising of human reason" (II-II, q. 66, a. 2, ad 1), i.e., from a requirement of human nature, dependently on natural law.

397. The thesis is proved. Demonstrations are taken from the Scriptures, from Tradition, and from reason: the Scriptures and Tradition show the legitimacy of private dominion, reason also its necessity.

A. *The Scriptures* suppose and acknowledge the right of private dominion to be legitimate. God, in creating men, indeed handed earthly things over to them undividedly (Gen. I, 28-30), but so that they would be possessed in the manner more apt for procuring for themselves the necessary and useful things of life; but that the manner of possessing by private dominions is legitimate is shown:

1° In the Old Testament: a) the first division of goods already appears among the sons of Adam, since Abel is presented as a shepherd of sheep, offering to the Lord from the firstborn of his flock, Cain as a farmer, offering from the fruits of the earth, and afterward building a city which was his own and which he called by the name of his own son Henoch (Gen. IV, 2, 4, 17).

b) At the time of Abraham the right of private dominion already existed widely: Abraham was rich in possession of gold and silver; - Lot had flocks of sheep, and herds, and tents (Gen. XIII, 1-2, 5); fields and caves were under private dominion, since Abraham bought the field of Ephron and the double cave in it, that he might bury Sarah there when she had died (XXIII, 1-20), with a stable and permanent right indeed, so that Abraham, Isaac, Leah, and Jacob were buried there; just as Joseph was buried in the part of the field which Jacob had bought from the sons of Hemor (Jos. XXIV, 32). But pastures were common; yet when, because of the multitude of flocks, a quarrel arose between the shepherds of Abraham and of Lot, they were separated, one from his kinsman (Gen. XIII, 7-11).

c) The right of private dominion was confirmed as legitimate by the divine law itself, which not only prohibits theft but also the very covetousness of another's good (Ex. XX, 17), wherefore it strictly forbids that the boundaries by which fields are circumscribed be transferred (Deut. XIX, 14); but the earthly possessions of each family, which had been sold, could be redeemed, and when the year of the great jubilee recurred they returned to the former possessor (Lev. XXV, 23-28).

2° In the New Testament: a) Christ confirmed the law, by condemning theft; and he gave only the counsel of selling all things and giving the price to the poor (Mt. V, 3); but to those possessing he commanded the good use of goods, by generous almsgivings (XXV, 41-43).

b) The Apostles, applying the counsel of the Lord, instituted common possession of goods in the first communities (Acts IV, 34-35); nevertheless Peter himself proclaimed that the renunciation of possessions is of counsel only, not of precept, when addressing Ananias: "While it remained, did it not remain to thee, and when sold was it not in thy power?" (V, 4). Whence, when the disciples had been multiplied, community of goods did not endure, and provision was made for the necessities of the poor by collections of alms (XI, 28-30). Hence Paul admonishes that it must not be prescribed to the rich to leave their goods, but that they "not be high-minded, nor trust in the uncertainty of riches, but in the living God..., to be rich in good works, to give readily, to communicate, to treasure up for themselves a good foundation unto the future" (I Tim. VI, 17-19).

From these it is established that, according to the Scriptures, a) the right of private property such as existed is legitimate; b) nevertheless it is in some measure limited by the precept of almsgiving.

B. *The Tradition of the Church* acknowledges and vindicates the right of private dominion:

1° The Church has always condemned the adversaries of private dominion: in the third century the Apostolics, who, with Augustine as witness (book *On Heresies*, 40), "most arrogantly called themselves by this name, because they would not receive into their communion those using marriages and possessing their own things... But these men are therefore heretics, because, separating themselves from the Church, they think that those who use these things have no hope"; - in the thirteenth century, the Waldenses, against whom Innocent III prescribed this profession of faith: "we confess and believe that those remaining in the world and possessing their own things, giving alms and other benefactions from their own things, and keeping the precepts of the Lord, are saved"; - in the fifteenth century, Wicleff and Hus, who denied the legitimacy of possessions in

ecclesiastical men (Council of Constance, sess. 8, a. 10; interrog., a. 34-36); - in the nineteenth century, the Socialists, who were reproved by Pius IX (*Qui pluribus*, November 9, 1856), by Leo XIII proclaiming, in the encyclical *Rerum novarum* (May 15, 1891), that their doctrine concerning expropriation is unjust, inept, and subversive of order, and by Pius XI in the encyclical *Quadragesimo anno*.

2° The Fathers explain that riches are not evil nor prohibited, but are unequally given by God, so that they might be for the richer an occasion of kindness and charity, but for the poor an occasion of patience and of greater merit.

But if the celebrated preachers of the fourth[12] and fifth centuries, such as Basil, Chrysostom, Nyssen, Ambrose, etc., most eloquently proclaim that goods are common, that what is due from them is to be rendered to the poor, that all riches descend from iniquity, that those who deny alms are thieves and guilty of injury; - this is rather to be attributed to the oratorical manner of speaking.

[12] Thus, for example, Basil: "Is God unjust, who has distributed to us unequally the necessities of life? Why, when you are rich, is that man poor? Is it not certainly so that you may receive the reward of kindness and faithful dispensation, and he may be endowed with great rewards of patience?" on that passage of Luke: "I will destroy," n. 7. - And Chrysostom: St. Paul "besides knew that riches are not forbidden, if one has used them as he ought. For as I have said: wine is not an evil thing, but drunkenness is evil; so riches are not an evil thing, but avarice is evil, cupidity is evil." Whence to sell all things is a counsel, not a precept (hom. 2 to the people of Antioch, n. 5). Hence the pastors of churches do not excommunicate the rich, but urge them to assist the needy. Cf. on this argument Vermeersch, *Quaestiones de Iustitia*, n. 210.

For, when occasion is given, the same Fathers expressly assert the right of private dominion; - they wish goods to be common by destination and use, so that they yield to the utility of others, not so that they be possessed by all; - they hold alms as a debt of charity; - whence those who deny them are guilty of injury in the wider sense, insofar as they wound justice understood in the general or metaphorical sense, or even legal justice, the more so because in those times of plague, drought, and great calamity many were poor even in urgent necessity; - but they rightly maintain that riches are from iniquity because from original sin and the corruption of morals the division of goods became necessary, and in fact they have often had their origin from injustice and usury. Besides, the orators of the seventeenth century in France said similar things, and nevertheless most certainly admit the legitimacy of private possessions.

C. *Reason* demonstrates the legitimacy and at the same time the necessity of private dominion. To this end one can argue thus:

The form of dominion or government of external goods to which nature strongly inclines man, and which the common good demands, is legitimate, indeed necessary, by natural law. But such is the regime or form of private dominion in the present condition of things. Therefore.

The minor is proved as to the first part: Nature inclines man to the possession of external things, both that he may govern himself and provide for himself even for the future, and that he may provide for his children even after his death, and that he may vindicate for himself the fruit of his labor (as we demonstrated when speaking of the object of dominion, n. 168).

But nature impels the individual and private man to this, not civil society; for

a) The individual man and the family are prior in nature and in time to the State itself: "for man is older than the republic," says Leo XIII; "wherefore he must have had by nature his right to protect life

and body before any city came together."

b) Society has not been constituted in order to deprive individual men and families of rights, or to restrict their activity and substitute itself for them, but to protect their rights, foster activity, and promote its exercise.

Therefore according to nature the right of dominion belongs primarily to individuals, not to the State, and therefore private dominion is legitimate.

The second part of the minor is proved: Nature demands and requires the regime which is necessary for the common good, or which appears as the one apt means by which the end may be obtained. But the regime of private dominion is morally necessary and the only apt means both for stirring up man's labor, and for procuring the progress of labor, and for preserving social peace.

Therefore the regime of private dominion is morally necessary by natural law.

The minor is proved from St. Thomas q. 66, a. 2:[13]

[13] Cf. Aristotle, *Politics*, c. V.

"a) First indeed, because each one is more solicitous in procuring something which belongs to himself alone, than that which is common to all or to many: because each one, fleeing labor, leaves to another what pertains to the common, as happens in a multitude of servants.

b) In another way, because human affairs are handled in a more orderly manner (and therefore with greater care and perfection), if the proper care of procuring some thing is incumbent upon each individual;[14] (whence private dominion is a stimulus of progress in labor, which progress in turn it procures by bringing in division of labor). But there would be confusion if anyone indiscriminately procured anything.

[14] "Each one will increase his possession more, attending to it as his own." *Politics* II, lect. 4.

c) Third, because by this the state of men would be preserved more peaceful, while each one is content with his own thing. Whence we see that among those who possess something commonly and undividedly, quarrels arise more frequently."

Therefore private dominion is morally necessary for more abundant production, for more perfect production, and for peaceful possession.

398. The necessity of private dominion can also be shown in this way, in a manner more adapted to present-day necessities: The regime of private dominion is morally necessary and the one means which effectively procures and protects abundant economic production of goods, an equitable distribution of these, and the legitimate liberty of citizens.[15] Therefore the regime of private dominion is morally necessary by natural law.

[15] Cf. on these Antoine, Schrijvers, Vermeersch, and Tanquerey, in o. c.

The minor is proved: 1. A certain abundance of goods is necessary for prosperity, for the exercise of virtue, for avoiding sickness, sadness, and envy, and for applying oneself to the intellectual works of sciences and arts. But men, when they labor to increase their own resources and to transmit them to children or friends, labor eagerly and with great zeal, from which the riches of the state are increased; on the contrary, when they expect no private profit, many remain idle and sluggish, trusting in the labor of others, so that little by little resources are diminished and vanish. This partly also comes

from the fact that the administration of common goods of the whole society is too complex. Whence various attempts at communism, although strengthened by necessary subsidies and by a large economic apparatus, perished through the laziness of members and internal dissensions.

2. An equitable distribution of goods, namely, one instituted according to the merit of each one and the proportion of work rendered, can be had in the regime of private dominion, but in a collective regime it cannot be done. For a) if it is done according to the merits of each, as it has seemed to some, the inequality which socialists wish to remove returns under another form; nor will there be an equitable judgment concerning the merits of others in a society in which administrators are chosen by votes and those to be vexed have greater will because of contrary partisan interests. - b) If goods are distributed according to the necessities and requirements of each one, who again will pronounce an equitable judgment concerning them? And indeed those who labor more and receive less will certainly not complain unjustly. - c) Finally, if it is dispensed equally to all and to each, there will now be lacking the stimulus necessary for labor, and many will indulge idleness. As Leo XIII says: "a way would be opened to mutual envy, to detractions and discords; with the stimuli of the talent and diligence of individuals taken away, the very fountains of riches would necessarily dry up; and that equality which they fashion in thought would in reality be nothing other than the equally miserable and ignoble condition of all men, without distinction."

3. The legitimate liberty of citizens is a great good which is necessary both to the dignity and to the happiness of men. Private dominion indeed favors this of itself; in a truly collective regime individual liberty is greatly diminished and, as it were, extinguished:

a) Liberty of choosing a profession or condition of life. For this will depend upon the collectivity or the State, since it itself will be the universal distributor of offices and duties; for this there will be necessary an inquiry into the aptitudes and merits of individuals, so that each one may be applied to the fitting art according to the necessities or congruences of the community. But since citizens will often be compelled to complete a kind of work repugnant to them or less pleasing, complaints and envies must necessarily arise, with great detriment to society. And because the community will be the sole mistress and governess of all things, to those who are not content with their lot, having left the home which they do not have the faculty of selling or leasing, nothing will remain except to flee into exile.

b) Liberty of determining one's own necessities or consumption, and consequently the means of sustenance, habitation, instruction, building or construction, etc. No one could live and be educated according to the aspirations and requirements of his personality, since the State would eliminate the necessities which it itself judged superfluous or harmful.

c) External liberty of the press and of thought, and therefore of schools and of the education of children. For since all presses, buildings, and all other things are possessed by the community, no writing will be able to be committed to type, no meeting held, no instruction given or doctrine proposed, unless the permission of the community has acceded and according to the judgment and ideas of those who hold power. A fortiori all external religious liberty will be over.

Therefore since the civil State is the sole lord and master of all, and possesses all things which serve economic production, the omnipotence of the State and its universal providence will have to be acknowledged, by which all private liberty of citizens is taken away.

Therefore the right of private dominion is altogether required for the social and at the same time private good.

399. Corollary. - According to tradition a double aspect of dominion must be distinguished: individual, insofar as it regards individual persons and families, and social, insofar as it regards the common good of all humanity. Whence a double reef is to be avoided: "for just as, from the social and public character of the right of property being denied or attenuated, there is a fall into, or an approach to, what they call individualism; so, with the private and individual character of the same right rejected or attenuated, one must hasten into collectivism, or at least touch its tenets," as Pius XI teaches, in the encyclical *Quadragesimo anno*.

Now as to the individual aspect, "to preserve the division of possessions and not... to invade another's right, commutative justice commands"; - as to the social aspect, "that owners use their own thing only honestly belongs not to this justice, but to other virtues."

A. As to the individual character:

1. "certain men wrongly declare that dominion and its honest use are contained within the same limits;

2. and much more does it depart from the truth, that by abuse itself or non-use the right of property perishes or is lost...;

3. they are deceived and err who strive to attenuate the individual character of private dominion so much that in fact they destroy it."

B. As to the social character:

Nevertheless "they perform a salutary work and one worthy of all praise who... strive to define the intimate nature and limits of these duties, by which either the right of property itself or the use or exercise of dominions is circumscribed by the necessities of social life." This especially pertains to the republic, which must "compose" private dominions "with the necessities of the common good," lest "private possession of goods... generate intolerable inconveniences," as in the case in which possessions are accumulated "into a certain despotic economic potentate": for thus "a certain social power... against all right has seized and usurped dominion."

But with public power intervening, a determined honest use of private dominion can now be owed by legal debt, not indeed to individuals from commutative justice, but to the republic from legal justice (II-II, q. 118, a. 4, ad 2).

400. - Conclusions. - 1° That the private regime of dominion is lawful is clearly contained in Scripture and Tradition and therefore pertains to the Catholic faith, because in the Decalogue it is proposed as an expression of natural and divine right.

2° He who would affirm the merely human or civil origin of the regime, or would deny that that right can arise from nature, would err, because he would openly teach against the Pontiff declaring in this

matter the doctrine of the Church (Leo XIII, encyclical *Rerum novarum*).

3° He who would affirm that in the present condition of things collectivism can be permitted or legitimately introduced would be rash, because he would contradict the common doctrine of theologians and of the Supreme Pontiff, which declares the necessity of private dominion for peaceful human living together and for their advancement. Therefore socialism is to be rejected not only as repugnant to present times, but as repugnant to all times, the nature of man after original sin being considered, not only on account of connected religious errors but as to the economic regime itself.

This is still true, in present-day times, of the milder form of the reformists' socialism, because, Pius XI testifies, "for the most part they reject neither the class struggle nor the extinction of dominion, but only temper them in some way."

4° But even if "Socialism has been so... amended that concerning these matters nothing in it is now to be reproved,... whether it is considered as a doctrine, or as an historical fact, or as an action, socialism... cannot be composed with the dogmas of the Church, since it imagines society itself to be most alien from Christian truth... Sublime, and wholly ignorant and careless of the end both of man and of society (namely, of the glory of God and of true temporal and at the same time eternal happiness), it thinks that human association has been instituted for the sake of utility alone."

"For from the fact that, by an apt division of works, goods are produced more effectively than by the divided efforts of individuals, socialists

a) infer that economic efficiency (restricted to the abundant production of material goods alone) must of necessity proceed socially. By which necessity

b) they think men must be bound, as to devote and subject themselves wholly to society, so far as the production of goods is concerned. Indeed

c) the possession of the greatest possible abundance of things which serve the conveniences of this life is esteemed so highly that the higher goods of man, liberty itself by no means excepted, are to be set after the requirements of the most efficacious production of goods."

They say that this is done for man's greater good: "But this loss of human dignity, to be undergone in the socialized process of production, they think will easily be compensated by the abundance of socially produced goods, which are poured out to individuals, so that they may freely apply them according to their good pleasure to the conveniences and cultivation of life."

Concerning this system the Pontiff pronounces this grave judgment:

"Therefore society such as socialism imagines, on the one hand, cannot be or be conceived without plainly excessive force; on the other hand, it indulges no less in false liberty, true social authority being banished from it, since that authority does not rest upon temporal and material conveniences, but descends from God alone, the creator and last end of all things."

5° In the state of integral nature in which Adam was created, the division of goods could legitimately have been made by human law, but it was not necessary, and therefore probably would not have been made, because cultivation of the land was slight, and the internal dispositions of man were perfectly ordered. In the state of pure nature it would have been necessary, because in that state there would have been in man concupiscence and defects as now, although perhaps in a lesser degree.

6° The things objected by Socialists against the regime of private dominion are not opposed to the principle itself, but rather are made against the abuse of the regime, and therefore they are not inherent and essential to the system itself but rather extrinsic and accidental, and they proceed from the evil will of men; whence, private dominion standing, a remedy can be brought to them. On the contrary, the things opposed by Catholics to collectivism are difficulties and vices inherent in it, and therefore cannot be avoided.

Even sincere Socialists themselves must confess,[16]

[16] Cf. Schaeffle, o. c.

a) the incompatibility of collectivism with the free determination made by each one of his necessities;

b) the greatest difficulty of knowing the necessities of individuals and families, and consequently of regulating national production lest too much be produced;

c) the greatest difficulty of ordering, directing, inspecting, and stimulating that great work of labors which the whole of society needs, and consequently of preserving individual liberty in the choice of profession, domicile, labor, etc.;

d) the absence of a sufficient stimulus to labor in place of personal profit;

e) the insufficiency, indeed the falsity, of the socialistic doctrine concerning value, which is the foundation of the system.

To these can be added the very great difficulty of passing directly from the present social order to the new collectivism.

Hence since the advantages of collectivism are very uncertain and the insuperable difficulties are inherent in it, it would be irrational and unlawful to make an attempt and experiment of socialism, because it would be an action harmful to society. Thus Leo XIII.

7° By nature all goods are said to be common negatively, by the mere absence of division, insofar as nature did not divide things among men and no one received private possession from nature itself; but not positively, by a prohibition of division, except as to use, because things are destined for the common utility of all and all must be nourished from the fruits of the earth, but not as to dominion or property: as if all possessed all things after the manner of one, and the law of nature dictated that all things must be common, and no one could legitimately acquire private dominion (a. 2, ad 1).

8° The tenet of the Socialists is a utopia, because they suppose men to be good of themselves and perfect, and perfectible to infinity, although without supernatural gifts human nature is liable to various defects and to concupiscence, especially after original sin.

401. They object. - 1. E. de Laveleye[17] has proved that original possession of estates among all nations was collective, that it became individual rather late and gradually, by reason of the more intensive cultivation necessary because men were multiplied, and that private dominion was introduced by Roman law, which thereafter prevailed in all Europe. Therefore it was introduced not from natural law but from positive custom and law, and consequently by the same positive will of men it can be abrogated.

[17] *De la Propriete et de ses fontes primitives*.

Resp. He has not sufficiently proved the assertion. He indeed shows that among certain peoples (Ruthenians, Javanese, ancient Germans, Helvetians), certain things were possessed collectively by a tribe or community; but therefore it cannot be concluded that it was always and everywhere so. On the contrary, history rather contradicts the theory, because it demonstrates that the collective possession of communities gradually decreased and, when men were increased and estates more intensely cultivated, everywhere prepared the way for private dominion; which shows the necessity of this in an evolved society.

Indeed, in possession of estates, a threefold stage can be distinguished:

a) the first is that of pastoral life, in which cattle, tents, and other movable things are possessed exclusively and privately, but pastures collectively by the tribe itself, so that invasions of hostile tribes might be repelled better and more effectively. This regime could endure as long as the grass growing of itself in the pastures was sufficient for nourishing cattle. But when, men being multiplied, the use of pastures cannot be perceived by one without being diminished among others, division is made, as is also narrated in the Scriptures, for example, concerning Abraham and Lot (Gen. XIII, 1-9).

b) The second is that of beginning cultivation: on account of the multiplication of men and cattle, it was necessary to cultivate the land, so that it might produce more abundant fruits. Whence fields are now possessed privately and exclusively by those who cultivated them, not yet however permanently, but during the time running between sowing and harvest, because cultivation was little intense and the fields were divided anew in each year.

c) The third is that of more intense cultivation, which demands immense labors and renders the fields much more fruitful. Hence fields naturally became the permanent dominion of those who improved them. Thus not only in the Roman empire, but among the most ancient peoples: Egyptians, Assyrians, Chaldeans, Chinese, and all cultivated nations.

But if among some, by reason of special circumstances, a certain common possession remained for quite a long time, it existed together with the right of private dominion, and did not at all exclude it.

2. Marx demonstrated that capital and the profit of capitalists arise from theft, since labor is the sole source of economic value.

Resp. Economic value is not from labor alone, but also from the intrinsic utility of the thing; for the convenience and pleasure of a thing, just as the qualities and excellence of the matter from which it has been made, exercise a great influence in estimating value and determining price. Thus a vein of gold or a spring of petroleum have great value even if they were discovered with little labor. Nor does it stand in the way that the qualities of things, since they are opposite, are not equivalent, and consequently do not bestow commutative value: for although in themselves they are not equal, nevertheless they can be equivalent in utility, because they are of the same importance for men.

But profit is owed to capital, because it is a cause, not only a condition, in the production of goods. There is namely a threefold cause: the principal efficient cause is labor, both manual and especially intellectual as directive; the instrumental efficient cause is capital, which provides the instruments and the workshops necessary for industry and the arts; the material cause from which things are made consists in the raw materials to be transformed and the land, which cooperate by native powers. Hence to the owners of materials or instruments there is owed not only an indemnity of

price for materials conceded, or for instruments to be acquired, repaired, and renewed, but also part of the profit is to be allotted, of which they themselves also have been a cause. But since today capitalists are accustomed both to provide materials and instruments of labor, and by intellectual labor to govern industries, it is no wonder if a great part of the profit can come to them, the more so because they take the danger of the industry upon themselves and thus confer utility upon the workers themselves; as will be shown more fully where the contract of hiring of works is treated.

3. The riches of capitalists have in fact been acquired unjustly.

Resp. a) this does not follow of itself from the regime of private dominion; - b) in cases in which it has been so, restitution must be made, unless by prescription possession has become legitimate, given good faith in those who acquired, or at least in their successors; - c) collectivism is not the one means, but there are others for obtaining a just distribution of goods.

4. The right to the fruit of labor is inalienable. But workers do not receive the whole fruit. Therefore.

Resp. I distinguish: the right to the fruit of labor is inalienable in such a way that they can sell or lease that right, conceded; in such a way that they cannot do this, denied.

5. We can legitimately possess only those things which we acquire by labor; therefore fields cannot legitimately be possessed, because they are not fruits of labor. And indeed, the rent or income which is paid for land has society itself as its cause. Thus H. George.

Resp. Labor is a legitimate mode of acquiring dominion, but it is not the only one nor always the first, because this is generally occupation, as we said above, n. 212. And although the land itself is not the fruit of labor, nevertheless its improvement proceeds from labor. But if it is said: rent has society as its cause, resp.: it has as its cause many private persons who belong to society, distinguish: sometimes, conceded; always, denied; it has the republic itself as its cause, denied.

6. The value of estates increases daily not so much from man's industry as from the progress of society itself:

For in cities or their vicinity, or near railroads, the price of estates in a few years is increased tenfold or twentyfold or even more, because a greater number of citizens is gathered there; but this increase is not owed to private owners of estates, but to the citizens taken collectively and to the city itself.

Resp. that the fact is verified neither always nor everywhere.

a) It is verified only where many inhabitants are joined together; elsewhere, however, the value of estates remains nearly the same, or even decreases. Therefore it is not a universal fact, on account of which the universal regime of dominions must be changed. - b) The fact is not owed to the city alone as such, but also to the private men themselves who are gathered in a determined place. - c) It is a thing of itself aleatory, which can benefit or harm, since before the event they generally do not know for certain that the value of this or that estate is to be increased; but it is not unjust for the increase to come to those who probably foresaw it, or even to others from good fortune, if this happens

exceptionally. - d) Nothing prevents the city in the case from imposing special taxes upon owners, so that part of the increased value may benefit society and thus all.

7. In all there is an equal and inviolable right of living; but such a right is empty unless all are in fact equal, and consequently unless the goods which nature brings forth for all are common, such as air, and the sea, the land itself and estates.

Resp. All men according to the essence of their nature are equal, and consequently there must be access of all to the necessary sources of life and life must be inviolate in all, and therefore in extreme necessity all can take for themselves necessary things. But to sources not necessary for life there need not be the same access, whence estates ought not to be possessed by all, for those who do not have them can labor in the estates of others or exercise profitable arts, by which they may acquire for themselves the fruits of fields and other necessary things.

Namely, nature made men altogether unequal according to accidental qualities and conditions, and therefore the rights acquired by them are very diverse, so that all ought not to be of the same condition and family: thus, for example, not all can lay claim to higher culture.

But the comparison adduced with air and sea is not valid: these cannot be effectively occupied and their use is inexhaustible; while estates can be appropriated, and they are easily exhausted and do not bring forth fruits unless they are cultivated. Whence the common good requires that air and sea remain common, but that estates be occupied privately, so that they may be cultivated better.

8. It cannot be denied that according to present-day economic conditions there is a tendency toward establishing collective dominions, as is clear from anonymous societies and multiplied monopolies; but these prepare the way for one universal monopoly of the whole collectivity.

Resp. The tendency is toward a certain collective property, because of a special necessity or fittingness in certain industries or businesses; but it does not follow from this that this transformation will be extended to all things, because such a necessity is not present everywhere.

a) Moreover the aforesaid collective dominions are nevertheless private, for they are constituted by private persons for their own profit and for increasing their own resources effectively, and indeed according to the method of capitalists, not according to the method of collectivists. But the collectivity of the community, if it is constituted, divides profits among all and takes away the effective stimulus of laboring. - b) Monopolies that are too universal seem to progress less happily, because their administration now becomes too complex.

9. At least Catholics are not permitted to attack communism, since they esteem highly community of goods in religious orders.

Resp. There is a threefold difference: a) community of goods is possible in small groups of men, and it does not harm if it exists exceptionally in human society. b) The men who constitute religious communities are chosen from among others, they intend to be more perfect, they lead a simple and humble life, and they bid farewell to their own conveniences and their own will, as also to marriage. - c) Nor is the administration of goods among them always an example of good economic government.

402. Remedies against Socialism and its causes are proposed by Leo XIII. They are to be brought by the Church, by the State, and by private owners together with workers.

1° The Church offers a remedy a) by her doctrine concerning the necessary inequality of human conditions, concerning the necessity of hard labor in punishment of sin, especially original sin, and concerning eternal happiness after this life; b) by moral precepts concerning justice and charity; c) by social institutions for the spiritual and temporal good of men.

2° The State must intervene so that a remedy may be provided for the economic causes of socialism: by fostering public prosperity, protecting the rights of proletarians and at the same time protecting private dominion, restraining abuses in the regime of labor or industry, pursuing a more equitable partition of goods, and by a certain general disposition obtaining that an easier access to private possessions may lie open to all. Those who possess are easily turned away from the doctrines of Socialism.

3° Owners and workers should strive mutually to understand one another with their aspirations. Owners should treat their workers more paternally and charitably and should regard in them the dignity and rights of man; workers, however, should attend to the necessities of industries and to direction in industries. For this purpose the societies both of workers and of owners are very useful, by which they may defend their rights, and harmoniously agree among themselves concerning the conditions of works, while they may settle disputes peacefully or be disposed to submit them to the arbitration of prudent men.

Question Two: On Theft

S. Th. II-II, q. 66, a. 3-6 and 8-9.

403. Theft, taken generically, is the unjust taking of another's thing, for the sake of gain, the owner being reasonably unwilling. It is said:

1. *unjust taking* or usurpation, i.e., either removal, or voluntary detention, since to detain is equivalently to take, and he who detains while he can and ought to return morally takes: "to detain," says St. Thomas, a. 3, "that which is owed to another has the same nature of harm as unjust taking"; and thus to theft are reduced: not paying debts, snatching something away by fraud or deceit, not restoring a thing found;

2. *of another's thing*, belonging to another by right of dominion, whether perfect or imperfect; whence theft is committed even against a depositary, borrower for use, lessee, etc., if you take away from them a deposited, lent, or leased thing;

3. *for the sake of gain*, i.e., with the intention of retaining the thing and receiving profit, whether for oneself or for another: for if it were done with the intention of returning the thing to the owner, or safely preserving it, or destroying or lending it, it would not properly be theft; and thus it is distinguished from simple unjust taking or damage, by which no profit is obtained but the good of another is destroyed without advantage;

4. *the owner being reasonably unwilling*, which is added for the sake of greater explanation, because it is already included in the word: unjust. For if the owner were not unwilling, or if he were

unwilling but not reasonably, because there is a just cause of taking away, there would be no injustice, nor theft strictly so called: thus if a poor man in extreme necessity takes, or if a maidservant gives to him; or if someone accepts under the title of compensation, or takes a sword or book from one who is now about to abuse it; or if a wife takes for her honest support, or lest the husband dissipate it in games or feasting.

A double species of theft is distinguished:

1. theft simply, or strictly so called (*vol; diefstal*), the hidden taking of another's thing, while the owner or the one who keeps the thing is absent or ignorant: this is negatively involuntary for the owner, through ignorance;

2. robbery (*roof*), or the open and violent taking of another's thing, while the owner is present, seeing, and, insofar as he can, resisting and struggling: this is positively involuntary for the owner on account of violence, whether physical and properly so called, or moral and improperly so called, namely, grave fear unjustly inflicted, as if a robber threatens death in order to extort money. This differs in species from simple theft, because it adds a new malice diverse in species: there is not only real injury in goods, but also personal injury against the person and his honor or liberty, to whom violence is brought or fear. Hence one can sin mortally in the species of robbery, and venially in the species of theft, as if you take a slight thing from a distinguished man who is present and gravely resisting; and vice versa.

Moreover theft, and say the same of robbery, can be simple, - or qualified, to which there is joined a certain circumstance, whether

a) changing the species, by reason of religion, namely, sacrilegious theft, whether the thing is sacred (real sacrilege), or it is taken from a sacred place provided it had been handed over to the custody of that place (local sacrilege), or a sacred thing is taken from its own sacred place (real and at the same time local sacrilege); or

b) notably aggravating. Thus formerly in law they distinguished *peculatum*, he who steals from public goods, to which the falsification of money pertains; *plagiatum*, he who abducts a man constituted in slavery; *abigeatum*, by which someone steals cattle in pastures. In present-day law other distinctions are usefully made in order to diverse penalties.

404. Principle I. Theft is a sin against justice, mortal from its genus. - For:

1° In itself and immediately it is against natural law and is opposed to commutative justice, and in the Decalogue (Exod. XX, 15) it is placed where grave precepts are enunciated (Mt. XIX, 18). For the right of dominion over external goods is derived from the law of nature and is legitimate, indeed necessary both to the individual and to society; but this right is openly violated by theft, since another's thing is taken away while the owner is reasonably unwilling.

2° Mediately and consequently it is opposed a) to charity, insofar as it takes away a good from one's neighbor and brings sadness upon him, and is apt to disturb peace and introduce quarrels, contentions, and hatreds;

b) also to the good of the community and of legal justice, since it tends so as gravely to disturb the tranquility of citizens and the public peace, necessary for the common good of society: "if men everywhere stole from one another," says St. Thomas, a. 6, "human society would perish."

Hence the Apostle says, I Cor. VI, 10: "Neither thieves... nor robbers will possess the kingdom of God."

Nevertheless theft admits lightness of matter, if the matter is divisible and admits more and less: for he who steals a few cents does not gravely offend private right, nor greatly disturb public peace, nor is the owner reasonably very unwilling or unwilling except against the manner of taking; - and similarly he who takes away a thing of greater moment from an owner who does not much care about it, or who in fact is known not to be very unwilling.

405. Principle II. Theft per se grave is constituted by that quantity or value whose taking, of itself gravely harmful, is done while the owner is reasonably and gravely unwilling, or which of itself is apt to cause grave sorrow of soul or indignation, and to which therefore society also is gravely unwilling, because it is apt to harm public peace.

Matter grave of itself, or from intrinsic damage, is not to be estimated only from the value or quantity of the thing taken away, so that the quantity required for grave matter is the same whether it is taken away from a rich man or from one not rich, as Bannez, Maldonatus, Dicastillo, Billuart, Carriere, Gousset, and others said, establishing it as that which morally equals the daily wage of an honest worker, or at least that which is necessary for the support of one day for an honest man. But according to the opinion which St. Alphonsus already calls common, the gravity of matter is probably to be determined from the value of the thing together with the condition and circumstances of the person from whom it is taken.

The reason is that theft essentially consists in the taking of another's thing, considered not as it were in the abstract, but in the concrete, insofar as it harms the owner and is joined with the reasonable dissent of the owner. Therefore the matter of theft and its gravity must be taken partly by order to the thing taken away, partly to the reasonable will of him from whom it is taken. "Sins," says St. Thomas, a. 3, "which are committed against one's neighbor, are to be weighed in themselves indeed according to the harms which are brought upon the neighbor; because from this they have the nature of fault." But the taking away of a thing which gravely harms one man is not therefore gravely harmful generally and to all. Whence the condition of the person is not extrinsic to theft considered under the aspect of damage, and the right in a good possessed by a poor man, according to utility and necessity, is worth more to the one having it. Therefore although theft may be materially equal, it is not so formally.

Hence a double grave matter is distinguished by modern authors: absolutely grave, from the value alone of the thing taken away, no account being taken of the condition of the person, and relatively grave, taken from the value of the thing and from the condition of the owner. For the gravity of matter, they say, is to be determined from the gravity of the detriment which by theft is brought against the end on account of which dominion of things ought to be preserved. But this end is twofold: the good of individuals, to whom this dominion is pleasing, useful, and necessary; and the good of the whole society, in which without private dominion of things public peace and security and the due incentive of labor cannot be had. Whence theft is distinguished as relatively and absolutely

grave, according as grave detriment is directly brought either upon the possessor himself or upon the good of society.

a) A relatively grave quantity, according to the varied fortune and necessity of the person, is damage notable of itself, although the thing is not very notable; namely, that which, given the condition of the owner, of itself brings grave harm. This is generally judged to be that which suffices someone for one day for the support of himself or also of his own; whence for a worker it is a value somewhat less than a daily wage, and for a true poor man still a little less. Therefore it differs much for various nations and diverse conditions of men, for great cities and remote rural regions.

b) An absolutely grave quantity is a thing notable in itself which of itself procures a great advantage, even if its taking from someone, for example from a very rich man, is not gravely harmful, as are an ox, a horse, a sheep, a hundred gold coins. For although such theft does not much harm the owner, nevertheless it gravely harms society, public tranquility and security, because if these thefts were not prohibited under grave obligation, they would become most frequent and thus the greatest detriment to all and a disturbance of peace and security would threaten the whole society. Whence public power and the whole community are deservedly gravely unwilling that such things be committed in its territory; and therefore the owner himself is reasonably very unwilling in such a theft, even if he himself does not directly undergo grave damage from it.

Grave matter, expressed in money, depends upon the relative value of money, upon the greater or lesser abundance of money and things, and upon common estimation. Thus, for example, in America and England grave matter is not unless the sum is greater than in Belgium, because of the lesser value of money and greater abundance. Hence:

1. As the value of money decreases, the sum required for grave matter also increases.

2. Nevertheless it does not always increase in the same proportionate ratio: for the thing depends also upon other factors, such as more difficult economic circumstances, relative need, and common estimation. Nor does adaptation in minds and morals to the new value of money happen suddenly. And even when money decreases, those thefts will be grave which, in the given circumstances, are apt to have repercussion upon common security, because then there is grave harm to society.

3. With all these things considered, in Belgium before the European war of the year 1914-18, absolute grave matter was judged by authors to be 25-30 francs or somewhat more.[1] But after the war, the value of money being greatly diminished, it seemed to many that it could be extended to 150-200 or even more. In the uncertain economic circumstances prevailing after the second universal war of the year 1940-45, one should rather abstain provisionally from computation, because no definitive one can be established.

[1] Bulot says 25-30 fr.; Tanquerey 20 or 30 fr., in the Federated States of America 7-8 dollars; Noldin 30 fr.; but these in present circumstances are to be increased somewhat. Whence Ferreres, who for various regions places it between 30 and 40 fr., now permits this to be doubled; Arregui, however, establishes it between 40 and 50 fr.; Vermeersch 50 fr., but in a region where money has been made extraordinary from use, up to 150-200 fr. Before the war Palmieri for richer regions held a probable computation to be 100 fr.; but Garriepy, an American, thinks this too benign and places it at 8-10 dollars. One must abstain from laxer estimations, such as that which Arendt proposed in *N. Th.* 1926.

4. Let these things be an aid to confessors in ministry; but they are not to be proposed ex professo to penitents, nor a fortiori to the faithful in a sermon: for they would easily be badly understood and become a stimulus to stealing.[2]

[2] Tanquerey noted this, o. c., n. 436, and Vermeersch, *Th. M.* II, n. 639.

5. In practice, the matter is not of such great moment. For a) true thieves also steal, or intend or are ready to steal, more than matter strictly grave; b) subjectively, grave matter is that which the thief thought to be grave; and objectively, that which in the region is generally judged a mortal sin by good faithful. Nor is such a common opinion, if it is sufficiently strict, to be reformed; because this would be to stimulate thefts and thus would harm the common good. Therefore c) before the fact, one must speak more rigorously, so that the faithful may be turned away from theft, for example, by asking: would you not be gravely unwilling? or by saying that it is imprudent to expose oneself to acts which perhaps are grave injustice; - after the fact, lest an obligation of restoring under grave obligation be imposed, unless it is certain. d) In this matter, however, ordinarily attention will have to be given to relatively grave matter.

406. Principle III. Theft light of itself can by accident be grave on account of a great extrinsic harm; and on the contrary theft grave of itself can by accident be light on account of the disposition of the owner, if he is not very unwilling.

Just as absolutely grave matter is given, so there is an absolutely light quantity, namely, that which morally is less than daily support; and nevertheless, by reason of a special circumstance, theft of absolutely light matter can be a grave sin, or on the contrary theft of matter grave of itself can be only a light sin; for:

1. Theft of absolutely light matter, which brings upon another grave sadness or annoyance or notable damage, is by accident a grave sin against charity toward one's neighbor, or also against justice. Thus if someone takes away a thing of slight value which is very dear to the owner; or an instrument, for example, a needle from a tailor, while another cannot be had, so that he is deprived of a means necessary for support or for making gain; or a small coin from one who needs it lest he be reduced to extreme necessity. But in these cases the grave sin is not under the aspect of theft, but under the aspect of offense or injury or damage.

2. Theft of matter grave of itself can by accident be light, if the owner is not gravely unwilling. For since the opposition of the owner is an essential condition of injustice, one must attend to the disposition of the injured person in determining the gravity of theft, which will be graver or lighter according as the owner is reasonably more or less unwilling. Hence thefts grave of themselves but committed among domestics, or among near kinsmen or very close friends, can easily be light, if the owner is or reasonably ought to be not very unwilling. In particular:

a. *Thefts of spouses.* On account of mutual union and a certain community of goods, at least in use, a spouse is judged to be less unwilling toward a spouse than toward others; whence the matter required for grave theft is greater for spouses than for strangers, greater for common goods than for proper goods: thus according to the prudent estimation of St. Alphonsus, which many follow, a quantity twice as great is required, and sometimes more. Indeed it can happen that secret takings by

the wife are not thefts, if the permission of the husband can deservedly be presumed; not however always, as if she expends notable money in buying ornaments wholly superfluous.

b. *Thefts of children from the goods of parents.* On account of the intimate union and common destination of goods, parents are rightly judged to be less unwilling; and according to the estimation of St. Alphonsus, for grave matter a quantity twice as great is required as that which otherwise would be required in similar conditions. In practice, for food or tobacco, parents are not unwilling except concerning the clandestine manner in which they are taken, unless it concerned things altogether precious; for money they are unwilling concerning the manner, namely, that it is done secretly, and concerning the end, namely, that it is consumed in play and pleasures, unless the sums were greater.

c. *Thefts of religious from the goods of the community.* It is said by many that religious are to be considered as sons, and therefore a quantity twice as great is required for grave theft, unless however great detriment were brought to a poor monastery. But this rightly seems too lax to others, since the condition is disparate, both because a religious is not, as a son is, a necessary heir of goods, and because religious superiors are much more unwilling than parents, on account of the spiritual detriment of subjects. Nevertheless a greater quantity is required than in other thefts. But in those sins there is always malice against religion, on account of violation of the vow of poverty.

d. *Thefts of servants from certain goods of masters.* For common food or things of lesser moment which are not cautiously kept, provided they are not sold or handed over to others or carried out of the house, but consumed by the servants themselves, masters are not very unwilling or are unwilling only as to the manner. But for things carefully kept, for choice and very precious foods or extraordinary things or things of great value, for money not small, the quantity sufficient for grave theft seems to be the same as for strangers, because masters are not accustomed to be less unwilling; especially for things specially committed to the custody of servants, which also can be reputed graver as an abuse of faith or denial of due fidelity.

e. *Thefts of workers in the workshops of the master.* These are to be judged by analogy as for the little thefts of servants; but special attention seems to have to be given to the damage really caused and perhaps to the customs existing in the workshop. For if the master knows the custom in some way and does not strongly contradict it, he is certainly to be judged less unwilling; unless however he would not dare to contradict it from fear of a greater evil.

f. *Thefts of domestics* generally can be estimated according to the aforesaid rules, unless something else is established. In practice the matter also depends on the fortune and personal disposition of the possessor and on the custom of places or families. Thus a rich man, one liberal, indulgent, a friend, is presumed to be less unwilling than a poor man, one avaricious, severe, or little loving; less also as to foods than as to other things; less if they take something moderate and rarely, than if something great and frequently; less if by simply taking secretly than by breaking in or by contracting debts in his name; less if domestics steal for their own uses, than if for giving or selling to others; less if a domestic is very useful, industrious, than if negligent, idle; less if one is a son, than if there are several or many.

Nevertheless all, whoever they are, are carefully to be deterred from the aforesaid little thefts, because they are repugnant to natural honesty, and because they easily introduce the proximate danger of gravely evil injustice.

407. Principle IV. Small thefts can morally be united and coalesce, both by reason of intention into one grave injustice, and by reason of moral conjunction into one gravely unjust damage, and by reason of physical conjunction into one gravely unjust detention.

1° By reason of intention, if someone commits small thefts either against one person or against several persons, with the intention of arriving at a notable sum, or of becoming notably richer, or of bringing grave damage. This man, on account of the intention, sins gravely from the first theft, and commits only one mortal sin, unless he revokes the intention and afterward renews it.

Thus he who, intending to steal two hundred coins, so that he may carry out his plan more safely, again and again steals two or three coins; he who uses false weights, although on each occasion he defrauds little; he who, under a feigned pretext, successively begs a great sum of money from various persons. The same holds of an innkeeper who is accustomed to mix a little water with wine, unless there is a general custom; - of tailors who retain for themselves or sell fragments of cloth still useful to the owners, which are left over, unless somewhere a custom is in force or less is paid while the fragments remain to the tailor, or unless it is established that wealthy owners do not wish the fragments to be restored to them or care little about them; - and something similar holds of millers who retain for themselves a small part of the grain or flour.

2° By reason of moral conjunction and unjust damage, if someone has committed several light thefts without the intention of arriving at grave matter, - which besides he did not preserve by accumulating but consumed by dissipating successively, - nevertheless afterward, by adding theft, in fact arrives at a quantity gravely harmful; provided that a) the thefts are not too distant, so that they cannot morally coalesce into one; b) the individual thefts have not been efficaciously revoked or restored; c) and the thief notices that relatively grave matter is being completed. This man sins venially on each occasion, but in the last act by which he completes grave damage he sins mortally, because then knowingly and willingly he inflicts notable damage. Thus if a grave quantity is taken away from the same owner; for if it is done from diverse persons, grave damage is brought to no one and only light thefts are committed, unless they were so very frequent that from this great damage threatened the common good and public security.

In practice: only those are judged to be morally united which are committed within a short interval, for example, within two months; and for very small thefts, still less time is required. Things rather notable, repeated rather often, finally coalesce at some point, because it is scarcely possible that the intention of arriving at a notable sum be lacking; the contrary is true for very small things.

3° By reason of physical conjunction and unjust detention, if someone, knowingly and willingly, retains in itself or in an equivalent a great quantity of another's good, even if taken away from several persons through light thefts. This man sins mortally, even if no moral union is present among the little thefts committed, because the detention of another's thing in a great quantity, no less than taking away, brings great detriment upon society. For just as it is disordered to become rich unjustly, so it is gravely disordered to become notably rich from injustice. Whence Innocent condemned proposition 38: "One is not bound under the penalty of mortal sin to restore what has been taken away by a few thefts, however great the total sum may be."

Light thefts following upon grave matter already completed do not constitute a new mortal sin, unless they again reach a new grave quantity, or unless they are considered as one thing with the

preceding grave matter, because then they include approval of it (I, n. 550).

Many add: also by reason of conspiracy; but this pertains to another question, namely, concerning cooperation in others' sins (n. 317).

408. Remarks. - 1. All concede that, for constituting a grave sin by coalescing small thefts, a greater quantity is required than if a thing of great value were stolen at once and once for all; because the damage is not felt so much and does not bring equally grave sadness and displeasure; - unless however a little time intervenes, for example, one or two days: for then the same quantity suffices, because the taking is judged to be one and the owner to be equally unwilling.

2. That greater quantity can be determined only from the estimation of prudent men, all circumstances having been considered. In ordinary circumstances, the prudent estimation of St. Alphonsus can be observed, according to whom, if the thefts are made at intervals from the same owner, a quantity greater by half is required; if from diverse owners, a quantity twice as great as otherwise would be demanded in the same circumstances.

3. Even if small thefts do not attain grave sin, some restitution under light obligation is to be imposed, lest penitents make a step from small thefts to greater ones, and lest by multiplying small ones they then attain grave matter.

Question Three: On the Causes Excusing the Taking of Another's Thing

409. State of the question. - Theft is the unjust taking of another's thing; and therefore it can never be made honest or excused. Nevertheless there are causes which make the taking of another's thing no longer unjust but lawful, and for this reason they are called by theologians excusing causes. These are two: urgent necessity and hidden compensation (*uiterste nood* and *heimelijke vergoeding*).

Article I: On Urgent Necessity

S. Th. II-II, q. 66, a. 7.

410. Notions. - From the treatise on charity (I, n. 905) let us recall that a threefold necessity is distinguished in temporal things:

1. Extreme necessity is that in which the necessaries of life are lacking, or there is certain imminent danger of perpetually losing a good equal to life which nature wills to be common to all, for example, health, the use of reason, liberty, integrity of members, a bodily sense. To this is morally equated quasi-extreme necessity, which is in a very probable and almost certain danger of losing the aforesaid goods, because it brings a proximate danger of falling into extreme necessity, for example, a lethal disease. As St. Thomas says, it is an evident and urgent necessity.

2. Grave necessity is present in a double case: a) as to external goods, when a notable loss of goods is imminent, such as loss of state, office, dignity, or reputation, in one word of goods which nature did not will to be common to all, and for preserving which therefore it did not will the means to be common; b) as to life and personal goods morally equivalent, when the danger is not imminent, but only probable, which namely cannot be avoided without great difficulty.

3. Common necessity is that in which ordinary begging poor persons are placed, who, unless they are helped, lead a troublesome life, but nevertheless are able to provide necessary things for themselves.

411. Principles. I. He who is placed in extreme or quasi-extreme necessity can, and of itself ought, from another's goods, even while the owner is unwilling, take as much as is necessary for him to escape this necessity; unless however the owner is placed in the same necessity.

For according to the order of the Creator and natural law, temporal things were instituted by the primary intention of nature for assisting the necessities of all men; by a secondary intention, so that they be divided into private possessions and thus be managed better, more orderly, and peacefully. But the secondary law of nature cannot derogate from the primary right, and those things which are of secondary intention cannot harm the primary intention. Therefore the division of possessions cannot impede assistance being given to men's necessities. Now if a man in extreme necessity could not take from others' things as much as is required for escaping necessity, the order of the Creator in the primary intention would be frustrated and a human deed executing the secondary intention would prevail over the primary end. Therefore.

And indeed a) the right to life, bodily integrity, the use of reason, or liberty, prevails over the right of property which is ordered to preserving those things;

b) hence in extreme necessity all goods are said to be common, not indeed absolutely all, but necessary goods, nor always as to dominion, but at least as to use, insofar as namely they are required for preserving life or health or integrity;

c) whence an owner cannot impede urgent necessities being assisted from his goods, and if he attempts this by force, he is an unjust aggressor;

d) unless however the owner himself is in the same necessity or by the taking away of the thing would fall into the same, because in an equal cause the condition of the possessor is better, and therefore the right of the owner prevails. Whence in a fire it is unlawful to snatch away another's ladder to save oneself, if he himself is about to perish without it; in a shipwreck, to snatch away a plank already seized by another which he himself needs.

Hence 1) in extreme or quasi-extreme necessity, it is not lawful to take away more than is necessary: for since urgent necessity bestows the right of taking, when this ceases that right ceases; whence if the use of the thing suffices, for example, of a horse for fleeing, of a gun for defending oneself, when the necessity has passed the thing itself, insofar as it still exists, is to be restored to the owner. And if by another way one can obtain the thing, for example, by borrowing or by seeking alms, regularly he cannot take it.

2. In a case of necessity if the consumption itself of the thing was necessary, nevertheless when necessity has ceased, the thing is to be restored in equivalent by him who possesses other goods or has hope or proximate power of possessing them, because only the loan of the thing, not dominion, was necessary to him; - on the contrary not by him who is needy both in thing and in hope, at least if the thing is not very notable.

3. When a poor man is existing in extreme necessity, another also can take away another's thing for relieving the necessity, provided he is not bound to assist the poor man from his own things: for what someone could do through himself can also be done through another, who then acts in the place of the needy man; whence a mother not having nourishment can take milk for a child about to perish from hunger. - The custodian of things is excepted, who can take away the owner's things only if the owner is bound to give.

4. In a case of necessity, it is lawful even to steal a thing of the greatest value, provided it is apt for removing the necessity and, as far as possible, as soon as morally can be done, is restored. Nevertheless in no way, not even from charity, is the owner bound to hand over such a thing; because no one is bound to assist another, just as neither to preserve his own life, with the greatest expenses or by extraordinary and exquisite means.

II. In simply grave or common necessity, to take away another's thing is unlawful and unjust.

For the reasons which hold for extreme necessity are not present:

a) not for guarding external goods, because nature does not confer an absolute right except to the necessaries of life and integrity;

b) not for preserving life or personal goods equivalent to it, because their danger can strictly be avoided, although with great difficulty;

c) not by reason of the common good, but on the contrary the common good demands that others' things not be taken away in grave necessity, because abuses against the common good would easily arise. For since cases of this kind are frequent, if in them others' things were lawfully taken, the way would lie open to innumerable thefts, quarrels, and fights, leisure, inertia, and dissipation of goods would be fostered, and public tranquility itself would be disturbed.

d) Whence Innocent XI condemned proposition 36: "It is permitted to steal, not only in extreme necessity but also in grave."

Hence 1) they err who in grave necessity easily seize from others' goods, unless from special circumstances the consent of the owner can be presumed;

2. although grave necessity does not excuse from theft, nevertheless it lessens its gravity; whence it excuses from so much, not from the whole;

3. nevertheless grave necessity can be a sufficient reason for delaying restitution;

4. in practice, before the fact one must act more severely, lest the faithful unduly extend cases of necessity and imprudently expose themselves to the danger of committing grave spoliations and injustices; after the fact of secret taking, more benignly, by asking whether there were not excusing circumstances, good faith, or also the owner's consent or condonation. Nor should the obligation of restoring be imposed unless it is certain.

412. Remarks. - 1. Poor persons who can escape their necessity by asking, unless the necessity is truly extreme and instant, are regularly bound to ask necessary things for themselves, because one

who by asking can sustain his life is not judged to be in extreme necessity. St. Alphonsus excepts an honest man who would rather die than beg. But if a poor man by asking does not obtain the necessary thing, or if here and now he needs some special thing which the owner is altogether bound to give, he does not sin by seizing the thing.

2. Poor persons in grave necessity are to be assisted from charity, or also from legal justice by reason of the common good, but not from commutative justice. And the same seems to be said in extreme necessity, because this necessity does not make the poor man the owner of another's thing but only bestows the right to occupy it for himself; whence from commutative justice the owner is bound only not to impede the poor man from taking necessary things for himself. Hence he who neglects to assist one in extreme need sins only against charity or also legal justice, not against commutative justice; but if by force or threats he impedes the poor man from taking a thing necessary to himself, he also wounds commutative justice, and is bound concerning the damages that followed.

3. From what has been said it is easily understood that the rule proposed by some is false: that for one constituted in necessity it is lawful without injury to take away those things which the owner is bound from charity to give generously to him. For we have seen that sometimes those things can be taken away which the owner ought not to give generously; and conversely, certainly not all those things can be taken away which the owner is bound to give generously from charity, since the precept of almsgiving obliges even in grave necessity, indeed also in common necessity.

Article II: On Hidden Compensation

S. Th. II-II, q. 66, a. 3, ad 3; a. 5, ad 3.

413. Compensation in the present matter is not understood as properly so called or legal, by which the mutual obligation of two debts is juridically extinguished (C. C., a. 1289); but as extralegal and improperly so called, by which a creditor takes away or retains from the goods of the debtor that which is owed to him, or to which he has a right to the thing. This can be defined: the recovery of a debt which is made by one who owes nothing to his debtor.

This is manifest if it is done by recourse to a judge; or hidden if it is done without recourse to a judge, and also of itself and regularly while the debtor is ignorant.

414. Principles. I. Hidden compensation generally is unlawful. - For if it were lawful for each one to vindicate without recourse to judges his own rights which seemed to have been injured by others, a broad way would be opened to thefts, since men are born to exaggerate their own rights and to attenuate those of others. Whence the common good demands, for forestalling disorders which would easily arise from hidden compensation, that the creditor regularly strive to recover his debts through judges. Otherwise he would sin against legal justice, because he violates the order of law.

II. Exceptionally hidden compensation can be admitted in certain circumstances and under due conditions.

Namely, when recourse to judges is morally impossible. For then commutative justice and the right of one's neighbor are not injured, since from another's goods there is taken only that which is owed

from strict justice. Nor is legal justice injured or public order disturbed, if it is done exceptionally, from a grave cause, when another way is lacking for recovering one's own goods.

415. The conditions required for hidden compensation are enumerated as the following five:

1. That there be a true debt from strict justice, not however from charity alone, gratitude, religion, fidelity, or a certain moral fittingness: for compensation is made in order to recover that which another strictly ought to restore from a delict or pay from a contract; but no one is so bound to pay or restore to another except what is owed from justice. Hence he who gave to another under the title of friendship, kinship, or poverty cannot, if afterward the latter becomes richer, take anything from him in compensation; the poor cannot secretly take from one who vowed to give to them, because from the vow it is owed to them from religion alone, but no strict right has been acquired; a servant to whom his master from gratitude had promised a sum of money or a legacy in a testament does not have a right to compensation, just as neither does a non-necessary heir who has no share in the testament.

2. That the fact (for example, the damage inflicted) be morally certain; for in doubt the condition of the possessor is better, and to each one there is the right of preserving the thing possessed unless it is established to be another's; otherwise, because of the danger of delusion, since men are prone to exaggerate their own rights, a broad way would be opened to spoliations and injustices.

3. That compensation be made to equality, so that no more is received than is owed; whence the thing which is taken away should be of the same value as the thing owed, and if it can conveniently be done, of the same nature and species.

4. That the debt cannot otherwise be recovered without grave inconvenience, for example, without many expenses, quarrels, danger of enmities, or if a request is foreseen to be useless. This seems also to hold concerning a debt proximately future, if there is a moral danger that the debtor will not pay in its own time. For then compensation is, as it were, a just defense, which is lawful not only when the evil is being brought, but also when it is morally imminent. Nevertheless care must be taken lest, from anticipated payment, damage arise to the debtor; whence, for example, less would have to be taken in proportion to the emerging damage and ceasing profit, as is understood from the following condition.

5. That the spiritual and temporal damage of the debtor or of a third party, if it can be done without grave inconvenience, be forestalled: of the debtor indeed, by employing means lest he pay twice, undergo a greater burden, or remain in bad faith, thinking the debt not to have been paid, for which a fictitious condonation can be expedient; of a third party, by avoiding lest another, for example, a servant, be accused of theft, or lest a thing deposited by a third party be taken away.

The first three conditions are required from commutative justice; the fourth from legal justice; the fifth for the most part from charity alone. But since all the conditions are not easily present in practice, therefore hidden compensation is rarely to be exercised, as being full of dangers of illusion and disturbance; still more rarely is it to be counseled.

416. Applications. - 1. Servants and workers who have freely agreed concerning wages cannot use compensation under the pretext that the work rendered is greater than the promised wage: the contract must stand unless it is evidently unjust and is not compensated otherwise, for example, by a richer table, by the occasion of receiving gifts, by clothing given as a gift, etc. Whence proposition 37 was condemned by Innocent XI: "Male and female domestic servants can secretly take from their masters to compensate their work, which they judge greater than the wage which they receive." - They can do so, however, if the master does not pay the wage; - or if he unjustly subtracts something from it, for example, because of a vessel broken without fault, unless this had been stipulated; - or because, compelled by force or fear, they agreed concerning a wage which is less than just, or by necessity, unless the master had received them from mercy alone.

2. A servant who of his own accord increases the owed works acquires neither a right to a greater wage nor therefore to compensation, because he is judged to do this gratis to conciliate the favor of the master to himself, for example, because otherwise the master would be indignant or would treat him less benevolently. But if he does this from the express or tacit will of the master, he merits a greater wage; and therefore if, this not being paid, the servant compensated himself, he is not obliged to restitution.

3. Merchants who freely sell at a certain and definite price below the legitimate price cannot secretly compensate themselves by unjust weight or measure; - they can if they were unjustly forced to sell below the just price, - or through error sold below the price, - or cannot procure for themselves the payment of a certain debt without grave inconvenience.

Chapter IV: On Injuries of Words in the Goods of Reputation and Honor

417. Notions. - Good reputation properly is the common estimation concerning someone's excellence; nevertheless the estimation of individuals concurs toward it as part of the common opinion by which reputation of another's excellence is constituted; - but honor is the external testimony of this excellence. These two can be injured by words, whether internal and mental, namely, by rash judgment and suspicion, or external and vocal or by equivalent signs: reputation, namely, by detraction, honor by contumely; to which several other sins can be reduced. We are about to explain these in three articles, to which a fourth is to be added: concerning the restitution of reputation and honor.

Question One: On Rash Judgment and Suspicion

S. Th., II-II, q. 60, a. 2, 3 and 4.

418. Rash judgment (*vermetel oordeel*) or suspicious judgment is that which someone pronounces concerning those things which are doubtful or hidden because of certain slight conjectures; whence in the matter of justice it is that by which from slight and insufficient motives we judge evil concerning another.

To rash judgment there can be an ascent of the mind through various degrees of suspicion: the first is doubt concerning the honesty of one's neighbor, when concerning his probity we deliberately suspend judgment from insufficient motives; it is not mere doubt or absence of adhesion, a mere suspension of judgment concerning the evil of another, but a positive act by which, namely, we will to doubt and

judge that one must doubt; - the second is suspicion, by which from slight motives and with great fear of erring we incline to judging that one's neighbor has done something evil; - the third is opinion, by which, not certainly but as likely and with fear, from insufficient motives we judge that one's neighbor has done something evil: it is therefore an assent of judgment, but not firm, concerning the evil of another; - the fourth follows, rash judgment strictly so called, or a firm and certain assent concerning the evil of one's neighbor given without sufficient reason. But how from an insufficient motive there can be a certain judgment is understood from the fact that the discussion is not concerning certainty properly so called, or concerning an absolutely certain assent from an evident motive, but concerning a morally certain assent which arises from an impulse of the will; but this can move the intellect to a rash assent, by bending it to assent without sufficient objective motives, even determining it to adhere firmly because of slight motives, graver motives being set after them (n. 73).

In all the aforesaid degrees, rashness or imprudence arises from this, that someone without a sufficient motive judges ill concerning his neighbor; but if he judged according to things proved and alleged, doubting when there is a sufficient reason for doubting, opining when a grave reason is present although merely probable and not certain, or pronouncing certainly when the reasons are morally certain, the judgment would be prudent, not rash nor sinful.

419. The causes from which rash judgment proceeds are indicated by St. Thomas, q. 60, a. 3: It happens from three things; "in one way indeed from this, that someone is evil in himself; and from this very thing, as though conscious of his own malice, he easily thinks evil of others... In another way it proceeds from this, that someone is badly affected toward another: for when someone despises or hates someone, or is angry with him or envies him, from slight signs he thinks evils concerning him, because each one easily believes what he desires. In a third way it proceeds from long experience; whence the Philosopher says that 'old men are especially suspicious, because they have often experienced the defects of others.' But the first two causes of suspicion manifestly pertain to perversity of affection; the third, however, lessens the nature of suspicion, insofar as experience advances toward certainty, which is contrary to the nature of suspicion."

420. Thesis. Rash judgment strictly so called is a sin against justice, grave from its genus. - It is said:

1. *judgment strictly so called*, i.e., a firm and morally certain assent: for doubt or suspicion from its genus is not a grave sin but a light one;

2. *rash*, i.e., knowingly and deliberately uttered with advertence to the slightness and insufficiency of the motives;

3. *it is a sin against justice*, because it is a way of acting unjustly against one's neighbor. For an internal act also regards justice, insofar as of itself it is ordered to external things and operations just or unjust, as the will of stealing or of restoring. Thus internal rash judgment is ordered to an external judgment against reputation and honor (a. 3 ad 3);

4. *grave from its genus*: for it can be light not only from lack of deliberation or lightness, but also from smallness of matter, namely, from slight rashness.

Namely, mortal sin is not present except by great rashness, for which three conditions are required:

a) perfect deliberation or full advertence at least in a confused way to the gravity of the thing and the insufficiency of the motives; whence if the judgment is altogether sudden, or conceived rather from lightness than from malice, the sin will be light, as often happens among men of timorous conscience, who are not accustomed to consent to such judgments;

b) full rashness or notable disproportion between the reasons and the assent, so that certain assent is given to motives altogether slight; whence the sin is light if the motives are not sufficient but approach sufficiency. Concerning this in practice judgment must be made with all circumstances considered:

Thus if a lascivious youth is seen speaking or playing secretly with a girl and in a somewhat dark place, it is a sufficient indication for judging that there is something evil; on the contrary if the same youth, or an upright man, is seen conversing with a girl in an open place in the middle of the day. If an unknown man secretly and by night enters another's house, it is not rashly judged that an evil intention is in him, otherwise if openly by day, or if a known person even by night;

c) gravity of matter, which is to be attended to from the harm inflicted, because with the quality of the persons and fact considered it is very disgraceful and notably harmful to the honor, reputation, and good estimation of one's neighbor. Hence to hold a maidservant to be lying without reason is not a grave sin; on the contrary, to hold a bishop so; to hold an unknown soldier to be a fornicator is not grave; on the contrary, to hold a priest so.

It is proved: 1) Each one has a strict right to good reputation or the good estimation of others as long as he is not morally certainly proved evil. But that right is violated by rash judgment, which of itself is grave, because it imports contempt of one's neighbor and begets dishonoring. For he who judges evil concerning another, noticing that there is no motive for judging thus, maliciously contemns him. Thus St. Thomas says:

"If it concerns something grave it is a mortal sin, insofar as it is not without contempt of one's neighbor" (a. 3); "from this very fact that someone has an evil opinion concerning another, without sufficient cause, he unduly contemns him, and therefore injures him" (ibid. ad 2). Whence Lugo: just as we sin against justice by taking away the reputation of one's neighbor among others through detraction, so among ourselves by rash judgment. And thus it differs in species from detraction.

2. For a judgment to be justly borne, three things are required: the authority of the one judging, the right reason of prudence or accurate knowledge of the cause, and perfect integrity (S. Th., a. 2). But these three are lacking in rash judgment: a) authority is lacking, since it is pronounced by a private person without office, and in circumstances in which it is done without any necessity or due office; b) accurate knowledge of the thing is lacking, since by hypothesis the judgment is rash, pronounced not from objective consideration of the thing but from an insufficient motive; c) integrity is often lacking, since for the most part it is pronounced from prejudice, envy, hatred, or from one's own perversity, not from the inclination of justice.

3. Whence Scripture often prohibits us from judging our neighbor; which at least must be understood concerning an unfounded and rash judgment (Mt. VII, 1-2; Lk. VI, 37; Rom. II, 1;

Jas. IV, 11).

421. Rash suspicion (*lichtvaardig vermoeden, ongegronde verdenking*), under which name among theologians there also comes either rash doubting or rash opinion, of itself and regularly is only a venial sin, because it is not something full in the nature of judgment and contempt, but incomplete.

Nevertheless exceptionally and by accident it can be mortal: 1) if deliberately and without any probable foundation it is made concerning a very grave sin (incest, sodomy, bestiality) as to men altogether upright, as if a pious priest were doubted to be a heretic: for suspicion concerning such a sin can be more injurious than certain affirmation concerning an ordinary sin; but it is so only because of the special circumstances joined to it; 2) if it proceeds from envy or grave hatred: for then it is grave because of the affection from which it arises.

422. Practical admonitions. - 1. Although, if there is a serious reason for doubting concerning the goodness of one's neighbor, we cannot judge or opine evil concerning him, nevertheless we are not bound positively to esteem him good (this belongs to greater charity) unless his goodness is truly established, but we can suspend judgment.

2. In the external manner of acting we are by no means prohibited, for forestalling our own or another's damage, from employing due precautions, just as if one's neighbor were dishonest; for example, to shut money in a chest lest it be secretly taken by servants or unknown guests. For this belongs to prudence. It is lawful to judge concerning someone that he can become evil, and consequently, common frailty being considered, to apply a remedy lest he become evil, and thus to forestall damage, without however positively doubting without reason concerning the probity of someone in particular.

3. Rash judgments, although they are concerned with a diverse object, are probably of the same species, because they violate the same right of one's neighbor; and consequently those objects are not to be declared in confession, but it suffices to indicate the gravity or lightness of the matter.

Question Two: On Detraction

S. Th., II-II, q. 73 and 74.

423. Detraction or defamation (*diffamation, medisance; achterklap, kwaadsprekerij*) is the unjust denigration of another's reputation by hidden words. It is said:

1° *unjust*: for it is not detraction if reputation is injured from a just and reasonable cause;

2° *denigration*: for just as a man is bright with good reputation, so by defamation he is blackened and obscured, although good reputation is not always totally taken away;

3° *of reputation*: thus detraction is distinguished from contumely and theft, which deprive one of honor or riches;

4° *another's*: for no one can commit injustice against himself in his own reputation;

5° *by hidden words*, i.e., while the one who is defamed is absent: for if it were done while he himself is present, it would now be Contumely, because first, of itself, and formally it would deprive him of

honor, but of reputation only materially and consequently.

424. Detraction is divided in various ways:

A. On the part of the matter, one detraction is simple, another calumny (*laster*), according as it manifests a hidden vice of one's neighbor without just cause, or imputes to him a false crime or vice; therefore calumny adds to simple detraction a lie, and indeed a pernicious one, as bringing unjust damage.

B. On the part of the mode or efficacy of the exterior act, one is direct if a vice is clearly narrated, another indirect if a vice is insinuated by silence or a good quality is denied or diminished. Detraction happens in eight diverse ways: "directly indeed in four ways," says St. Thomas, q. 73, a. 1, ad 3: "1° in one way, when he imposes a falsehood on another; 2° when by his words he increases a sin; 3° when he reveals something hidden; 4° when he says that what is good was done from an evil intention. Indirectly, however, either 5° by denying the good of another; or 6° by maliciously keeping silence"; or, others add, 7° by diminishing; or 8° by praising remissly; yet these two are easily reduced to the fifth and sixth.

Indirect modes of speaking or keeping silence are sometimes more malicious than direct modes, as for example: I do not say all things. There are other deeds of his concerning which it is enough to keep silence! If I could say all the things I know. These are certainly splendid things; would that he had always shown himself such; but what does it help to recall the past! This person is pious, but!... I could provoke his blushing. I know certain things which no one would suspect about him, etc. Sometimes it suffices to keep silence deliberately, and a fortiori to smile or to make a gesture.

C. On the part of intention or the interior act of the will, one is formal, which is done from the explicit intention of injuring reputation; another material, which is done from another motive not necessarily evil, of lightness, lack of reflection, loquacity, utility, without the intention of defamation but with foresight of it.

425. Thesis I. Detraction, whether simple or calumnious, is a sin against justice, mortal from its genus, less grave than homicide and adultery, graver than theft.

The thesis is to be understood not only concerning formal detraction, uttered from the intention of injuring the reputation of one's neighbor, but also concerning material detraction done with full or sufficient advertence to this. It is proved:

1° It is against commutative justice: To take from an unwilling neighbor a notable good to which he has a strict right is a grave sin against justice. But by detraction there is taken from an unwilling neighbor a notable good, to which he has a strict right, namely, reputation, which is a greater good than riches. Therefore. The minor is proved: a) it is evident when calumny is in question, which deprives an innocent man of due reputation, to which he has a right by reason of virtue; b) it also holds concerning simple detraction, which deprives a hidden delinquent of reputation to which he has a right by reason of possession: he possesses a very useful good which he needs and of which therefore he ought not to be despoiled, until it becomes harmful, and meanwhile he keeps the right not to be reputed evil in society as long as he has done nothing evil openly. - Nor should you say: because of sins he deserves justly to be despoiled of reputation. For to judge concerning delicts and penalties pertains to God or to a judge constituted in the name of God; but he who by private

authority, without sufficient reason, takes away reputation unduly usurps to himself the rights of God and of judicial authority.

2° It is against legal justice and greatly harms the good of society: for the public good demands that the evils of others not be revealed without sufficient motive; for if it were lawful for all to manifest the hidden sins of one's neighbor, contentions, quarrels, envies, and hatreds would arise on every side, and the peace and tranquility of families and of the whole society would be disturbed.

3° It is also against charity, for as St. Thomas says, q. 74, a. 2, ad 2: "reputation is a disposition to friendship and infamy to enmity," and "he who detracts from his brother seems to detract from the law insofar as he contemns the precept concerning love of neighbor" (ibid. ad 3).

Hence a) Scripture holds detractors and evil-speakers to be hateful to God and men and assimilates them to those who are excluded from the kingdom of heaven;[1] this holds at least concerning calumniators; and b) the Fathers hold that vice as an abomination and a diabolical work. It is useful to remember that St. Bernard said of the detractor that with one breath he infects three souls lethally: he kills himself, the hearer, and him from whom he detracts.[2]

[1] Cf. Prov. XXIV, 9; Rom. I, 29-30; I Cor. VI, 10.

[2] Serm. XVII, *De Diversis*, n. 4-5.

Moreover, "among the sins which are committed against one's neighbor, homicide is graver, by which the life of one's neighbor already actually existing is taken away; consequently adultery, which is against the due order of human generation, through which there is entrance to life. Consequently there are exterior goods, among which reputation excels riches, because it is nearer to spiritual goods, whence it is said, Prov. XXII, 1: A good name is better than many riches. And therefore detraction according to its genus is a greater sin than theft; nevertheless less than homicide and adultery. Yet there can be another order because of aggravating or diminishing circumstances" (a. 3).

426. How great the right to reputation is. - So that both the right to reputation, and the malice of detraction, and the reasons excusing from it may be better understood, the following are to be noted:

A. To each one there belongs a right to ordinary good estimation or good name; although no one of himself has a right to the estimation by which special virtues are attributed to him, nevertheless each one has the right of demanding that in human intercourse he be treated as someone to whom the virtues common among upright men belong: each one, from the fact that he seems to act rightly, and as long as he has done nothing evil publicly, is to be held good until he is proved evil.

Moreover there is a right to this reputation not only true, which is founded in true goodness and excellence, but also to false reputation, which rests only upon apparent and estimated goodness:

1. One can have a right in true reputation directly and of itself: for this reputation is a good positively acquired by one's own acts, in which therefore he exercises full right and dominion; whence this right also is absolute and universal, which demands that each good man be held by all to be such as he truly is.

There exists, namely, a bond between the person and true reputation, which bond can justly be violated by no one except by permission of the owner himself. Therefore this reputation is never

lawfully taken away and calumny is always an injury; - nor is public calumny lawfully repeated, because it is cooperation in evil: it confirms a false opinion.

2. The right in false reputation does not arise positively and directly from the internal probity and excellence itself of the man, but negatively from acts, insofar as nothing evil appears publicly in them, and indirectly from the inconveniences which would arise against the private and common good if the hidden defects of others could everywhere be published.

Therefore it is founded positively in public and private necessity:

a) in public necessity, for from the revelation of crimes one's neighbor could not usefully perform his office, he would lose all authority, would lack the good of conversation, and those closely joined would be affected with ignominy, and thus contentions, quarrels, envies, and hatreds would arise on every side by which peace and tranquility in society would be disturbed. And this is still more established because

b) it is also founded in private necessity: for he who lacks reputation is deprived of a great protection against greater vices; on the contrary, fear of losing reputation often restrains the evil themselves, while he who has lost reputation can be restrained by no bridle; besides, as long as the crime is not public, conversion is easier, since human fear is less to be feared. Whence, says St. Thomas, q. 73, a. 2: "to take away someone's reputation is very grave, because among temporal things reputation seems to be more precious, by the lack of which a man is impeded from doing many good things; on account of which Ecclus. XLI, 15 says: Have care for a good name: for this will remain to you more than a thousand great and precious treasures. And therefore detraction, speaking of itself, is a mortal sin."

That right is not absolute, but conditioned by the private and public good, and limited by it; and consequently it ceases when a notable good either of the revealer, or of the delinquent himself, or of others, or of society rather demands that hidden defects be revealed. And therefore no one can be deprived of this false reputation of his unless, from the reputation not taken away, proportionate damage would follow to a private man or to the community, whether in a right already possessed or in a right to be possessed.

B. No one of himself has a right to extraordinary reputation, which is founded in singular gifts and talents, for example, of an outstanding theologian, orator, physician, saint: he does not have a right to such reputation if he does not really possess these things. Wherefore manifestation of the error on which extraordinary reputation rests is not against justice; - nor against charity, provided there is a reasonable motive for manifesting it.

C. The preceding things hold not only concerning private persons, but also concerning moral persons because of similar reasons. Indeed also concerning the dead, in whom the subject of the right to reputation perseveres, namely, the immortal soul, which is not verified for goods of fortune, whose right rests upon the necessities of bodily life; moreover the reputation by which they live among men is a great good which they therefore esteem and desire to retain.

Nevertheless this holds concerning the dead in a lesser degree, because they need reputation less than the living, and therefore are less unwilling in the violation of the right, whence calumny is so much less a sin; and as to detraction, the common right to knowing historical truth is accustomed to

prevail, provided notable damage is not at the same time brought upon persons still living or institutions still existing.

427. The gravity of detraction is taken not so much from the gravity of the crime divulged as from the gravity of the harm of infamy, or of the damage which the injured person suffers in reputation. This damage must be considered not only in itself, but also as to the injured person, and as to the efficacy of the detraction.

Therefore one must attend:

1° To the imputed defect in itself: if the defect is grave, ordinarily it notably injures reputation; if light, ordinarily lightly.

Hence a) detraction regarding honesty of life is much graver than that which regards natural defects of body or soul (for example, that someone is imprudent or unlearned), because these are not accustomed notably to lessen reputation, and easily become of public right; - b) if however a natural defect is very disgraceful and brings great sadness to the injured person, it can be a grave sin, for example, if it is said of an eminent man that he is a natural son, of someone that he is the son of a priest; - c) in general to call someone proud, angry, lazy, etc., is not as grave as to narrate particular facts from which those defects are actually manifested: such a general manner of speaking, rather than grave personal fault, denotes natural propensities or venial defects, which by their nature are accustomed to be public; on the contrary, to say that someone is lustful or unjust, because it indicates a habit; - d) it is not grave to report concerning one who is already defamed by sin something connected with that delict, for example, concerning a known adulterer to say that he sent love letters, concerning a husband who is known to be drunk, that he quarreled with his wife; otherwise if the fact is altogether dissimilar, for example, if it is said that he who has lost reputation in doctrine or faith is ruined in morals, or vice versa: for he who has lost reputation in one thing has not therefore lost it in a wholly diverse thing. But there is no sin of defamation if you say of a prostitute that she laid snares for a youth, because she suffers no detriment in reputation, since this is included in prostitution.

2° To the person injured and his condition and dignity. For the gravity of the defect which is manifested depends much upon the condition of the person, and he who enjoys an integral reputation and needs it for exercising an office or business suffers graver damage than he who neither enjoys nor needs it.

Hence a) an accusation of great ambition, hypocrisy, or lust harms a priest or pious monk more and gravely than a layman; likewise an accusation of immodesty harms a girl more than a soldier; on the contrary, an accusation of sloth brings greater detriment to a soldier than to a girl. Regularly it is not grave to say of a light and worldly youth that he is a lover of girls; on the contrary, to say that a bishop is lying, a merchant dishonest, a physician ignorant, is apt to harm gravely in reputation or also in temporal goods;[3] - b) to detract from a family or community is unlawful, because the disgrace redounds to the whole community, for example, that in such a monastery certain religious indulge in such a vice, or that regular discipline is not observed, or that such a crime, for example, of fornication, was committed; in such a city nearly all are infected, all the girls corrupted, all the merchants plunderers; - otherwise if in a general way it were said that in monasteries there are not lacking some who sin gravely, in a great city there are many unjust persons, many corrupted girls.

[3] It can happen that the injury of reputation is slight in itself, but apt for bringing grave damage in goods of another genus, as if someone narrated that the man whom a hearer wished to take on for the office of secretary was talkative. Then to the light sin of detraction there would be added a grave injury of charity or justice in temporal goods.

3° To the efficacy of detraction, which depends both upon the quality of the detractor, and upon the number, disposition, and quality of the hearers.

a) Upon the quality of the detractor: a man who is held to be grave, prudent, and truthful harms more than one light, talkative, and lying; and he who reports something as seen harms more than if he reports it as heard from persons of uncertain authority; if however he narrates a grave thing as heard from a trustworthy person, or if from the circumstances he foresees that the hearers will believe it, or if he reports a thing so enormous that the mere suspicion of it gravely defames, such as sodomy committed by a priest, he sins gravely.

b) Upon the number, disposition, and quality of the hearers: other things being equal, detraction is worse before talkative men who will divulge the matter than before men tenacious of secrecy, uttered before many than in the ear of one. Indeed many estimate that manifestation made without reason to one prudent man who will not divulge the matter is never a grave sin; but if it were done for a just cause of counsel or consolation, there would certainly be no sin, because there is a proportionately grave reason.

From these things it follows that he who narrates a hidden crime concerning an indeterminate person, whether by not naming him, or by naming him in a region where he is unknown and never to be known, does not commit detraction if he knows the hearers cannot know the person; on the contrary if he foresees that he can be known.

428. The moral species of detraction is formally one and the same, because all detractions injure one and the same right of reputation. Hence:

1. Simple detraction and calumny under the aspect of detraction are of the same species, because they regard the same good of reputation and injure the same right, although calumny also contains the species of lying; but this difference is material as to the injury brought upon reputation. Besides, a lie of itself is venial; and although in the case it is pernicious and therefore grave, nevertheless it is pernicious only because it injures reputation, and in this it agrees with detraction. Whence the circumstance of calumny is only aggravating and therefore is not to be declared in confession, unless by reason of reparation and restitution to be enjoined in a diverse way.

2. Detractions imputing diverse crimes (for example, adultery, theft, sacrilege) are sins of the same species, because this difference is merely material, just as money and clothing for theft: namely, they injure reputation in the same way. Whence in confession they are not to be specified.

3. Detractions made before several or diverse persons, although they are aggravated from this, nevertheless are not multiplied in species or number, because the right to reputation is one among all, not multiple; therefore the number or quality of the hearers is not to be declared, but it suffices to confess: I detracted before several persons.

429. Thesis II. It is lawful for a proportionately grave reason to manifest the hidden defects of others. - The reason is that it is lawful, under due conditions, to posit the cause of an evil effect. But in the case 1° there is an action of itself not evil but indifferent: the manifestation or narration of a defect which really exists; 2° from it there follows equally immediately a double effect: one evil, namely, the infamy of one's neighbor, another good, namely, knowledge very useful to another who from it procures a good or prevents an evil. Therefore it is lawful to manifest the hidden defects of others, provided the other two required conditions are present: 3° the intention not of harming but of obtaining the good effect, whence no more nor to more persons can be revealed concerning the defect than is necessary for avoiding evil or obtaining good; 4° a proportionately grave reason for revealing with respect to the defamation, namely, notable damage to be avoided or a great good to be obtained for notable defamation.

But as Billuart notes, diss. XV, a. 2, § III: "it is not necessary that the good to be attained outweigh or even equal the good of reputation... because the guilty and the innocent are not equal in right; and otherwise it would follow that for avoiding temporal damage, for example, theft, it would not be lawful to reveal to the master the thefts of domestics... which nevertheless no one will admit." Namely, to preserve the right, which is greater, of an innocent person to a notable good of a lesser order, namely, of riches, morally equals the lesser right of a guilty person to a greater good, namely, reputation.

But the special reasons on account of which the reputation of another can lawfully be injured or ought to be injured can arise

1° from religion, for example, if there are revealed to superiors the vices of one to be ordained, who would be for scandal and detriment to the Church;

2° from justice, if someone from office ought to disclose and denounce the crime of another;

3° from charity, for forestalling damage of the narrator, of the delinquent, of a third party, or of society.

Therefore there suffices:

a. The common good of society, when revelation of the delict is necessary for impeding grave damage which threatens society. Thus, lest a public office be conferred upon one unworthy or incapable, his hidden vices can be revealed to a superior, if they are going to harm the whole community; likewise those who secretly spread doctrine harmful to faith or morals are to be denounced to superiors; and editors of newspapers can disclose the vices of candidates who seek dignities or public offices, if this knowledge contributes to the public good.

b. The good of the delinquent, whenever it cannot be procured without his defamation. Thus the secret vices of sons or subjects can be manifested to parents or superiors for their correction; and a hidden impediment must be manifested if someone cannot be restrained from contracting an invalid marriage.

c. The good of the revealer, if, for the sake of consolation, counsel, or defense, he narrates to some friend hidden injuries inflicted upon himself, or to a confessor, or to another prudent counselor, or to a judge for weakening the testimony of another. Nevertheless one must take care that it not be said to

several persons, or that the person not be named more openly than is necessary for consolation or counsel.

d. The good of a third party, namely, lest the dishonest harm or innocents be deceived and seduced by them. Thus we can warn someone to avoid the company of a perverse man lest he be perverted; to manifest a thief to those with whom he dwells; and if inquiry is made concerning the honesty of a servant, the skill of a physician, the morals of a youth about to enter marriage, etc., to respond according to the truth.

Nevertheless in these cases let it be noted: 1) revelation must be made with the least damage to the guilty person, so that we manifest only that which is truly useful for averting evil, and only to those to whom it is necessary; - 2) it is never lawful to impose a false crime, even for avoiding one's own or another's damage, but this is a grave evil, as is clear from propositions 43 and 44 condemned by Innocent XI; - 3) it is unlawful to manifest a hidden crime whose knowledge was acquired unjustly, for example, by reading another's letters unjustly; unless in the present circumstances someone already had a right of using such a means, in the case, of opening private letters.

430. To manifest a public or notorious crime to others who are ignorant of it generally and of itself is not against justice, because the right to reputation has been lost; although it can be against charity. Notorious or public is that which can be hidden by no evasion, or, as Cajetan says, that which of itself is apt to come into common knowledge. One thing is notorious by law, concerning which it is established by the sentence of a judge; another by fact, which was done openly with many present or has already come to the ears of many. Now:

1. A delict notorious by notoriety of law, or by force of a legitimate judicial sentence publicly promulgated, can be manifested even without cause, in the region where it has been so denounced, because the judge deprived the accused of the right to reputation in this matter and granted permission of divulging it.

Nevertheless it is unlawful to manifest it: a) in another region where the judicial sentence has no force, because there the accused has not been deprived of the right to reputation, and therefore this is against justice; b) if the accused has amended himself or the delict has already been destroyed by oblivion; this is against charity, if from this others would think him not thoroughly amended, - not however against justice, because the faculty given by the judge continually exercises its force, and therefore it is not unjust to renew the memory of the condemnation, unless however the law should concede perfect rehabilitation.

2. A delict notorious by notoriety of fact alone, which because of the number and quality of witnesses now cannot be hidden, can be manifested in the place where it is notorious, because the right to reputation has there in fact been lost; - unless it has already been amended and destroyed by oblivion: for then to recall it to memory without reason would be unjust, because the delinquent has recovered the right to reputation.

3. A delict notorious in one place by notoriety of fact cannot be manifested without injustice in another distant place, because the delinquent has not lost the right to reputation there; -

unless it is foreseen that shortly it is to be legitimately made known in that place, or unless there is deserved fear lest the delinquent harm others in that place.

431. Concerning detraction through newspapers and daily papers. - For these, in this matter, the same laws and principles hold of themselves as for private persons; but the applications can be varied and diverse according to circumstances. For common utility has more force in public writers than in private persons. Public papers are an essential condition of modern life and a necessity of our time; they also exercise great influence in political and social life. Whence Catholic writers are to be allowed as ample a faculty as the moral law permits, if there is serious competition on the part of non-Catholics.

This will easily be done for the greater papers. But a) it is not so easily to be admitted for lesser and local papers, or for periodicals; - b) nor are opposing papers always truly to be feared; - c) and also it will not always be necessary to indicate the names of persons: for facts can be narrated with names omitted, or with only their initial letters indicated, if it is feared that the crime will be divulged where it is not yet known; and this is to be done, unless however it has certainly been divulged by others.

With these things noted beforehand, the following rules can be established:

1. To narrate public facts is lawful, but with the precautions noted above.

2. To investigate or divulge hidden things is not lawful except by reason of a great common good, or on account of a great good of a third party; for judging this, great discretion is needed.

3. Public matters can be publicly judged, as befits modern democratic societies: thus, for example, defects and unjust acts in magistrates or in their functions; unless however a greater evil is to be feared. For it is good that officials fear such judgment, and that Catholic writers dare to denounce their defects and iniquities.

4. Concerning candidates to be elected to public functions, to manifest hidden crimes and defects which render a candidate unworthy is lawful, both by reason of the common good and by reason of the custom by which candidates tolerate this.

But let it be noted for the third and fourth rule, that crimes whose manifestation contributes nothing to the common good cannot be manifested, and indeed so much the less the higher the office someone holds. Newspaper writers must attend altogether to this, since they easily and often exaggerate.

432. Can reputation which the defamed man has renounced be lawfully and justly violated? - Resp. 1° Given a just cause, it is lawful to detract from one's own reputation and to permit it to be detracted from by others: for man of himself has dominion over his own reputation, and so he can dispose of it from a just cause, for example, for saving life, for repressing pride, for his own humiliation and the exaltation of divine mercy.

2° Without a just cause it is not lawful (Eccli. XLI, 15): nevertheless this of itself is only a sin of prodigality and of defect of charity toward oneself; by accident it can be against justice and charity owed to one's neighbor.

For our reputation can be necessary to one's neighbor in three ways:

a) when the reputation of others depends upon our reputation: thus the reputation of a monk or priest;

b) when our reputation is necessary so that we may render to our neighbor an office owed by strict right, for example, the reputation of a pastor or magistrate;

c) when not from justice but from charity we are bound to benefit our neighbor, and by infamy we are reduced to being unfit for this.

In the first and second case defamation of oneself is against justice; in the third case he who defames himself sins against charity, just as he sins against charity who throws away money by which he could have benefited the poor.

433. Those cooperating in detraction, some directly consent to it, either because they induce the detractor to denigrate one's neighbor, or because they voluntarily rejoice over it; others indirectly, merely do not impede detraction.

1. Those who induce to detraction, by asking about the defects of one's neighbor, or by praising him in such a way that they move others to detract, or by approving their narration, sin in the same way as those who detract themselves: namely, against charity and against justice, and indeed externally; for they formally cooperate in an unjust action, and provide direct scandal, by provoking others to it. Whence they are bound to reparation in solidum with the detractor.

2. Those who internally rejoice over detraction, without themselves formally cooperating, sin not only against charity because they rejoice over the evil of one's neighbor, but also with an unjust affection, because they take complacency in the unjust action of detraction: gravely if they do it from hatred, envy, or vengeance and the matter is grave; lightly if from curiosity or concerning the manner of narrating, lightly sinful.

3. Those who merely do not impede detraction sin, unless they are excused by some reason, against charity alone, because they do not impede the evil of the defamed person, nor the sin of the detractor; not however against justice, because they are not bound from justice to avert that double evil. Thus especially superiors, who from justice or office are bound to correct subjects, nevertheless are not bound from justice, by force of their office, to watch over the reputation of others.

The obligation of impeding detraction is of itself grave in grave matter, unless some reason excuses. Nevertheless for mortal sin there is required: a) another certainly detracting unjustly; b) a founded hope of impeding detraction; c) without a relatively grave inconvenience, for example, of quarrel or insult.

Whence St. Alphonsus teaches: because in this matter it can be established with greatest difficulty that correction will profit, and on the other hand detractors corrected before others are very easily offended, the opinion excusing hearers ordinarily from mortal sin if they omit correction can reasonably be sustained. They are excused also from venial sin if, noticing the detraction, they depart

or turn the conversation aside, etc., because these actions are true corrections. Nevertheless a superior is bound more strictly than a private man, because of the reasons adduced.

The obligation of impeding detraction can be fulfilled:

a) by restraining it through authority, if the hearer has it;

b) by correcting fraternally among equals;

c) by proving the falsehood if it can be done, or by otherwise bringing it about that faith is not given to the detractor;

d) by showing a sad countenance with displeasure or indignation, by turning the conversation to another thing, by reporting good things concerning the defamed person, by excusing him or interpreting him praiseworthily.

434. [Original misprint: 432.] Whispering (*oorblazerij*) is evil and secret speech against one's neighbor for dissolving true friendship, or the manifestation of some saying or deed of another for disturbing peace and friendship among families or friends. It differs in species from detraction by reason of the end, because it properly does not intend the denigration of one's neighbor but the sowing of discord, although for the most part it contains detraction.

It is a sin against charity and against justice, not only when it uses unjust means as often happens, but always, because it takes away from another the good of friendship, for preserving which, once friendship has been entered, he has a strict right by reason of possession.

But it is a grave sin from its genus, because of itself it tends to destroying friendship and peace, which is the greatest good, with Scripture as witness (Eccli. VI, 14-16): "A faithful friend is a strong protection: but he who has found him has found a treasure; to a faithful friend there is no comparison... a faithful friend, a medicine of life and immortality."

"And therefore," says St. Thomas, q. 74, a. 2, "whispering is a greater sin than detraction, and also than contumely; because a friend is better than honor and to be loved than to be honored." For whispering deprives one of a greater good and brings greater harm. Hence in the Scriptures that sin is said to be hateful to God and men (Eccli. XXI, 31; XXVIII, 15; Prov. VI, 16-19), and worthy of death (Rom. I, 29, 32).

Hence a) it is graver according as the friendship which is dissolved is more intimate or more necessary, and according as worse effects are to be feared from it: thus it is very grave if discord is sown between spouses, between parents and children, among defenders of the Catholic faith, or if very great dissensions are foreseen;

b) on the contrary, it is not a sin to remove a friendship which is not true but harmful or dangerous, such as is had among thieves or with a concubine.

Question Three: On Contumely

S. Th. II-II, q. 72; q. 73, a. 1; q. 75 and 76; q. 103, a. 1.

435. Notions. - Just as reputation is injured by detraction, so honor is injured by contumely (*beleediging*). Honor is the external testimony of another's excellence, made by words or equivalent signs. It can be done by laudatory words which pronounce another's excellence, by calling him, for

example, lord, eminent, most wise, - by deeds or actions such as inclination, going to meet him, yielding place, - or by exterior things, such as gifts, the erection of a statue, the setting up of an image, etc.; all these are employed from the intention of the one honoring, to signify another's excellence or his superiority in regard to oneself, under some respect, or in regard to others.

The foundation of honor is qualities or gifts, of whatever kind, internal and external, natural or supernatural, by which someone excels, especially virtue, which is the true excellence of man.

Honor proceeds as from its first motive from reverence, insofar as someone, from the reverence which he has toward another, honors him; and at the same time it tends to reverence as to an end, insofar as he honors him so that he may be held in reverence by others. But its effect is glory, which is clear knowledge of excellence among others. It differs from good reputation: a) reputation chiefly consists in the internal opinion of many, honor in external testimony; b) reputation is borne concerning one absent, honor is shown to one present, either through himself, or through another which represents him, such as an ambassador or image; c) reputation concerns a certain perfection simply, but honor concerns excellence or superiority in perfection.

436. Definition of contumely. - Contumely is directly opposed to honor; whence it is the unjust dishonoring of a present person. It is said:

1° *dishonoring*, i.e., not only the negative absence of honor even when due, but a positive contrary act which expresses contempt, which is chiefly done by words uttered or written, also by deeds insofar as they are equivalent signs which have the force of words, for example, by a contemptuous look or gesture, by an infamous picture, by a slap inflicted, by the breaking of an image or defacing of a door. Whence the privative omission of due honor is not contumely, unless because of special circumstances it is equivalent to a positive act of contempt, as if, all being greeted, one is deliberately neglected;

2° *unjust*, because it could also be a just punishment of a delict;

3° *of a present person*, at least in some way, whether through himself, or in an ambassador or in an image, or in such a way that the injury is made known to him through a messenger or through letters. For "he who utters words against someone in secret, seems to fear him rather than to despise him, whence he does not directly bring detriment to honor" q. 73, a. 1. Hence for contumely it is not necessary that it be done before others; for "if someone says his defect to someone... to him alone, it can be contumely insofar as he who speaks acts unjustly against the reverence of the hearer" q. 72, a. 1, ad 1.

437. Contumely is made from the intention of dishonoring and by this differs from other sins. - Its end is externally to manifest contempt toward the man to be dishonored; therefore:

1. It differs really from detraction a) by reason of the object or end, because it directly injures honor, not reputation; b) by reason of the mode, because it is done to one present, while detraction of itself is done concerning one absent. But if contumely is done before others in such a way that a delict, whether false or unknown, is imputed to another while he himself is present, then it is joined with detraction but formally is contumely.

Let St. Thomas be heard, q. 73, a. 1: "Just as by deed someone harms another in two ways: openly indeed as in robbery,... but secretly as in theft...; so also by word someone injures another in two ways: in one way openly, and this is done by contumely,... in another way secretly, and this is done by detraction. But from this, that someone openly utters words against another, he seems to despise him; whence from this very fact he is dishonored, and therefore contumely brings detriment to the honor of him against whom it is uttered. But he who utters words against someone in secret seems to fear him rather than to despise him; whence he does not directly bring detriment to honor, but to reputation, insofar as one uttering such words secretly, as far as in him lies, makes those who hear have an evil opinion of him against whom he speaks: for the detractor seems to intend this, and strives for this, that credence be given to his words. Whence it is clear that detraction differs from contumely in two ways: in one way as to the mode of proposing words, because namely the contumelious man speaks openly against someone (i.e., to his face), but the detractor secretly; in another way as to the end, or as to the harm inflicted, because namely the contumelious man derogates from honor, the detractor from reputation."

2. It also differs really from mockery or jeering, by which the defects of one's neighbor are turned into laughter, whether by words, or by gestures such as with wrinkled nose, or by deeds, to his illegitimate blushing, disturbance, and confusion. Therefore mockery has an end diverse from contumely: to procure blushing, which is not dishonoring but fear of dishonoring (q. 75, a. 1).

3. It differs also under some respect from abusive speech and reproach (*versmading*), by which generally any vice whatsoever, or defect of fault or penalty or merely natural defect, is disgracefully objected to someone to the detriment of honor, or a lessening or need, while contumely strictly so called objects fault (q. 72, a. 1, ad 3).

438. Principle. Contumely is a sin against justice, grave from its genus. - For it takes away from one's neighbor a notable good which is usually esteemed more than riches, indeed in external goods it holds the first place, "both because it is very near to virtue, as being a certain testimony existing concerning someone's virtue; and also because it is shown to God and to the best; and also because men set aside all things for obtaining honor and avoiding blame" (q. 129, a. 1). But to take away such a good is against justice, because it is done while one's neighbor is unwilling, who has a right to it because of natural or supernatural qualities and gifts, especially because of honesty and virtue.

Whence Christ, Mt. V, 22: "But he who shall say to his brother, Raca, shall be liable to the council: but he who shall say, Thou fool (i.e., madman), shall be liable to the hell of fire." And the Apostle admonishes Christians that they be "anticipating one another with honor" (Rom. XII, 10), and "in humility judging one another superior to themselves" (Phil. II, 3).

Nevertheless it can be venial a) on the part of the agent, if it is done from inadvertence, lack of deliberation, sudden anger, or from an intention of not gravely injuring honor, as if someone speaks in jest or not so seriously;

b) on the part of the matter, if there is no grave injury of honor. Whence contumelious words which are uttered by parents against children, and abusive speeches by which men of the lowest condition or quarrelling women attack one another and vomit forth whatever occurs, are easily excused from grave sin, because they are usually considered as of lesser moment or are even not seriously uttered.

439. The gravity of the sin of contumely is to be weighed not only absolutely from the thing itself or the contumely uttered according to itself, but also respectively

1° to the dignity of the person offended: for injury is measured from the dignity of the person offended to whom it is terminated; whence the same contumely brought upon a father, bishop, or king is much graver than if it is brought upon an equal;

2° also to the offending person and his dispositions: thus an offense which arises from hatred, envy, or contempt is graver than that which arises from anger or lightness; greater if it is uttered by a person of great authority than by a man of lower condition;

3° to the effects to follow from it: the sin is greater if it is done before several persons or before those who from this receive scandal, or if quarrels, contentions, enmities are foreseen.

440. Mockery (*beschimping, bespotting*) agrees with contumely in matter; but it differs in mode and end, and consequently is of a diverse species; for it is had when someone objects to another a defect or fault in a joking manner, so that the other blushes or is ashamed (Mt. XXVII, 41-44; Lk. XXIII, 36). It is called jeering when someone is exposed to ridicule not by words but by gestures or movements of the body (Mt. XXVII, 40). It is called derision when the same is done by means of some deception (Mt. XXVI, 68; XXVII, 29; Lk. XXII, 63). Cf. St. Thomas, q. 75.

The gravest sin is mockery of God and of those things which are of God (Is. XXXVII, 23), because it is also blasphemy against religion; the second place is held by mockery of parents because it is also against piety (Prov. XXX, 17); in the third place derision of the just is grave insofar as the virtue and simplicity of the just man is derided (Job XII, 4), which derision is very harmful because through this men are impeded from acting well. Besides, derision will be a grave sin against justice if it notably offends and shames one's neighbor, or causes grave damages and sins (Prov. XXII, 10).

But derision concerning a light evil or defect, or one not sufficiently deliberate, is a venial sin, indeed none, if it is done moderately and with a just cause, for example, so that the one derided may abstain from a defect or sin, or that honest recreation may be fostered. Nevertheless, even friends should deride soberly, prudently, and not too long, especially if the neighbor is foreseen to be not lightly moved by this; wherefore St. Thomas wisely admonishes (q. 72, a. 2, ad 1): "It pertains to eutrapelia to say some light abusive speech, not for the dishonoring or saddening of him against whom it is said, but rather for the sake of delight and jest; this can be without sin, if due circumstances are observed. But if someone does not fear to sadden him against whom a joking abusive speech of this kind is uttered, provided he excites laughter in others, this is vicious."

441. Cursing, concerning which St. Thomas treats after derision (q. 76), can be understood in three ways:

1° one is merely enunciative, by which someone reports the evil of another, and this is nothing but detraction;

2° another is causative or imperative, by which someone moves others by command to bringing evil upon another; and this is the first of the nine modes of cooperation, concerning which we spoke above (n. 309);

3° another is optative, by which someone expresses an evil affection or desire and wishes evil to another (*verwensching*). This can be defined: a dishonoring by which someone imprecates evil upon

someone insofar as it is evil, and thus it is against justice; besides, it contains the sin of hatred against charity, if evil is wished from the heart.

Optative cursing, just like imperative cursing, is a sin if someone intends the evil of another insofar as it is evil; but it is not a sin if someone intends the evil of another under the aspect of good, because then the intention of the one speaking is not referred to evil but to good, whether because it is just (for example, to desire just punishment), or because it is useful (for example, for correction). This however is to be understood, provided it is done according to the order of charity: thus he would sin who wished the death of his father because of the inheritance.

Cursing is a mortal sin from its genus, because it is against charity; nevertheless it can be venial either because of the smallness of the evil which one wishes to another, or because of the imperfection of the affection, because it is not done from the heart but from lack of deliberation or without the mind of one desiring, for example, from a sudden movement of anger or from custom. And nevertheless curses even light of themselves can from circumstances be mortal, whether by reason of the person against whom they are made, for example, if they are made against God, against parents, against superiors especially present, or by reason of scandal.

It is a sin so much graver according as we ought more to love and reverence the person whom we curse and according as we wish graver evils. Whence

1. it is gravest to curse God, which is also blasphemy against religion;

2. then to curse parents, which is also against piety;

3. then to curse superiors, which is also against observance;

4. then against other neighbors according to the gravity of the evil wished; but if by a simple evil affection diverse things are also wished under the general aspect of evil, because they are evil, the sin is against charity insofar as evil is desired, and against justice insofar as, by uttering it, one's neighbor is dishonored; but if by an efficacious desire someone desires to inflict diverse evils upon another, the sins are diverse in species against justice according to the diverse evils wished;

5. to curse irrational creatures: a) if they are regarded according to themselves, it is not a mortal sin, because they are not a subject of right and injury, but it is idle and vain, and therefore venial; b) insofar as they have a relation to evil, there is no sin because it is to curse evil itself; c) insofar as they are creatures of God, it is blasphemy against God; d) insofar as they are useful to man, it is the same as to curse man.

Concerning the comparative gravity of detraction and cursing, St. Thomas teaches, q. 76, a. 4 [Original misprint: q. 77]: "The enunciation of fault is a sin, insofar as some harm is thereby brought upon one's neighbor; but to bring harm is graver than to desire harm, other things being equal. Whence detraction according to the common account is a graver sin than cursing expressing simple desire. - But cursing which is done by way of command, since it has the account of a cause, can be graver than detraction, if it brings greater harm than the denigration of reputation; or lighter, if less."

442. Remark: On patience in tolerating contumelies. - From patience we are bound to endure contumelies in preparation of soul, but not always to do this in act. As St. Thomas clearly explains, q. 72, a. 3: "It is the precept of the Lord: if someone has struck you on one cheek, offer him also the other, namely, so that a man be prepared to do this if there is need; nevertheless he is not always bound to do this in act, because neither did the Lord himself do this, but when he had received a slap, he said: Why do you strike me?... Sometimes it is necessary that we repel an inflicted contumely, especially for two reasons: 1) because of the good of him who brings the contumely, so that his audacity may be repressed, and he may not attempt such things thereafter; 2) in another way because of the good of many, whose progress is impeded because of contumelies inflicted upon us. Whence Gregory says: those whose life has been placed as an example for imitation ought, if they can, to restrain the words of those detracting from them."

Question Four: On the Restitution of Reputation and Honor

443. State of the question. - Just as external goods of fortune unjustly taken away are to be restored, and unjust damage caused in them is to be repaired, so a fortiori it must be held for reputation and honor, which are goods of greater moment. Nevertheless their restitution is not always convenient, but rather often presents special difficulties. Wherefore it must be carefully examined who is bound to restore them; what, when, to whom, how, and before whom he ought to restore; and what are the causes excusing from restoring them.

444. Principle I. He who unjustly injures another's reputation in any way whatsoever is bound from justice to restore it as soon as possible, and to repair all material damages, at least confusedly foreseen, which have effectively and culpably followed from the defamation. - It is said:

a) *he who unjustly injures reputation*: for where there is no violation of right, there can be no place for reparation; whence if someone has revealed another's crime from necessity or a just cause, he is not bound to restitution;

b) *in any way whatsoever*, whether internally before himself, by his own judgment of mind, or externally before others, whether by simple detraction or by calumny, whether he himself detracted or unjustly cooperated with one detracting, whether positively he did this by commanding, counseling, consenting, etc., or negatively, by not impeding when he could and from justice ought to impede;

c) *he is bound to restore reputation*: for what was unjustly taken away must be returned. This obligation of itself is personal and therefore regards only the defamer, but not the heirs, except by accident if the owner promised pecuniary recompense;

d) *as soon as possible*; otherwise the burden of the defamed person is continued, and there is danger lest the detraction be propagated farther or produce other evil effects;

e) *and to repair all material damages which have effectively and culpably followed*, namely, real damages which he truly caused, as if the detractor impeded another from profit, office, benefice, or from a fitting marriage, or was the cause why another is dismissed from office or compelled to labor at a lesser wage; but not those things which justly befall the other, or only on occasion of the detraction, as if from it it happens that he is justly sent to prison by a judge, or if the defamed man from sadness kills

himself or brings another evil upon himself or his own, because these are related by accident to defamation. This obligation is real, and consequently passes to the heirs, both of the one injuring, though not beyond the forces of the inheritance, and of the one injured.

It is proved: Everyone who knowingly and willingly violates the strict right of another is bound to repair it. But 1) man has a strict right to reputation, which nevertheless can be injured unjustly; therefore he who injures the reputation of another unjustly is bound to repair it; - 2) man also has a strict right that damage not be unjustly brought upon goods of fortune, which nevertheless often comes from injury of reputation; therefore the unjust defamer is also bound to repair these damages.

Both obligations are grave, if the defamation was gravely culpable.

Hence 1° he who sinned gravely by defaming another is bound to repair reputation even with grave inconvenience to himself, for a grave obligation binds with proportionate inconvenience.

2° He who from light fault or from inadvertence or imprudence injured the reputation of another is bound to repair, but without grave inconvenience: for he is bound as far as he can to impede his saying from producing further effects, otherwise the infamy which follows further would also be imputed to him under grave obligation.

3° If the whole fault is not from the speaker but from the hearers, because they interpreted the words of the speaker sinisterly, the speaker is bound not from justice but from charity alone to correct the error.

4° If light infamy has induced grave damage in goods of fortune, as if someone lost the office of secretary because he was presented as talkative, there is a grave obligation of repairing that damage, if it was foreseen, because then the defamation is grave, not by reason of infamy, but by reason of damage.

5° He who injured another's reputation by rash judgment or suspicion is bound to put those away and to conceive a good estimation.

445. The manner of repairing reputation. - Generally reputation is to be repaired in that manner by which the infamy brought upon one's neighbor is truly removed, and therefore the unjust damager must choose the mode which does not seem easier to himself, but which, with the circumstances considered, is truly efficacious. Therefore in practice it will have to be distinguished whether the infamy arose from calumny or detraction, whether it remained secret or became public.

A. If calumny is in question, this is openly to be retracted, even with loss of one's own reputation or of another equivalent good; for in an equal cause the condition of the innocent is better than that of the guilty. Hence, if this is required for an efficacious retraction, the calumniator must confess that he lied; nevertheless sometimes, the circumstances being considered, satisfaction is made to justice by saying that he erred or was deceived; and if the retraction would not be efficacious unless an oath were added or witnesses employed, these means would have to be employed, because they do not appear too difficult.

Only then is the calumniator proportionately excused, if his reputation is necessary for the public good, as if a magistrate calumniated, or if the damage which the defamer would have to suffer by restoring would much exceed the damage of the defamed man: thus defamation is not to be repaired with danger of life, unless death also threatens the defamed man himself from the defamation.

B. If simple defamation is in question, a special difficulty comes from this, that the crime unjustly manifested is true. Therefore the detractor cannot declare that he spoke what was false; for this would be a lie, but a lie is never lawful. Therefore he must repair the injured reputation in another way, either formally and directly, or equivalently and indirectly.

1° Formally and directly, if it thus benefits the defamed man: by saying that he spoke unjustly and badly, that he did injury to the other, indeed, by using amphibology, that he erred, that he did not say the matter as it was to be said; nevertheless let him act cautiously, lest the hearers, understanding the ambiguity, be confirmed more in their sinister opinion.

2° Equivalently and indirectly, if directly he can effect nothing before astute hearers: by speaking honorably concerning the defamed man, by praising him when occasion is given, especially in similar matter, or by excusing him, and in various ways promoting his good reputation. This manner of repairing is often safer and more efficacious than the former, which smells of mental restriction.[1]

[1] "Someone can take away someone's reputation in three ways: in one way by saying what is true and justly, for instance when someone discloses another's crime with due order observed, and then he is not bound to restitution of reputation; in another way by saying what is false and unjustly, and then he is bound to restore reputation, by saying that he said what was false; in a third way by saying what is true, but unjustly, for instance when someone discloses another's crime against due order, and then he is bound to restitution of reputation, as much as he can, without lying however, as for instance by saying that he spoke badly, or that he unjustly defamed him; or if he cannot restore reputation, he ought to compensate him otherwise" II-II, q. 62, a. 2, ad 2.

C. If the defamation was public and widely spread, the reparation also ought to be public, so that it may be efficacious insofar as it can be; hence:

1° Defamation published in writing and in print is fittingly repaired in the same way, and ordinarily is to be repaired thus; indeed even defamation made orally is often suitably repaired in that public way, especially if it has already been widely diffused and it is unknown to whom it has come;

2° otherwise, however, first it must be retracted before the immediate hearers themselves, because before them the defamer was the immediate cause of infamy;

3° then also before mediate hearers, insofar as the diffusion must be attributed to the fault of the defamer and reparation is possible: a) thus of itself, if by direct intention he disclosed the crime so that the hearers would divulge it, or moved them to this by command or persuasion; or also if he told light and talkative persons whom he foresaw would easily publish it, at least if he did it without stipulation of secrecy: for then the damage of further defamation was foreseen and voluntary;

b) on the contrary, if he narrated under secrecy, or to such persons whom he prudently judged would not publish the matter further: for then the further infamy is involuntary to him, and must be imputed to the malice of the hearers;

c) in practice, reparation before mediate hearers is often morally impossible; in which case it suffices to retract before the immediate hearers, at the same time exhorting them to do the same, when opportunity is given, before those to whom they manifested the crime.

In the case in which the defamation is at least in part irreparable, some reparation through money can be counseled, especially in the case in which the defamer is rich, but the defamed man poor and willing to accept a compensation of this kind.

446. Several causes excusing from restitution of reputation are listed:

1° Absence of damage, namely, if the defamation was not efficacious, because for example the hearers did not understand, or did not give faith to the detractor, or knew the matter from elsewhere, or another, by correcting the detractor, impeded the evil effect.

2° Cessation of damage, namely, if the infamy has already been removed, whether because reputation was recovered through a good life, or because the falsity of the calumny was publicly acknowledged, or the defamation was destroyed by oblivion in the course of time: for then one must altogether beware lest by an inopportune retraction the defamation come back to life.

3° Impotence, by which namely reparation is physically or morally impossible, as if the hearers of the detraction are unknown, or cannot be approached; if the delict has become public by another way; or another's reputation cannot be repaired without one's own far graver damage: then the defamed man is judged to renounce his right.

4° Remission or condonation by the injured person, whether express or tacit, provided he has the power of perfectly condoning, and the public good does not stand in the way from elsewhere; for if infamy redounds to others, or scandalizes others, or stands in the way of an office being duly performed, as of a magistrate or priest, who needs a good name for exercising his office, perfect condonation cannot be made: for then the defamation also injures the state.

5° Mutual compensation, provided the injuries on both sides are equal, and a third party does not suffer from it. Compensation is not to be understood in the sense that the defamed man can defame his defamer: for this would be mere vengeance; but because, if the defamed man himself has injured the reputation of the detractor and does not wish to repair the injury, reparation can be delayed until the other is prepared to repair reputation.

Thus plebeians are judged tacitly to remit injuries to one another, since they know that very often others detract from them and nevertheless do not restore; whence neither are they presumed to demand restitution, or certainly to wish to use mutual compensation in not restoring.

447. Principle II. He who unjustly injures honor owed to someone is bound from justice to restore honor, and to repair all material damages which effectively and culpably followed from this.

For man has a strict right to honor just as to reputation, and therefore the violation of this right must be repaired, whether the contumely was public, or merely hidden. Cf. Mt. V, 23-24.

The manner of repairing honor which is required and sufficient is that which, with the gravity of the injury, the condition of the persons, all the circumstances, and the customs of the place considered, is apt for signifying an equitable estimation of the offended person and thus for repairing the damage inflicted, so that reasonably more cannot be demanded. Whence public contumely is repaired in one way, private in another; satisfaction is shown to a superior in one way, to an equal or subject in another.

Hence: 1. Honor taken away publicly is to be repaired by public reparation, i.e., offered before those who were witnesses of the contumely, or at least in that manner by which the satisfaction becomes known to them.

2. Hidden contumely is sufficiently compensated by hidden reparation, for example, by privately showing signs of sorrow to the offended person.

3. If a superior offended a subject, for the most part a friendly greeting or showing of benevolence suffices, which from the very quality of the one showing it has a greater value and greater signification; rarely will the asking of pardon be necessary, "lest," as Augustine says, "while too much humility is preserved, the authority of ruling be broken," although sometimes it is also useful for edification.

4. To an offended equal, signs of honor greater than usual should be shown: by yielding to him an honorable place, by inviting him to table, by drinking to his health, by procuring favor, etc.; or, if the injury is graver, pardon should be sought. Nevertheless in certain regions, or among persons of a certain condition, it is not the custom to seek pardon.

5. If an inferior offended a superior, often a humble direct or indirect entreaty for pardon will be necessary.

Nevertheless sometimes, if the offended person has taken vengeance, by inflicting a reciprocal injury, for example, by striking, wounding, etc., the other is not bound to further satisfaction: for then the one taking vengeance seems to accept the vengeance which he takes for the satisfaction owed to him, as the common persuasion of men judges. Thus also plebeians are exempted from restitution of honor, if equal abusive speeches have been made among them; because compensation was immediately present.

Let it be noted: a) through the seeking of pardon every injury of itself is sufficiently repaired, even one brought upon a most noble man; if he is not content with this satisfaction, he can be referred to a judge;

b) nevertheless the judge is not to be approached for obtaining greater satisfaction, unless honor and reputation, which someone needs for the common good or the good of a family, cannot be sufficiently preserved by another way;

c) honor itself is not repaired by the payment of money; nevertheless sometimes a fine to be paid can be imposed, for example, for the poor or for pious causes.

Section C: On Justice and Injustice in Voluntary Commutations or Contracts

S. Th. II-II, q. 61, a. 3.

448. Voluntary commutations are said to occur when someone voluntarily transfers his own thing to another. This can be done in many ways: for he can transfer

either 1° the thing itself simply:

or a) gratuitously, without debt, as in donation and succession,

or b) for the recompense of another equivalent thing, as in buying and selling, to which census and exchange are reduced;

or 2° his own thing as to be recovered, because credited for mere use, namely granting the use of the thing with the debt of recovering the thing:

or a) gratuitously, either in things non-fungible or non-consumable, and then it is a commodatum; or in fungible and consumable things, and then it is a mutuum; or in fruitful things, and then it is usufruct;

or b) not gratuitously, and then it is letting and hiring of things or of works;

or 3° his own thing as to be recovered, not by reason of use but by reason of preservation, as in deposit and sequestration; or by reason of obligation, as in pledge and suretyship, "when someone binds his own thing as a pledge, or when someone gives surety for another."

All these, like many others, are called contracts, whose necessity arises from the social nature itself and the indigence of man.

For since man cannot acquire happiness without the help of others, by that very fact he tends not only to live in society, but also to make agreements with others. Once the division of goods has arisen, not everyone possesses all things; and since human powers are limited, each easily understands that he cannot at the same time devote himself to agriculture and to various arts; indeed, even if he could, it would not be expedient, since by devoting himself to one art he becomes more skilled in it and produces many more and more perfect things: by division of labor, indeed, manufactured things increase immensely. But if he produces things of one kind, he will have more than are necessary to him, and on the other hand he needs many things which by his own labor he cannot produce for himself; whence it is necessary that, by commuting those things which he has more abundantly for those which he does not have, he obtain these things by making agreements with others.

And therefore, since man is not always able to possess, or by his own art to make for himself, all things which are necessary or useful to him, he strives to procure the same from others, namely by exchange, buying and selling, letting and hiring, and other pacts or contracts. Whence the faculty of alienating and contracting is proved from this, that without commerce in things and exchanges men would not receive from the right of dominion all those utilities on account of which precisely it was conceded by nature.

449. General principle to be attended to in contracts. - From what has been said it is understood that contracts more strictly so called, by distinction from a gratuitous act or an act of beneficence, instituted for the common utility of both parties, are ruled by the rule of justice which is prior and superior to every consent of the parties, namely by the law of equivalence between what is given and what is received. This principle rules the whole matter. St. Thomas notes it for the contract of buying and selling, in which the marks of a perfectly bilateral pact are more manifestly verified:

"Buying and selling seems to have been introduced for the common utility of both, namely when one needs the thing of the other, and conversely... But what has been introduced for common utility ought not to be more to the burden of one than of the other; and therefore the contract between them ought to be established according to equality of thing. But the quantity of the thing which comes into man's use is measured according to the price given... And therefore if either the price

exceeds the quantity of the value of the thing, or conversely the thing exceeds the price, the equality of justice is taken away," q. 77, a. 1.

Hence 1) that principle holds concerning all contracts more strictly so called, introduced for the utility of both parties, such as the letting and hiring of merchandise and of works, partnership, exchange, census, also gaming, wagering, stock-exchange speculations, etc.;

2. insofar as someone most freely wills to depart from the said rule of equivalence in favor of another, the contract has the character of gratuitous beneficence or friendship;

3. if equality is injured against someone's will, the contract becomes by that very fact unjust;

4. he who would abuse another's ignorance, or would use fraudulent or violent means, so that the other would renounce the said equality or consent to inequality, by that very fact would sin against justice, making the contract inequitable.

450. Matter to be treated. - St. Thomas does not treat of the nature and species of contract, but supposes these things known from the law and custom of his time, and from the general principles of human acts; but he treats only of two special sins which can be committed in contracts alone, namely fraudulence, which occurs in buying-selling and in similar contracts; and usury, which occurs in mutuum and in similar contracts; because, as he says, "concerning other voluntary commutations there is not found another (new) species of sin which is distinguished from theft and robbery," of which there has already been discussion.

It will be for us to deal with the principal contracts in general and in species; namely:

A. Concerning contracts in general: 1. concerning the notion and division of contract; - 2. concerning the consent required for contract; - 3. concerning the object or matter of contract; - 4. concerning the subject of contract; - 5. concerning the effect or obligation of contract.

B. Concerning unilateral contracts: 1. concerning promise; - 2. concerning donation; - 3. concerning testament; - 4. concerning principles common to donation and testament; - 5. concerning legal succession.

C. Concerning bilateral onerous commutative contracts, namely: 1. concerning buying and selling; - 2. concerning letting and hiring; - 3. concerning the contract of partnership; - 4. concerning census and exchange.

D. Concerning bilateral gratuitous contracts: 1. concerning the contract of credit, or concerning commodatum and mutuum; - 2. concerning deposit and sequestration; - 3. concerning mandate and management of affairs.

E. Concerning aleatory contracts: 1. concerning insurance; - 2. concerning gaming, wagering, and lottery; - 3. concerning stock-exchange speculations.

F. Concerning subsidiary contracts: suretyship, pledge, and mortgage.

Chapter I: On Contracts in General

Question One: On the Notion and Division of Contract

451. Contract in the broader sense means the same as pact (*verdrag*); but in the strict sense it is a species of pact, namely a pact bringing in an obligation for each contracting party. If one party alone is obligated, strictly it will be a mere pact, for example, a gratuitous promise, or a donation, which obligates only the donor; whence it is called an act rather than a contract. Nevertheless in the present treatise we take the word in the more general sense.

And therefore contract is defined: an agreement by which one or more persons obligate themselves toward one or more others to give, to do, or not to do something (a. 1101). It is said:

1. an agreement, for contract is a species of agreement; and an agreement is the consent of two or more into one and the same settled decision. This is the formal cause of contract: mutual consent, so that if the consent or acceptance of one party is lacking, by that very fact the contract does not exist;

2. by which one or more: these are the subject of the agreement;

3. obligate themselves toward one or more: that obligation does not constitute the contract but is the effect of the agreement;

4. to give, to do, or not to do something: this is the object or matter of the contract, that into which they must consent.

Therefore an agreement which leads to an obligation toward another is a contract; but the obligation is understood to be true, and indeed strict, namely one which is derived from commutative justice. Whence from an obligation undertaken a right is transferred, namely a right in a thing, or a right to a thing. Hence contract can also be defined: the consent of two or more concerning a right to be transferred. And therefore:

1° Contract is an agreement between two or more, by which a certain obligation is produced and consequently some right is transferred; this is done either directly by conferral of a right, or indirectly by extinction of an obligation.

2° It depends especially on the deliberate will of the contracting parties, so that a contract does not subsist without the will of the contracting parties, and of itself does not oblige beyond their will.

3° It is as it were a private law which they voluntarily impose upon themselves, from which, as an effect, there arises an obligation or moral bond, by which each contracting party, or at least one of them, binds himself to the moral necessity of paying, doing, or omitting some thing.

4° Whence it necessarily supposes at least two persons, since no one can contract with himself, or confer a right upon another who does not know or does not accept.

5° Of these one, the promisor or proposer (*promettant*; *toezegger*), offers and promises as debtor; the other, the stipulator (*stipulant*; *bedinger, bepaler*), acquires the promise or the right.

452. Elements of contract. - In contract three things are distinguished:

1° The essential or substantial things, without which a contract, or such a contract, can neither be nor be conceived. They are three: a) the consent of the parties concerning some right to be transferred; b) the object about which consent can turn, and indeed the object proper to such a contract, for example, merchandise and money in buying; c) the subject, or persons fit for contracting.

2° Natural things are clauses which from law, custom, or equity are wont to be appended and are tacitly included, and are presumed to be present unless they are excluded by explicit agreement, for example, warranty against eviction or hidden defects in buying and selling (a. 1160).

3° Accidental things are those which can be added, but are not judged to have been added except from a special pact, for example, payment in determined money, or delay of payment beyond the time established by law or custom.

453. Contract is divided in many ways:

A. And principally by reason of effect or obligation:

One is unilateral (*eenzijdig, eenerzijdsch*), which produces an obligation in only one of the contracting parties, as promise and donation (a. 1103); 2) another is bilateral or synallagmatic (*tweezijdig, wederzijdsch*), when it produces obligations in each of the contracting parties (a. 1102), whether immediately, and then it is perfectly bilateral (for example, buying and selling), or in the other party only mediately and occasionally, and then it is imperfectly bilateral (for example, commodatum).

A perfectly bilateral contract in the stricter sense is a contract whose notion is more fully verified in it; there is a twofold species of it: a) a contract of certain event, or commutative contract (*ruilverdrag*), when each is judged to give or receive something equivalent and certain; b) an aleatory contract, or contract of uncertain event (*kans- of toevalsverdrag*), in which the equivalent is uncertain, namely the hope of another thing to be obtained: of making gain or avoiding loss, or when the thing to be rendered depends upon a fortuitous event, or at least the quantity of the thing, as in gaming, insurance, speculations (a. 1104 and 1964).

B. By reason of cause or motive: a) one is gratuitous (*de bienfaisance; weldadigheidsverdrag*), which is made from the intention of doing good, unto the sole favor and utility of one party, when someone hands over a right to another gratis or without his own emolument (a. 1105); b) another is onerous (*à titre onéreux; onder bezwarenden titel*), which is made unto the utility of each party, when each receives some advantage and some burden, as in selling or letting (a. 1106); c) another is mixed, which is partly gratuitous and partly onerous, yet simply onerous, as in the sale of a thing for half its value, or in a donation under an onerous condition.

Every onerous contract is bilateral, since it produces a burden and therefore an obligation in each party; conversely, an imperfectly bilateral contract is not necessarily onerous but of itself is gratuitous, as mutuum, commodatum, deposit: although each party is obligated to something, nevertheless only one receives an advantage.[1]

[1] Others speak in the contrary way: they call only onerous contracts bilateral, and divide unilateral ones into gratuitous and onerous.

C. By reason of mode or form, one is properly so called, explicit or formal, which is entered into by words, writings, signs, or deeds expressly manifesting consent; 2) another is improperly so called,

implicit and virtual, which is entered into by tacit consent by assuming the office of judge, pastor, teacher, etc.: by that very fact implicitly and by force of a quasi-contract the obligation is undertaken of rightly fulfilling the annexed offices.[2]

[2] In French civil law quasi-contract is taken in a diverse sense: it is a contract which the law feigns, a presumed contract (a. 1371), a voluntary and solitary deed of man from which he is obligated toward another, and sometimes two are obligated between themselves. The Code indicates only two species: the deed by which someone voluntarily manages the goods of another, whether the latter knows it or does not know it (a. 1372 sq.), and the deed by which someone knowingly or unknowingly receives from another what is not owed to him (a. 1376 sq.).

Of explicit contracts, a) one is consensual, which is perfected by consent alone (*bij enkel overeenstemming*), and this is simple (*eenvoudig*) if it is contracted without special formality (sale, letting), whether it is written or not written; or solemn (*plechtig*) if it cannot be validly contracted without formalities (matrimony, donation of an immovable thing, testament, mortgage); b) another is real (*zakelijk*), which is perfected not by consent alone but by delivery of the thing, for example, commodatum, mutuum, pledge, deposit.

D. By reason of consent, 1) a contract is absolute or conditioned; 2) it can be pure, to which no special accidental circumstance is added, or qualified, which has annexed to it an accidental quality or modification, for example, a contract to a day, to a demonstration, to a cause, under a mode (a. 1168 sq.). Hence a conditioned contract differs from a modified contract, because a condition suspends the obligation or the resolution of the contract until it is fulfilled; a mode does not suspend, but imposes only the obligation of observing the mode, and if it is not observed the contract nevertheless is not revoked.

E. By reason of denomination, it is 1) named (*benoemd*), which has its proper name in law; or 2) unnamed (*onbenoemd*), which lacks a proper name (a. 1107), such as many bilateral contracts, which then are reduced to four categories: *do ut des, do ut facias, facio ut facias, facio ut des*, or to opposite modes: *do ut non faciam*, etc. Thus, for example, I give a garment so that you may not exact a debt; I do not exact a debt so that you may labor for me.

F. By reason of subsistence, it is principal, which subsists of itself; and accessory or subsidiary, which accedes to another principal contract, depends on it, and strengthens it, for example, pledge, mortgage.

G. Finally, by reason of relation to human law, a contract is naked or clothed according as it is not recognized by civil law or is fortified by its patronage.

454. Human law, especially civil law, rules contracts, and accordingly defines the obligations and rights of the contracting parties, the manner of entering into a contract, their effects, and even the conditions of the act required for firmness and effect, or also for validity. In this last respect human law can touch contracts in five ways:

1. Sometimes it neither prohibits nor approves them, but does not recognize them nor attribute any force to them in the external forum; thus, for example, gaming contracts (a. 1965: a naked contract, not clothed).

2. Sometimes, in order that it may recognize them, it requires special proof, for example, by writing, witnesses, presumptions (a. 1316). Thus, for example, writing is required when a

contract exceeds the value of 1500 fr. (a. 1341 modified by the Belgian law of 21 Apr. 1938): in sale (a. 1582), in letting (a. 1715), in settlement (a. 2044).

3. Sometimes a contract is not declared null through itself since it is not annulled by law, but it is decreed that it can be annulled, for example by a judge, and then it becomes invalid (even in the forum of conscience) from the moment of the sentence; for example, sometimes the contract of minors.

In French law it is called rescindable (*rescindable; verbreekbaar*), revocable (*révocable; herroepelijk*), or even null (*nul*) without addition.

4. Sometimes it is declared invalid by the law itself. Namely, when conditions simply required for validity are lacking, it is invalid from law; but that law must be applied by the sentence of a judge; whence it remains valid before the sentence, but after the sentence it is invalid (even in the forum of conscience), not indeed from the moment of the sentence, but it is judged never to have been posited.

Then in law it is called null from law (*nul de droit, nul de plein droit*) or simply null (*simplement nul; ongeldig*).

5. Finally it is altogether invalid (and in the forum of conscience) even before the sentence of a judge. Namely, when conditions essential to the nature, object, or existence of the act, and thus altogether required for its validity, are lacking, so that without them it could not even be conceived. The public good then demands that it be held null even before the intervention of a judge. Then in law it is called null by the fact itself (*nul par le fait même*), radically null (*radicalement nul*), nonexistent (*non avenu; nietig, onbestaande*); for example, a contract concerning an illicit thing (a. 1131 and 1133). But if the matter is doubtful, the sentence of a judge is to be awaited.

455. For a contract there is required (a. 1108): legitimate consent, - a capable subject or fit person, - apt matter, - a licit cause or legitimate reason in the obligation, which nevertheless is to be understood as objective and proximate, or the end of the work by which the contracting party is immediately moved to undertake the obligation. Hence we shall speak of three things: of consent, of subject, of object or matter of contract; when these have been given, a fourth follows, namely the obligation, which is the effect of contract.

Question Two: On Consent Required for Contract

456. The conditions required on the part of consent for contract are three, namely that consent be internal, externally manifested, and mutual:

1° Internal, namely true, deliberate, and free, because consent is an act of deliberate will, i.e., posited with that advertence of intellect and liberty of will which are required for a perfectly human act (as mortal sin is), with the intention of obligating oneself. Therefore there is excluded:

a) fictitious consent, which in reality is null; likewise consent given jokingly, or merely presumed;

b) indeliberate consent, which is not a truly human act, for example, consent given by a madman, a drunk man, one hypnotized, or a half-wit;

c) coerced consent, extorted by force or fear.

For contract is a consent of wills by which a moral obligation is undertaken and a right is transferred. But no consent of the will is given if it is not internal: for a moral obligation cannot be undertaken nor a right transferred except by a free intention or human act.

Hence 1) he who fictitiously consents, although externally he may seem seriously to pronounce words, in the external forum is presumed to have truly consented; but in reality he does not perfect a contract nor contract an obligation. Nevertheless he is bound from justice to repair the injustice inflicted on another, and if it cannot be repaired otherwise, he is even bound to fulfill what he fictitiously promised;

2. he who enters a contract with the intention of obligating himself contracts validly and is obligated, even if he has a positive will of not fulfilling, because between the two intentions there does not exist a contradiction; unless, however, he externally manifested the intention of not fulfilling, for example, "I promise the watch, but you will never have it": for this would be a sign that he does not wish to contract seriously;

3. but he who has two truly contradictory intentions, for example, of contracting and yet of not obligating himself, makes no contract;

4. yet he who intends to enter a contract as it is usually done, without having distinct knowledge of the obligation, contracts validly, because he implicitly consents to the obligation.

2° External, i.e., manifested to the other by a sign by which the internal consent becomes known to him; otherwise he is not able to know the consent. Therefore there is required a) consent expressed by sensible signs, b) communicated to the other party by at least one, so that it is manifested from the will of one for this purpose, that it may become known to the other; otherwise the consent will be held as a mere intention. Whence the manifestation of consent must be made to the other party either by the contracting party himself, or by another deputed for this; therefore it would not suffice that Peter told Paul that he wished to sell a horse to John, although John, warned by Paul, accepted the sale.

For expressing consent any external sign suitable for this suffices, by which the mind is clearly manifested; nor are words necessarily required for this; indeed silence can suffice, if from the adjuncts assent is sufficiently evident, which easily happens in gratuitous contracts as in donation, because in favorable matters silence can be held as acceptance; not so in onerous ones.

3° Mutual or reciprocal, rendered by each contracting party concerning the same object, i.e., given by one and at least implicitly accepted by the other. Namely, it is necessary that one consent to the obligation, and the other accept the consent, because before acceptance there is not had an agreement of several into the same thing. For one cannot by his own will acquire a right for another and oblige him to himself, unless he himself wills and consents.

Hence consent in some way must be simultaneous, not indeed elicited simultaneously at the same time, but existing together, insofar as the consent of one virtually or morally perseveres, not revoked, when the other expresses his consent. Whence a contract between absent persons can be perfected through a procurator or letters, or by the help of telegraph and telephone.

457. Corollaries. - From this it is easily understood:

1. That he who has offered a thing can withdraw from the offer, so long as it has not been accepted by the other; for a mere offer does not bind, except after it has been accepted;

2. likewise, that he can determine the time within which the other must consent (for example, by letter), so that, the time elapsed, the consent is withdrawn, since he now wills that it not persevere;

3. that consent, if no time has been fixed beforehand, is judged to persevere until it is revoked, or according to what law or custom shall have established;

4. that a unilateral contract of itself is perfected as soon as acceptance is manifested by an external sign, even if it has not yet been communicated and made known to the one offering, because now the consent of wills is had; - unless per accidens from positive law the communicated acceptance is required, as in solemn donation;

5. conversely, in a bilateral contract, connaturally and of itself, there is required mutual consent mutually communicated: for an obligation is not contracted nor a right yielded unless it is communicated to another; therefore where the obligation is mutual it must mutually be communicated and become known. For just as the consent of the one offering does not oblige him unless it becomes known to the other contracting party, so the consent of the one accepting does not oblige him unless it is known to the one offering; because in a bilateral contract the one accepting also offers. Whence so long as the one offering has not known the consent, he can still withdraw the offer; yet per accidens it can be established by law or by the will of the contracting parties that the contract has force from the moment of acceptance.

458. Error and deceit are opposed to deliberation of the intellect. - Error is a false judgment; speculatively it differs from ignorance, which is the mere lack of due knowledge, but practically in the present question they are equivalent, for as to effect in contracts the same thing must be said concerning each. Error is distinguished in many ways:

A. One is antecedent, if it is the cause of the contract; another is merely concomitant or incidental, which is not the cause of the contract.

B. It is substantial, or accidental:

1. Substantial error turns about the substance of the contract, i.e., about that to which consent is principally borne, whether a) about the nature or species of contract, for example, if you take letting or commodatum for sale; or b) about the substance of the thing or object, for example, gold for copper, a gem for glass, a horse for an ox, wine for oil; or c) about the primary final motive, which is principally intended; or d) about a substantial quality (which redounds into

the substance), to which consent is bound, so that it is a condition without which not and limiting the consent, for example, if someone buys new wine for old, an aged mare in place of a younger one for breeding, and intends: I buy if it is so, and I do not buy unless it is old, or younger.

2. Accidental error turns about the accessories of the contract, namely a) about the secondary or impelling motive, or b) about an accidental quality to which consent is not bound. Yet this can be the motive of the contract, if it is entered into because of that quality, without that quality itself being a condition without which not of the consent; and then it is the cause of the contract, i.e., it moves to the contract, but is not principally intended, but secondarily: for example, if someone buys a horse because he thinks it is white, or wine because he judges it to be Bordeaux, without saying: I do not buy unless it is white or Bordeaux. Then the error is antecedent; but if in no way it is the cause of the contract, it is merely concomitant.

C. It is proper to the one erring and caused by no one else, and then it is simply error; or induced by another, and then it is called deceit.

459. Principles concerning a contract entered into with error. -

1. Substantial error, even merely concomitant, renders a contract invalid, because in the case the one erring does not furnish consent concerning the thing about which the contract is (a. 1110). Whence if you buy oil for wine, the contract does not have force, even if, knowing that it was oil, you would have bought it.

2. Accidental error which is not the cause of the contract, or is merely concomitant, does not render it invalid, because it has no influence on the contract.

3. Antecedent accidental error, i.e., one which in fact gives cause to the contract, renders at least in the forum of conscience a gratuitous contract invalid: for this demands a greater fullness of the voluntary, and the common good does not prevent it from being easily rescinded. Thus, for example, a donation made to someone because he is thought to be poor, or a blood relative.

Yet in practice attention must also be given to the disposition of the contracting party; for example, someone bestows a small alms on a poor man because he thinks him sober and pious and otherwise would not bestow it; yet after the fact, generally, he does not wish the donation to be void, even if the poor man is impious and drunken.

4. Accidental error which gives cause to a contract does not invalidate an onerous contract. The reason is that in an onerous contract, since favors and burdens are mutual, because of the accidental error of one, the other ought not to suffer damage; - and besides, the common good demands this, the security of commerce: for since these contracts are most frequent, if because of accidental error they could be rescinded, the whole order would be overturned and lawsuits would be multiplied unto infinity.

Many add, however: for the forum of conscience, if the matter is still intact, the deceived party is not bound to fulfill the contract, provided he renders the other party unharmed, because the tacit mind of

the contracting parties is not to oblige themselves to execute the contract if they have been deceived. But this reason does not hold, because contracting parties, on account of the necessity of the common good and the security of commerce, are judged to will to consent and to renounce rescission of the contract, if only accidental errors are present, which all cannot be attended to. Besides, so it is in the external forum.

Hence: a) Error concerning quality of itself is accidental, unless the quality is intended as a condition without which not, to which consent is bound.

He who buys a red horse because he thinks it white buys validly, unless he has said: I do not buy unless it is white; conversely, a priest buying blue cloth for a cassock, which he thinks black, makes the purchase null.

b) Error concerning person of itself is substantial in gratuitous contracts, in which principally the person is attended to upon whom the benefice is conferred, and besides a greater liberty is required.

I say: of itself, because in fact the will of the one gratuitously conferring must also be attended to, especially in things of lesser moment, in small alms, in which often they intend to give absolutely, or at least do not wish restitution to be made. Conversely, in onerous contracts error concerning the person is generally accidental, for example, if you buy a book from Peter thinking it is from Paul: for then principally one's own advantage to be received from the contract is attended to; unless the person is a substantial quality, as in the purchase of a painting made by a famous painter. A fortiori the error will be substantial in matrimony, in which the person is the very matter of the contract (a. 1110).

c) Error concerning the impelling motive of the contract is accidental; conversely, if it is about the final motive, it is substantial.

Thus if someone buys a horse, falsely thinking that his own has died, the contract has force; conversely if he buys under the condition that it has died.

460. Principles concerning a contract entered into with deceit. - Deceit is a saying or deed employed to deceive another, which can be done by craftiness, frauds, machinations, fallacies, whether positively by lying, or negatively by being silent or concealing a hidden defect which ought to be revealed. Whence it is an action or omission posited so that the other may be induced into error. And therefore it includes error, and adds the injury of deception which lessens liberty; for if the other, detecting the fallacy, is not deceived, and nevertheless contracts, consent is in no way vitiated. Now:

1° Substantial deceit in the same way as error invalidates the contract, and moreover obliges one to repair the damage unjustly inflicted on the deceived party, for example, one selling worn garments as new.

2° Accidental deceit which is not the cause of the contract does not render it invalid.

3° Accidental deceit which is the cause of a gratuitous contract invalidates it.

4° Accidental deceit which is the cause of a dissoluble onerous contract, and is employed by the other contracting party, does not render the contract invalid, because it does not take away voluntary

consent; but it makes it rescindable at the will of the deceived party (a. 1116-1117), because fraud ought to patronize no one.

5° Accidental deceit employed by a third party does not make the contract rescindable, unless the contracting party was a participant in the deceit; nevertheless the deceiver is obliged to repair the damage unjustly caused.

461. Violence and fear are opposed to liberty. - Physical and absolute violence, which the subject is compelled to undergo and which he wholly resists, since it renders the act altogether involuntary, renders the contract null; but it is a quasi-metaphysical case, that someone's hand be physically forced to sign a contract against his will. But if the violence is not absolute and perfect, then it is reduced to fear or moral violence. Now fear is a trepidation of mind by reason of an impending or future evil or danger. Rarely and per accidens does it so disturb the mind that it removes the use of reason; but of itself and ordinarily it does not impede.

Fear a) can be grave, absolutely or relatively, if grave damage (absolutely or relatively) and imminent is feared; or light, if only light damage is feared, or grave but not imminent;

b) can be from a necessary natural cause; or from a free cause, and then it is either justly inflicted, or on the contrary unjustly inflicted; moreover it is inflicted to extort consent or not to extort it, whether by the other party or by a third party. It makes no difference whether he who inflicts fear threatens evil to the contracting party himself or to a person closely joined to the contracting party (a. 1113).

462. Principles concerning a contract entered into with fear. -

1. Any fear whatever so disturbing the use of reason that it excuses from grave fault invalidates the contract, because it destroys consent.

2. Fear that is not unjust renders the contract neither invalid nor rescindable, unless it takes away the use of reason. A donation of money made in a fire or shipwreck to another so that he may free the donor from danger has force, or one made from fear of penalty lest the other bring the offense before a judge.

3. Grave fear unjustly inflicted, whether by a third party to extort consent or by the other contracting party for any reason, invalidates gratuitous contracts, because more perfect liberty is required for them. Thus if a son threatens his father so that he may give money.

4. Grave fear unjustly inflicted, whether by the other contracting party, or by a third party but to extort consent, does not render an onerous contract invalid, because consent remains free, but it renders it rescindable, because the consent is the fruit of injustice (a. 1109, 1111, and 1117); yet from the law of nature it seems to invalidate an indissoluble contract which binds one's whole life, such as matrimony and solemn religious profession.

Hence the purchase of a sword from fear of an enemy has force, and a promise of money made with a view to protection against an enemy; conversely, the sale of a horse from a threat of death, or a promise made to a calumniator so that he may abstain from defamation, can be rescinded.

5. Light fear in the external forum does not rescind a contract, because it is not judged to have been the cause of the contract (a. 1114); but in the internal forum, if light fear unjustly inflicted to extort consent was the sole cause of the contract, it probably renders gratuitous contracts invalid, onerous ones rescindable.

463. Observations. - 1° In civil law error, deceit, and fear must be strictly proved before a contract is annulled. Whence they give place only to rescission (a. 1117).

2° From positive law certain acts or contracts which from natural law are valid or rescindable can be invalid.

3° Briefly, the Code of Law, can. 104: "Error renders an act invalid if it turns about that which constitutes the substance of the act, or falls upon a condition without which not; otherwise it has force unless something else is provided by law; but in contracts error can give place to a rescissory action according to the norm of law."

Can. 103: "1. Acts which a person, whether physical or moral, posits from extrinsic force which he cannot resist, are held as not done.

2. Acts posited from grave and unjustly inflicted fear, or from deceit, have force, unless something else is provided by law; but they can... be rescinded by the sentence of a judge, whether at the petition of the injured party or ex officio" (cf. can. 1684-1689).

Question Three: On the Object or Matter of Contract

464. Conditions required for contract on the part of matter. - The matter of contract generally is the object of a right, i.e., everything, whether a thing, or an action, or an omission (a. 1126), into which a right in a thing or a right to a thing can be acquired, or everything which can be given, done, or omitted by man; in species the matter must be:

1. Possible, for no one can oblige himself to the impossible, for example, to migrating to the moon or to avoiding all fortuitous things; whence:

a) If the matter is impossible relatively to the contracting parties, the contract is null;

b) if it is partly possible, partly impossible, and the matter is indivisible in itself or in the intention of the contracting parties, the contract is null; conversely, if it is divisible in itself and in the intention of the contracting parties, it is valid as to the possible part;

c) if the matter is morally impossible, the contract of itself has force, but no one is judged to will to oblige himself, unless he has said so explicitly;

d) if from an unforeseen circumstance it becomes impossible for the contracting party, the contract remains valid if he is able to furnish the same thing through another without grave inconvenience;

e) if the contracting party by his own fault has rendered it impossible, he is bound to repair the damage inflicted upon the other contracting party; otherwise, if he was altogether inculpable.

2. Existing in reality or in hope, i.e., at least certainly or probably going to exist in the future, for example, fruits not yet mature in a field, gain hoped for from such commerce. For the hope of a

future good, or the thing hoped for, is estimable by price (a. 1130).

Conversely, a contract cannot bear upon something which neither is nor will be, which is nothing; for dominion cannot be transferred nor a right acquired into a thing which does not exist and never will exist. Thus a contract concerning a burned thing is invalid (a. 1601).

But if the matter exists according to one part and according to another does not exist, it is in the judgment of the buyer either to rescind the contract or to stand by the contract while requiring a diminution for the destroyed part; this is to be understood if the destroyed part is notable (a. 1636-38).

3° In some way estimable by price, i.e., useful for human uses and furnishing value. Hence a) it must not be of no price: for a thing of no price cannot be the object of a benefit or a burden, and therefore a contract concerning it, whether gratuitous or onerous, is null; b) nor may it exceed every temporal price, or be a merely spiritual thing, in those contracts in which commutation is made with a thing estimable by a temporal price: for this is simony; but nothing prevents donating a spiritual thing or commuting it with another spiritual thing, unless however it is prohibited by the Church.

But a temporal thing can be annexed to a spiritual thing, whether antecedently, when the temporal thing is prior in the order of nature, for example, a church, chalice, sacred ornaments; or concomitantly, when one cannot exist without the other, either per se, as the labor to be undergone in the celebration of Mass or the administration of a sacrament, or per accidens, as greater labor because of a later hour or a longer journey; or consequently, when the spiritual thing is prior in the order of nature, for example, an ecclesiastical benefice. Now concerning the first thing a contract has force, provided the price is not increased because of the spiritual thing; concerning the third it does not have force, because the temporal thing necessarily depends upon the spiritual; concerning the second it does not have force if the temporal thing is annexed per se, it has force if only per accidens.

4° Placed in commerce (a. 1128), i.e., subject to alienation and acquisition.

Whence there are excluded a) things which cannot be occupied, as air, the ocean, etc.; b) things which pertain to public dominion, as public roads, public offices and duties.

5° Determined at least according to species, and at least determinable according to quantity; otherwise the contract would be uncertain and illusory (a. 1129).

Quantity is sometimes defined mathematically, for example, if ten pounds of coffee are sold; sometimes morally, for example, if wheat necessary for the sustenance of someone's family for a whole year must be furnished; indeed it can be uncertain here and now, provided it is determinable, for example, the whole heap of stones or wood which is present.

6° Proper to the contracting party: for no one can transfer to another a right which he himself in no way has, neither in reality nor in hope, neither in the present nor in the future; hence a sale or legacy concerning another's thing is null (a. 1599 and 1021). But future things which are held in hope can be the object of a contract (a. 1130); nevertheless positive laws generally invalidate a contract concerning an inheritance which is expected from a person still surviving, even one entered into with his consent, namely to impede the death of this person from being desired or procured[1] (a. 1130 and 1600).

[1] An exception, however, is made for a matrimonial contract: for a contract can be made concerning future succession in favor of the spouse or of children who are born (a. 1082). And by contract it can be determined whether future successions will constitute part of the community (a. 1526).

Hence a) generally each can promise only what must be furnished by himself, but not what must be furnished by a third party (a. 1119);

b) nevertheless he can constitute himself as a kind of pledge of another's deed, and promise not only that he will take care of it, but that he will bring it about that the third party actually consent; yet so that, if the third party does not consent, he renders the other contracting party unharmed (a. 1120);

c) he can stipulate unto the grace or favor of another (a. 1121).

7° Not yet owed to another from strict justice (a. 1021 and 1599): otherwise it is not his own. Thus a judge cannot enter a contract for receiving something for a just sentence which he is bound to render from office, since he obliges himself to nothing new.

Conversely a) a contract concerning a thing owed from another virtue, for example, charity or gratitude, although it can be illicit, is nevertheless valid, because thus someone obliges himself to something new, namely to doing it from a stricter obligation. Whence a physician who from charity must furnish care gratis to some poor man can validly agree with him concerning a fee to be received;

b) indeed nothing prevents a contract concerning a thing owed by you to another from justice from being made again with a third party to whom nothing is owed from justice. Thus one hired by Peter to carry a message to Rome can again for the same journey require a salary from Paul, whose business he will accomplish at the same time.

8° Honorable and licit, i.e., prohibited by no law, even apart from the contract, so that it is honorable in itself: for no one can oblige himself to something evil, nor demand that an illicit thing be done.

Yet the contract has force if the matter is dishonorable only because of the intention of the contracting party (for example, the purchase of a sword for killing), or because of the prohibition of the contract (for example, matrimony entered into against betrothals): for then the matter is not dishonorable in itself.

465. Concerning a base contract it is asked: whether after fulfillment of the base work it becomes valid, so that the other party now must furnish his own part? - It is answered: three things must be well distinguished:

1. an illicit contract, for example, a prodigal donation;

2. a contract under an illicit condition, for example, I will give you 1,000 fr. if you kill my enemy;

3. a contract from an illicit cause or concerning an illicit thing, for example, I give you 1,000 fr. that you may kill; or if it is entered into mutually: I promise you 1,000 fr. for killing, I promise you killing for 1,000 fr.

Now:

The first contract is valid, because it is not concerning an illicit thing.

The second contract is concerning a licit thing to be furnished, namely concerning payment of the price, but it is entered into under a suspensive condition; and therefore before the fulfillment of the condition, namely of the evil work, it is invalid; after the fulfillment of the evil work, it is valid. This in no way is special to such a contract, but common to every contract entered into under a suspensive condition. Sometimes, however, by civil law it is declared null (a. 1172), but in the sense that it is rescindable, and therefore it is not null before the sentence of a judge; but in gratuitous contracts such a condition is judged not to have been added (a. 900).

The third contract is invalid, even before the sentence of a judge, as one entered into concerning an illicit thing and from a base cause alone (a. 1131). Whence a) before the evil work has been perpetrated, neither is bound to fulfill the contract, but each is bound to withdraw from it. And if the price for the base work has already been paid, it will have to be restored, because a title for keeping it is lacking. For a base work cannot be the object of an obligation, and before the work is fulfilled there is no title in the one receiving the price except an obligation undertaken of positing the base work.

b) But if the contract is concerning an evil work to be furnished by each party, for example, I promise adultery for killing, - I promise homicide for adultery, no obligation will ever be able to be present, even if one has perpetrated his work, because there will never be any obligation to do evil.

c) But if the contract is concerning an evil work to be furnished for a temporal price, certain moderns judge that even after the evil work has been perpetrated there is no obligation of paying the price, under the pretext that by the course of time a contract is not made firm which, as invalid, does not exist from the beginning; and besides that the common good demands the perfect nullity of contracts concerning an illicit thing. - Yet with the great doctors[2] it seems that one must altogether affirm: after the evil work has been perpetrated, of itself there is an obligation of paying the price, which the other can exact and retain.

[2] St. Thomas II-II, q. 32, a. 7; q. 62, a. 5, ad 2; q. 87, a. 2, ad 2; IV Sent., d. 15, q. 2, a. 4, qc. 2; St. Bonaventure; St. Antoninus; St. Alphonsus, Th. M. III, n. 712.

The reason is 1. because in the third immoral and null contract by which someone promises a base thing, there is always implicitly included another unnamed contract, namely the second: concerning an honorable thing under a base condition: *do ut facias*, which obtains force after the work has followed, as was shown above. In reality, although that work is illicit and to be omitted, nevertheless from the estimation of the contracting parties it brings danger and burden, which are estimable by price, and the estimation of this sort of danger is not intrinsically evil and can be the matter of an unnamed contract: *do ut facias*. When then the other has undergone the danger, the price must be paid for the danger or burden, unless perhaps: a) the price is altogether prodigal, which would have to be reduced; or b) by some positive law the executor is deprived of the price of the crime; but such a disposition, as an infliction of penalty, has no force except after the sentence of a judge.

And therefore the will of one remains to remunerate the other if he furnishes the work; whence once the work has been furnished, by that very fact the contract, or consent of wills, is perfected. And therefore the obligation does not arise from a null contract; but on the occasion of this, from another valid contract.

2. From the inconveniences which are derived from the opposite opinion: otherwise, for example, a young man who deflowered a girl under promise of matrimony would not be obliged to take

her in matrimony, nor would the price have to be paid for an illicit work of a Sunday; which no one admits. - They respond: the young man is bound from the damage, because the girl cannot enter another favorable marriage. - This indeed is a just title, but more seems to be required; otherwise the rich would offer money and thus the girl could marry in a favorable marriage. Hence even if such a title of damage to be compensated by money does not exist, nevertheless justice always obliges one to marry because of the promise, and so public estimation judges.

Therefore the object is licit: payment of an indifferent thing; - the cause is the deed, not as base but as estimable by price; - the consequences are not evil, for, the delict having already been done, it can no longer be said that the law favors it; but if hope of benefit should move one to perpetrate crime, hope of paying nothing would move one to persuade another to a delict and to deceive simple persons; and thus favor would be granted to him who is more guilty.[3]

[3] Vermeersch, *Quaestiones de Iustitia*, n. 294.

466. Practical corollaries. - From this the following are deduced:

1. He who has completed a base work can exact and retain the agreed price, as is besides certain for prostitutes from the response of the Sacred Penitentiary, 22 Apr. 1822; and for a superstitious office from the response of the Holy Office, 14 Jan. 1846.

2. Nevertheless the other can approach a judge and petition for annulment of the obligation, other damages being compensated if they were present; although it seems less honorable. Besides, he can easily be restrained from this by the danger of infamy.

3. He who without any pact has received gifts which, the circumstances considered, are given to this end, that the donee be induced to an evil work, is not bound to restore them, although it is to be counseled; but from strict justice he can keep them, because they were given absolutely without obligation.

Question Four: On the Subject of Contract

467. Conditions required for contract on the part of the subject. - If only natural law is considered, all and only those who have the use of reason validly contract, whether physical persons, or also moral persons legitimately constituted: for for a valid contract on the part of the subject nothing else is required except deliberate and free consent by which a right can be transferred and an obligation undertaken. Whence those altogether incapable of contracting are: a) infants and children who have not yet attained the use of reason, but not minors under puberty who already enjoy sufficient use of reason; b) the perpetually insane; c) the drunken, the furious, and the perfectly hypnotized, at the time when they are not masters of their mind; - but less capable are all half-wits and all others who enjoy some, but not full, use of reason, for whom accordingly it is fitting that they not be able to contract without a curator who furnishes them counsel and assistance.

But by positive law those are capable of contracting who are naturally capable and are not declared incapable by law (a. 1123): human law can, for the common good, limit the right of private persons and to that end weaken contracts, so that spiritual or temporal damage may be excluded from persons specially to be protected, and provision may be made for the peace of families and the honesty of morals. Thus a) by ecclesiastical law certain persons can be incapable for certain contracts,

as religious, concerning whom there is discussion in Canon Law; - b) by civil law, but variously for various nations, generally minors, interdicted persons, and, in many laws still, wives in certain cases determined by law are more or less incapable; and especially those to whom certain contracts are prohibited (a. 1124), just as also moral persons in whom the faculty of contracting is wont to be restricted.

468. Dispositions of positive law. - I. Minors either are not emancipated, and then they are under paternal power or under guardianship; or they are emancipated, and then they are under curatorship.

A. Minors not yet emancipated are under paternal power when they are deprived neither of legitimate father nor mother; those are under ordinary guardianship[1] who are deprived of at least one legitimate parent: ordinary guardianship is an office imposed by law, commanding or permitting, upon someone for gratuitously administering the person and goods of a minor.

[1] A twofold guardianship is distinguished in law: officious guardianship is an obligation spontaneously undertaken of educating a minor and administering his person and goods. This guardianship can exist while father and mother are living; nevertheless their consent is required (a. 361).

In French and Belgian law this guardianship is a) either legal, when it is deferred by the law itself: when one parent has died, guardianship is deferred by full right to the survivor (a. 390); yet the mother can renounce guardianship (a. 394), - which is not conceded to the father, - and if she enters a new matrimony, she loses guardianship, unless she convokes the family council, which will decree whether guardianship is to remain with her (a. 395); but if she keeps it, the husband is by the fact itself co-tutor (a. 396). If father and mother are lacking, and the last survivor has not designated a tutor, guardianship by full right is deferred to the nearest ascendant (a. 402); but if there are several of the same degree, one is to be designated by the family council (404).

b) Or testamentary, which is deferred by the surviving father or mother, legitimately enjoying paternal authority, to someone to be exercised after the death of the one deferring (a. 397), by testament or by an act before a notary (398 and 392).

c) Or dative or nominative, which is deferred to someone by the family council when legal or testamentary guardianship is lacking (a. 405 sq.): only one tutor can be named.

In every guardianship a substitute tutor must be designated (a. 420), whose office is to defend the minor, if there is need, against the administration of the tutor whenever the advantages of the tutor and of the pupil come into conflict.

Minors constituted under the power of father or tutor can do nothing in their own name, even with the consent of the tutor, but in all pacts they are subject to the father or tutor, who acts in their name and administers their goods as a good father of a family. - But the tutor 1) can accomplish acts of mere administration alone, for example, letting, sale of goods which the family council has decreed are to be sold, reception of revenues, payment of debts (450 sq.); 2) but acts of greater moment only with the concurrence of the family council acceding, for example, to accept succession even under the benefit of inventory (a. 461); 3) or of the tribunal, for example, to take a loan, or to constitute a mortgage, alienate immovables, carry out partition of goods or settlement (a. 457-458; 466-467); indeed 4) he is altogether prohibited from carrying out certain acts, for example, buying the goods of the pupil and accepting cession of a right or credit against his pupil (a. 450).

In certain laws, however, minors are permitted to receive goods without obligation (in Austrian, Swiss, German, English law); or to deposit their own monies in the public savings bank, or to be able to let their works in a certain manner.

B. Emancipated minors, who, exempt from the power of father or the authority of tutor, have the right of governing themselves and administering their goods, are constituted under curatorship.

They act in their own name, and can enter into certain contracts of mere administration (a. 481), but in matters of greater moment they need the assistance of the curator, the family council, or the judge, according to the various prescriptions of law (a. 482-484). - But if, with the consent of parents or of the family council, they assume the office of merchant, they are able alone to carry out all things which pertain to business, except the alienation of immovables (a. 487).

Now: 1) Acts entered into by minors with all prescribed legal forms are valid and firm.

2. Acts done without the common form required, i.e., without the assistance of tutor or curator, are valid, but rescindable, provided it is certain that the minor has been injured, but from the contract (a. 1305), not however from a fortuitous case (a. 1306) or from his delict or quasi-delict (a. 1310).

3. Acts done without the special formalities required, such as the consent of the family council or tribunal, are rescindable even independently of injury, but only at the will of the minor and of those having his cause.

But if after majority they have been confirmed, they cannot be rescinded (a. 1311). Ten years after majority, however, are conceded for petitioning rescission.[2]

[2] In Italy and Lusitania, five years are given.

In Italian, Austrian, Spanish, and German law, the minor alone, with certain exceptions indicated above, can contract no civil obligation; whence he can rescind contracts, even if he has not been injured.

In German law, they are also rescindable by the other contracting party, if he was ignorant of the defect of consent or minority (a. 108).

II. Interdicted persons. - Interdiction (*ontzegging*) is a sentence of a judge by which someone is declared incapable of ruling his own person and administering his goods. One is judicial, which is pronounced on account of the habitual state of weakness or insanity, even lucid intervals being supposed (a. 489), against an adult or even against a minor; another is legal, by which, during the punishment of those condemned to death or to forced labor, and sometimes to temporary detention or reclusion, they are deprived of the ability of contracting (a. 20-24 and 29 C. Poen. belg.).

Those judicially interdicted are constituted under a tutor. This guardianship is carried on in the same way as the guardianship of minors (a. 509). When the cause of interdiction ceases, the interdiction also ceases, yet not by full right but by the sentence of a judge with the same solemnities with which it was declared.

Now: 1) All contracts of interdicted persons are at least rescindable (a. 502), and a declaration of nullity can still be petitioned for ten years after the cessation of the interdiction (a. 1304), by the

interdicted persons themselves or their heirs and those having their cause.

2. Contracts entered into before interdiction are valid, but rescindable by sentence of a judge if the cause of interdiction had already manifestly existed (a. 503).

3. Contracts of a demented person already dead cannot be rescinded, unless before his death interdiction had been petitioned, or dementia is gathered from the contract itself, or the matter concerns a purely gratuitous contract, namely donation or testament (a. 504 and 901).

Similar to interdicted persons are those who juridically are subjected to a judicial council. They are those who either because of a cause of the same kind as that which provokes interdiction, but not grave enough for pronouncing it (a. 499), or because of prodigality, are ruled in the administration of their goods by a judicially designated council (a. 513); in other words, they are half-wits or prodigals who cannot prudently manage their goods.

Contracts entered into before the said subjection cannot be rescinded, in any case. During the time of subjection, the capacity of contracting is restricted: under the authority of the judicial council fall lawsuits, settlements, taking a loan, receiving credits, alienating goods, pledging them and subjecting them to mortgage: namely, these contracts have no force without the assistance of the aforesaid judicial council; and if nevertheless they are entered into, they are rescindable; but other contracts have force.

III. Wives, without the consent of the husband, certainly cannot dispose of goods of which the husband has the usufruct or administration; but:

1. Generally they have perfect liberty of disposing of goods, if they have any, that are paraphernal or separate.

2. In any regime whatever, even of community of goods, a) if with the consent of the husband or tribunal they exercise separate public commerce, they can validly oblige themselves, without special consent of the husband, in those things which pertain to their commerce, so that, if there is community, the husband can now be obligated (a. 220; C. Com., a. 9-11); b) likewise wives can be obligated by reason of delict or quasi-delict (a. 216 and 1424); c) likewise by reason of domestic expenses for the sustenance of the family, because of the presumed consent of the husband, unless the contrary is certain; d) finally they can make a testament (a. 226).

3. Outside these cases, in French, Belgian, Dutch, Spanish, Lusitanian law, etc., wives labor under a certain general incapacity of contracting without the consent of the husband; whence without the special consent of the husband they cannot donate their goods inter vivos (by solemn donation), or pledge or subject them to mortgage, or alienate immovables under any regime whatever, or even accept donations or successions. - But when they are judicially separated from bed, by Belgian and French law they now have full liberty and marital authority is suspended.

Contracts entered into by a wife against the aforesaid dispositions are rescindable at the will of the husband, of the wife herself, and of their heirs, and indeed for ten years, even without injury; - unless however they have been confirmed by the wife, with the husband consenting (a. 225).

In Austrian, Swiss, Italian, German, and English law, there is now no special incapacity of wives for contracting; but if they dispose of goods of which the husband has administration or usufruct, the act can be invalid or weakened by reason of matter, because they dispose of a thing not their own, but it will not be weakened by reason of the subject, because the contracting party is incapable.

IV. Moral persons or societies which have obtained juridical capacity, especially institutes of public utility, often have a restricted capacity of contracting: for these are considered as minor persons, and therefore for acting they often need special permission of the competent authority; but other societies also cannot enter contracts except according to the prescriptions of law. Therefore, so that their acts can be valid or firm, at least in the external forum, they must be entered into according to the special formalities prescribed by law.

469. Moral principles concerning the obligation of contracts entered into by minors, interdicted persons, and wives.

I. Contracts of minors, interdicted persons, and wives, rescindable from privilege, can also be rescinded in conscience, even if they have promised the contrary, since that promise is invalid, opposed to the common good and to law; - provided they were entered into without fraud or another unjust means.

For since the law has been made for the common good unto their special protection, they can also use the benefit of the law; from another side those who contract with them ought to impute to themselves the damage inflicted, since they are warned by law not to make agreements with these except under legally defined conditions.

II. Those who in bad faith have used frauds or other unjust means in contracting cannot in conscience pursue rescission.

For the intention of the legislator is to protect the weak, not to patronize their frauds. Thus, for example, minors pretending (not simply affirming) that they are capable.

III. When the contract has been dissolved, those who contracted without fraud are bound to restore nothing, unless the thing still exists in itself or in an equivalent, so that they have been made richer.

Then they are bound not from a null contract, but from another title, namely by reason of the thing accepted. For the legislator does not intend that a minor or wife become richer, but that he or she be preserved unharmed.

IV. He who has deceived by fraud or has damaged by an unjust means, even when the contract has been dissolved, is bound to compensate the damage unjustly inflicted.

Then he is bound by another title besides the contract, namely by reason of unjust acceptance.

Hence the following resolutions are understood:

1° A minor, already of mature disposition, who falsely pretends to be of age and borrows money, ought to return it because he contracts fictitiously; likewise he ought to pay who for the sake of studies is away from the paternal home and procures those things which are necessary to him for honorable sustenance, because thus he acts by mandate of the father.

2° A wife who buys or borrows money to provide for the necessities of herself and her family ought to return it, because she is judged to act by mandate of the husband.

3° A minor son who has contracted many debts and squandered the money accepted is bound from justice to pay nothing, - nor are the parents bound to anything, - provided the son has employed no fraud toward the creditors, nor has been made richer from the debts.

4° A minor son who has borrowed 10,000 fr. from a very wealthy Jew, promising yearly interest of 50%, and besides swearing that he would never use the benefit of the law, has made a rescindable contract; and after he has obtained a legitimate dispensation from the oath, he can petition rescission from the judge.

5° A minor son buying something without the consent of father or law can rescind the contract, and can compel the seller to return the price received and to receive back the thing sold.

6° A wife, buying a house without the consent of husband and law, can counsel the husband that he rescind the purchase, although the seller suffers damage from this.

Nevertheless, if justice does not forbid acting thus, sometimes equity can demand something else, especially when the other contracting party was in good faith and is going to undergo a sufficiently great damage.

Question Five: On the Effect or Obligation of Contract

470. Contract effects a) in the debtor a twofold obligation:

1. directly, of executing the contract or furnishing that concerning which agreement was made;

2. indirectly, of compensating the damages following from non-execution of the pact;

b) in the creditor, a right corresponding to each obligation, namely, of exacting what is owed to him.

Furthermore each obligation, just as also the corresponding right in the other, can be 1) merely natural, which binds from the very nature of the contract but only in conscience, and gives no action in the external forum, as is the debt to be paid which cannot be juridically proved; 2) merely civil, which arises from civil law and produces an action in the civil forum, but does not oblige in conscience, as if someone is erroneously condemned to a fine and there is no way available for proving inculpability; 3) mixed, which obliges in each forum: and this can arise even from just civil law alone.

471. The direct effect is an obligation from commutative justice of giving, doing, or omitting something. Namely, a valid contract:

1. produces a true obligation in conscience, because the intention of obligating oneself is of the essence of contract, and this has itself after the manner of a particular law with respect to the contracting parties themselves (a. 1134);

2. produces an obligation which according to nature and extension depends upon the intention of the contracting parties, and therefore contracts are to be fulfilled in good faith (a. 1134), and oblige not only to those things which are formally expressed in them, but to those things

which were in the explicit or implicit intention of the contracting parties, as is gathered from the words employed, from the character and dispositions of the persons, from the custom of places or civil laws, and to all things which, the nature of the contract being attended to, equity, law, or usage demand[1] (a. 1135);

[1] Rules of interpretation are handed down, a. 1156-1164.

3. does not have obligatory force except between the contracting parties themselves and those who hold their place, for example, heirs or mandators and creditors; hence they can profit or harm no one else (a. 1165-1166): for no one incurs an obligation or a benefit from the pact of another, unless he has consented;

4. obliges, if it is rescindable, until he who has the right petitions rescission.

But it becomes definitively firm a) if within the time defined beforehand by law he has not petitioned rescission; b) if he has renounced the right of petitioning rescission, while rescission is conceded only for his private good. For if it is also conceded because of the public good, he cannot renounce his right: thus a minor cannot renounce it when he would be induced to renounce his right by the other contracting party, because the public good demands that perverse men not have so easy a means of excluding imprudent young men from the benefit of rescission.

In species a) the obligation of giving embraces two things: the obligation of handing over the thing (a. 1136), and of preserving the thing and watching over its conservation as befits a good father of a family (a. 1137);

b) an obligation of doing not fulfilled imports compensation to be furnished for all damages coming from it to the other (a. 1142). But if one did not wish to do it and the other was able, this other can do it at the expense of the first, with compensation also petitioned for the delay employed (a. 1143-1144);

c) likewise an obligation concerning a thing not to be done: if, notwithstanding the contract, it has been done, the other can destroy the work at the expense of the first (a. 1143) and exact compensation for damages (a. 1145).

472. The indirect effect is the obligation of compensating damage coming from a contract not observed. But violation of a contract can occur from moral fault, from merely juridical fault, and from a fortuitous case. Now:

1. if there is fully deliberate moral fault, there is present an obligation of compensating the damage following from it, because there is damaging truly, efficaciously, and formally unjust;

2. if there is merely juridical fault, at least there is present the obligation of compensating after the sentence of a judge, or even at the petition of the injured party;

3. in a fortuitous case, no obligation is given of compensating damage (a. 1148). There is an exception a) if the debtor has taken fortuitous cases upon himself; b) if he is in fault as to why the thing was impeded by a fortuitous case; c) if he was culpably in delay, unless however the thing would likewise have perished with the creditor (a. 1302).

The debtor is constituted in culpable delay 1) at the moment when he does something which from the contract was not to be done; 2) when he does not do in useful time what was then to be done; 3) when he does not do it at the time determined by agreement, i.e., if he does it before the time fixed beforehand for beginning or after the time fixed beforehand for finishing; 4) when the law recognizes that delay is incurred by full right; 5) when the debtor has been juridically or legally summoned.

The quantity of compensation to be furnished is that which was determined in the agreement (a. 1152), unless it is modified by the judge (a. 1231-1232). But if none was determined, it will have to be estimated according to natural equity (a. 1149), and indeed so that, if deceit is absent, damages foreseen or which are presumed to have been foreseen are to be compensated (a. 1150); conversely, if there was deceit, foreseen damages and those which immediately follow from the contract not fulfilled are to be compensated (a. 1151). Yet if the matter of the contract is money to be paid, the compensation generally cannot exceed the rate of legal interest (a. 1153).

473. A conditioned contract in its obligations depends upon the fulfillment of the condition.

A. A contract entered into under a condition concerning the present or concerning the past obliges at once or not, according as the condition exists or does not exist on the part of the thing. And the same holds for a condition concerning a future thing that is certain and already known as such in a necessary cause: such a condition is judged not to have been added.

B. A contract entered into under a condition concerning an uncertain future only obliges or ceases to oblige after fulfillment of the condition. For condition is twofold (a. 1168): one is suspensive (*vertragende*), which suspends the assent to be furnished so that the existence of the obligation depends upon the fulfilled condition, for example, I buy the house if my absent wife consents; another is resolutory (*ontbindende, opschorsende*), which dissolves the assent given so that the cessation of the obligation depends upon the fulfillment of the condition, for example, I buy the house unless my wife contradicts; I sell the horse unless within a month I need it. Now:

1. A suspensive condition a) before the event suspends the principal obligation, but induces an obligation of awaiting the event of the thing; whence the debtor preserves dominion of the thing, and the creditor has only a conditioned right (a. 1182). b) Once the condition is fulfilled, the contract without new consent passes into an absolute one; indeed generally the obligation is judged to exist from the day the contract was entered into (a. 1179). c) When the condition is lacking, the contract (unless the debtor impeded the condition, a. 1178) is null; indeed it is judged to have been null from the beginning, and therefore if the thing had already been handed over, it would have to be restored with the fruits received (a. 1181-82).

A contract made under a merely potestative condition, whose fulfillment depends on the will of the debtor alone, is null from the beginning (a. 1174), for example, I will give you the book if I will.

2. A resolutory condition a) before the event does not suspend the obligation, but leaves the contract valid, so that the debtor here and now is held by the same obligations and the creditor has the same rights as if the contract were firm; whence the promised thing is to be handed over to the creditor. b) Once the condition is fulfilled, the contract is dissolved by that very fact without the sentence of a judge, so that the obligation is judged never to have existed; and therefore the thing returns to the prior owner in the same state as if the contract had never

existed. c) When the condition is lacking, the contract becomes simply irrevocable, with the same obligations as if no condition had ever been appended (a. 1183).

In synallagmatic contracts a resolutory condition is always understood: unless the other has not stood by the promises; but its fulfillment does not dissolve the contract except by decree of a judge (a. 1184).

474. A modified or qualified contract in obligation depends upon the nature of the added clause. - The principal modal contracts are:

1. A contract to a day, whose execution, namely, is established as to be fulfilled at a certain time. The obligation from this contract, in the creditor, consists in this, that he cannot exact execution before the time fixed beforehand, although at once he has the right to the debt to be paid afterward. Yet in civil law there is exception: a) the case in which the debtor cedes his goods, whether by force or without force (C. C., a. 1188; C. Com., a. 450); b) the case in which by his own deed the debtor diminishes the securities given to the creditor for payment (a. 1188); - in the debtor: he cannot pay before the established time, whenever this time is constituted for the grace of the creditor; but otherwise if for the grace of the debtor (a. 1186). Generally, unless the contrary is proved, the term is judged determined in favor of the debtor (a. 1187).

2. A contract under a cause is that to which is added the reason because of which it is contracted. The reason is either final or impulsive, and concerning it those things must be said which we said concerning error about the motive of contract.

3. A contract under demonstration is that in which some sign is appended indicating the thing about which or the person with whom one contracts. This contract does not have force if error concerning the sign is turned into substantial error; otherwise it has force.

4. A contract under penalty is that in which, for strengthening the execution of the contract, a penalty to be paid is established if the contract lacks its effect. In this contract there are two obligations: one principal and absolute; the other secondary and in some way conditional. By the consent of all, a penal agreement is accessory to the principal; hence a) it does not subsist if the principal is null; but the principal is not destroyed by the addition of a penal clause (a. 1327); b) the creditor can urge the principal obligation while neglecting the penal one (a. 1228), but he cannot exact the principal and the penal at the same time, unless the penalty was added because of delay (a. 1229); c) if the debtor in delay has begun to execute the principal obligation, the penalty can be diminished by the judge (a. 1231).

5. A contract under disjunction is that by which someone is held to give, do, or omit one out of two or several things. By either obligation the contract is satisfied (a. 1189); - the choice is left to the debtor, unless it has expressly been conceded to the creditor.

475. An oath added to a contract does not change the obligation of the contract itself, but only extrinsically adds an obligation of religion. Hence:

1. If the contract is valid and firm, a promissory oath does not extend its obligation, but adds another obligation of religion, so that someone is now held to the same thing by a twofold title, of justice and at the same time of religion. Whence when the obligation of the contract ceases, the obligation of the oath also ceases, because the accessory follows the principal; unless the one swearing intended to oblige himself further.

2. If the contract is invalid by reason of matter illicit from natural or divine law, or from human law but directly on account of the common good, it does not become valid from the oath; nor is the promissory oath itself valid, because the accessory follows the principal, and because the one swearing cannot oblige himself to what is illicit, or harmful to the common good, as contrary to good morals. Thus sworn pacts concerning usury, concerning prostitution of the body, or a sworn matrimonial contract entered into with a diriment impediment are of no strength.

3. If a contract from human law is invalid or rescindable, but principally in favor of the private contracting party, the contract does not thereby become firm, but the promissory oath is valid and induces an obligation of religion. Whence a minor or wife who by oath promised not to rescind an otherwise just contract is held from religion not to rescind; if nevertheless he or she petitions rescission, it is valid, but he or she has sinned against religion, unless a dispensation from the oath had first been obtained.

4. If a contract is invalid from substantial error, neither does the contract itself become valid from the oath, nor is the promissory oath itself valid, because the accessory follows the principal and because the one swearing does not intend to swear concerning a thing about which he does not consent.

5. If a contract has been confirmed by an oath extorted from grave fear, the contract and oath are valid, because fear does not take away the voluntary, nor the human act. Hence if someone from fear of death swears that he will give a robber a sum of money, he is bound to give it; nevertheless he can petition a dispensation of the oath and rescission of the contract, or the punishment of the robber.

476. The obligation of contract ceases (a. 1234):

1. by payment of the debt or execution of that concerning which there had been an agreement;

2. by novation or substitution of a new debt, debtor, or creditor, by which the preceding debt is extinguished or the debtor is freed (a. 1271);

3. by condonation, by which the creditor remits the debt;

4. by legal compensation, which obtains place whenever both contracting parties owe to each other the same quantity of money or of fungible things;

5. by confusion, when the obligation of the debtor and the right of the creditor come together in the same person, as if the debtor becomes heir of the creditor;

6. by the perishing of the thing owed (a. 1302), without fault or delay of the debtor, or by fortuitous case;

7. by rescission or annulment of the contract, according as it is dissolved by the authority of a judge or declared invalid;

8. by the event of a resolutory condition (a. 1183);

9. by liberative prescription, as was said above (n. 233).

Chapter II: On Unilateral Contracts

Question One: On Promise

477. Promise is presupposed to all other contracts, and is included in all; yet it can be standing by itself, and then it is a simple promise. This is defined: a liberal, deliberate, and spontaneous obligation of faith made to another and accepted, concerning a licit and possible thing to be furnished in favor of another. It is said:

1. liberal, so that it may be distinguished from a mutual and onerous promise which can enter a bilateral and onerous contract, by which namely someone promises and obliges himself to furnish something, if the other undertakes an obligation or burden;

2. deliberate and spontaneous, i.e., perfectly immune from every error, deceit, fear, and force, as befits a gratuitous contract which ought to proceed from mere liberality and accordingly requires full liberty; although this ought not to be verified under the same title in a mutual onerous promise;

3. obligation: thus it is distinguished from a mere intention, which does not include a new obligation toward another; whence he who does not keep an intention without reason is guilty of inconstancy toward himself, but offends neither fidelity nor justice toward another;

4. of faith: thus it is distinguished from donation, which is not the giving of faith but of a thing, in which the thing itself is given, whereas in promise faith is given and an obligation is undertaken of furnishing the thing in the future. Namely, donation gives a right in a thing; not so promise, which at most grants a right to a thing;

5. made to another and accepted by him: namely, it is necessary that the promise be externally manifested and accepted by the promisee; otherwise there would not be a consent of several wills into the same thing, nor a contract. For some sort of right to my obligation cannot arise in another unless the other wills it; whence acceptance is required, which must be made by an external deed, even tacitly if the promise is made to one present and silent, in which case acceptance is presumed;

6. concerning a licit and possible thing...; otherwise the promise would be invalid.

Therefore three conditions are required for promise: 1) the mind of obligating oneself, 2) deliberate and spontaneous will, 3) manifestation of the will and acceptance by the other.

478. Obligation of promise.

1. A gratuitous and unilateral promise of itself seems to oblige only from fidelity, by which man in association with others ought to conform deeds to words; St. Thomas saying, II-II, q. 88, a. 3, ad 1: "according to honesty (which is a moral debt, not a legal one), from any promise man is obligated to man"; nevertheless per accidens it can oblige from justice, if there accedes to it an intention of obligating oneself from strict debt, in which case in the other there arises a true right to the thing. For since a contract is a particular law which the one promising freely imposes upon himself, he can also impose upon himself an obligation from justice. In this case, not in the former, it is a true contract.

2. A bilateral and onerous promise, made under the condition that the other undertake an obligation or sustain a burden for obtaining the thing promised, of itself obliges from justice, and therefore under grave matter from its genus: for it is a perfect or onerous contract. For an onerous obligation mutually undertaken between equals is connaturally of justice, and is wont to be so understood and assumed. Yet it does not seem altogether impossible that two should exceptionally intend to oblige themselves only from fidelity; but this is not to be presumed, but must be proved.

3. An obligation of mere fidelity, even in grave matter, is of itself light; per accidens a grave obligation of justice can accede, by reason of damage that will follow from violation of the promise, for example, if someone promises to give a loan and the promisee therefore does not provide for himself from elsewhere, or if a physician has promised to help a sick man and this man, relying on such a promise, has called no other physician, or if a brother has promised his brother to pay half the expenses for the education of a nephew if he enters college, or if someone has not kept a promised secret: but then the obligation does not arise from contract, but from this, that someone does not remove a voluntary cause of damage.

4. An obligation of justice, when it is had, is grave from its genus; yet for mortal sin a greater quantity is required than in theft. St. Alphonsus after others establishes matter four times greater than that which is required for grave theft relatively to the promisee. This is consonant with reason, because he has only a right to the thing, not in the thing, and a right toward a person who promises altogether gratuitously.

479. The obligation of promise ceases:

1. if the promisee renounces his right or spontaneously condones;

2. if the handing over of the promised thing becomes impossible, or illicit, or useless or damaging to the promisee;

3. if a notable change of circumstances supervenes or becomes known, such that prudently someone would not be judged to have willed to oblige himself for such an event: for an act does not oblige beyond the intention of the one promising;

4. in the case of a mutual promise: if the other has not stood by his promises, because faith is not to be kept with one breaking faith.

If the promisee dies before execution, the one promising is held to nothing, unless it is certain that the promise was made solely or principally with a view to the family of the promisee or his heirs. - If the one promising dies, a personal promise does not pass to the heirs, but is extinguished; a real one passes, unless from the circumstances it is manifest that the one promising willed to oblige only himself personally.

480. Practical observations. - 1. Simple promises, as they are more often made among men, oblige from mere fidelity and not from justice. Those promising sufficiently rarely understand themselves to be obliged from justice. Therefore, unless the contrary is certain, it must be judged that the obligation is not from justice.

2. Indeed those things which according to the external form seem promises, often are nothing but intentions, because the word *to promise*, in the intention of the one pronouncing it, does not always signify an obligation.

3. An obligation of justice is present when the one promising intends to transfer a true right, and the promisee believes that a right has thereby been acquired by him. This can be certain not only from the express declaration of the one promising, but also from various circumstances, as if he has obliged himself as much as he can, with an oath added, or by a written bond or another written instrument, before witnesses called for this, or before a notary with solemnity, or from common estimation.

4. On account of a promise it is not licit to compensate oneself secretly, unless it is certain that it is not a mere intention but a true promise, and indeed one obliging from justice. This can happen if it was made because of unusual services furnished, in which case a title of wage intervenes (an implicit contract). But even then the mere intention of giving expressed is not to be confused with a true promise; and the sentence of a judge in this question would have force of itself.

Question Two: On Donation

481. Donation (*schenking*) is the type of unilateral and gratuitous contract. Etymologically it is, as it were, the giving of a gift, or the liberal giving of some proper thing to another accepting. Giving is an action of the donor sufficient of its nature for transferring dominion, which is done either by handing over the thing, or by the office of words. Whence donation can be defined: a gratuitous and liberal act by which someone without obligation or debt of justice transfers the dominion of his own thing to another accepting; for by this very fact, that he has accepted, the unilateral and gratuitous contract is perfected. It is said:

1. an act, furnished from one side; whence it does not become a contract unless the acceptance of the other accedes;

2. gratuitous, i.e., without obligation and burden for another; for if some obligation were added, donation per accidens would be in some way onerous, and therefore a mixed donation;

3. liberal, without obligation or debt of justice, i.e., no right compelling; whence strict debt is excluded, and indeed such a debt as has not arisen from liberality, for example, from a contract of promise; but moral debt from an obligation of charity or piety, indeed not even of gratitude, is not excluded, although then the donation is not fully liberal. And thus merely liberal donation is distinguished from antidoral donation (i.e., counter-donation) or remuneratory donation, which is made from gratitude, on account of the merit of the donee;

4. transfers the dominion of his own thing, whether it is full dominion, or direct, or useful: thus it grants to another a right in the thing, and indeed of itself here and now;

5. to another accepting, otherwise it would not be a contract; but this is perfected from the very acceptance of the other, whence it is a consensual contract[1] (a. 938).

[1] So also the Italian code, a. 1062; the Spanish, a. 623; the Dutch, a. 1703. - In Roman law it was, and in German law, a. 929, still is, a real contract which is not perfected except by handing over of the thing; before this there is given only a right to the thing.

Therefore a threefold condition is required for donation: on the part of the donor, liberality; on the part of the thing transferred, ownership; on the part of the donee, acceptance.

482. Donation can be made in three ways: inter vivos (*onder levenden*), causa mortis (*ter zake des doods*), and by testament (*bij uitersten wil*). In the first case the transfer of dominion is made actually and irrevocably; in the second, actually and revocably; the third transfers dominion into the future for the time which follows the death of the testator, and at the same time revocably. To these is added presumed donation, through inheritance.

483. Donation inter vivos is an act by which the donor divests or deprives himself actually and irrevocably of the thing given in favor of the donee accepting (a. 894); in other words, an act by which the donor gratuitously transfers actually and irrevocably full or useful dominion.

For this three things are required:

1. the transfer of some good, namely of a thing either corporeal or incorporeal, or of a right, so that the other acquires a right in the thing;

2. gratuitous transfer, and thus it is distinguished from commutation or sale; but if some burden is imposed, there is had a mixed contract, partly gratuitous, partly onerous;

3. actual and of its nature irrevocable, insofar as goods or rights are transferred at once and of themselves irrevocably, so that they cannot be revoked except only in cases expressed by law. Thus it is distinguished from a promise, by which rights in the thing are not actually transferred; and from a testament, by which rights are transferred neither actually nor irrevocably; and from mutuum, by which the thing is transferred with an obligation of restoring it.

484. Conditions required from the nature of the thing for the validity of donation are: the capacity of giving in the donor, which requires that he have dominion together with free administration of his goods; and the capacity of receiving in the one accepting, or capacity of dominion, for which it is at least required that he already be conceived; but other conditions besides

are required from positive law (a. 901 sq.). Thus in present-day law, donation is often a solemn contract, for whose validity a special form is required, so that it can be certainly established, and its irrevocability placed in security: thus the French and Belgian code (a. 931); the Italian (a. 1056), Dutch (a. 1719), Spanish (a. 633), Austrian (a. 943), German (a. 518).

Especially according to French and Belgian law:

A. Two conditions for any solemn donation are necessary for validity, namely, if the solemn act is made or must be made for placing the donation in security: 1) that it be made before two notaries, or before one notary and two witnesses, and that the protocol (*la minute*) be kept with the notary (a. 931); - 2) that acceptance be given explicitly in the same way, so that the donation has no force except from the day of acceptance, or of notification made to the donor (a. 932).

B. Besides, two conditions are required for certain donations, namely: 1) for movable things, for validity there is required an estimative index of all things which are donated, describing the individual things and their price, and signed by the donor and donee (a. 948); - 2) for immovables, which can be subjected to mortgage, the act of donation and acceptance must be transcribed with the conservator of mortgages (a. 939), yet so that the defect of transcription does not render the donation invalid, but only rescindable; but rescission cannot be petitioned by the donor himself or by those who ought to have effected the transcription, but by those whose rights were injured through the donation (a. 941).

C. Yet certain donations are immune from the aforesaid formalities:

1. Manual donations, which are perfected by the handing over of the thing alone, as results from a. 852-868, 2279.[2] Namely, they have force for corporeal movable things and for titles to the bearer, provided they are made by a capable person: then namely a. 931 is not applied; but not for others, for example, for incorporeal things or for those which are donated without actual handing over.

[2] So also the Austrian Code, a. 943; the Dutch, a. 1724; but the Italian only for movables of modest value.

2. Donations under the appearance of an onerous contract, for example, of a simulated purchase, as if someone sells a thing for a certain price and in the same act makes condonation of the price or of part of it: it has force provided the donor is capable of giving, the donee capable of receiving, and the contract is made in the proper legal form. Thus also if someone writes on paper, under the form of an onerous contract: "I acknowledge that I owe Peter one hundred francs"; - but not if he were to write: "let it have force for one hundred francs," because this is the form of a gratuitous contract.

3. Accessory donations, namely those which accede to an onerous contract in favor of a third party; as if Peter sells a house to Paul for 50,000 fr., so that Paul gives 10,000 to John: in the case the act of donation has force just as the sale does, because the accessory follows the principal (a. 1973).

4. Donations which are made by way of gratuitous renunciation, as if a creditor remits a debt, or an owner renounces a certain servitude, or a legatee a legacy: they have force, provided they are

made in the manner defined by law, as if the written bond in which proof of the debt is had is destroyed.

In the last three cases, a special solemn act is not required, because even without it the end of the law is obtained, namely, that the donation be certainly known and its irrevocability placed in security.

485. Revocation of donation. - Although donation of itself and by nature is irrevocable, yet in three cases, according to law, it can deservedly be revoked (a. 953):

a) if the donee has been judged guilty of signal ingratitude toward the donor, as if he has attempted the killing of the donor, has affected him with cruelties or grave injuries, or has denied him food in indigence (a. 955);

b) if to the donor, who at the time of donation lacked offspring, a son is afterward born, even if he had already been conceived at the moment of donation (a. 960-961);

c) if in an onerous donation, the conditions imposed on the donee have not at all been fulfilled (a. 954).

In the second case, the donation is null by full right (a. 960); in the first and third, revocable (a. 956).

There accedes the case in which it is appended as a resolutory condition: if the donee should die before the donor himself (a. 951), and this condition is verified.[3]

[3] In the Code of Germany (a. 528) there is admitted besides supervening indigence of the family estate; but the birth of offspring is not admitted as a cause.

486. On the value of an informal donation in conscience. - Donations valid from the nature of the thing, but null from the sole defect of legal forms, from the disposition of positive law can be altogether null even before the sentence of a judge, if namely the form is required essentially for the very existence of the donation, so that without it this could not even be conceived; and perhaps such is the intention of French law (a. 893). Yet because this is not certain, donations can be held as valid until the sentence of a judge intervenes establishing it thus; which is altogether necessary in the case in which, because of the defect of another required condition, the act is only simply null or rescindable (n. 454).

But after the sentence of a judge, they are now null even in the forum of conscience, if there is question of profane causes; for pious causes, they more probably remain valid, on account of can. 1513, which seems to be extended to donations inter vivos just as to testaments;[4] yet others, not improbably, apply can. 1529 and say that donations, by distinction from testaments, in the case are null.[5]

[4] Can. 1513: "§ 1. He who by natural and ecclesiastical law is freely able to determine concerning his own goods, can leave goods to pious causes, whether by an act inter vivos or by an act by reason of death.

[5] Cf. Kiselstein, in *Rev. Red. de Liège*, XI, n. 2. - Can. 1529 sounds thus: "Those things which civil law in the territory establishes concerning contracts both in general and in species, whether named or unnamed, and concerning payments, are to be observed with the same effects in canon law in ecclesiastical matter, unless they are contrary to divine law or something else is provided by canon law."

487. Question: What if the donor by his donation injures the right of another to whom something is owed from justice, for example, if someone cannot pay his debts and does not foresee that he probably will be able to pay? - It is answered:

1° The donor then donates validly because he disposes of his own things: for the right of dominion still pertains to him; whence in this there is no injustice; - but voluntarily he casts himself into the moral impossibility of rendering, and thus he does injury to creditors, because their strict right is violated, that the debtor pay from his own goods.

2° Likewise the donee who, knowing such impotence, induces him to give gifts to himself is a participant in injustice; and therefore he himself is secondarily bound to restore.

3° Indeed, according to many, the same holds if the donee, conscious of that impotence, does not indeed compel him to donation but accepts it, because it is remote cooperation, since he cannot accept except that of which the other can freely dispose. But others deny it, because the donee is not the cause that the debtor wills to donate, and does nothing except use his own right, namely, to accept a thing of which the other validly disposes; whence he is not a cause of the damage of creditors except permissively or per accidens, since it is not certain that he is held from justice to impede this damage.

4° Finally, if the donee is ignorant of that impotence, probably he ought to restore nothing from justice, because on account of good faith he receives without injustice that which the donor validly donates; although nevertheless some say he is held to restitution if the donated thing still exists or he has thereby been made richer.

In practice, for the third and fourth case, because the thing to which he concurs in some way is dishonorable, restitution of the goods which come from the impotent donor is to be counseled.

488. Observation: concerning donation causa mortis.

Under this name comes a gratuitous contract which is made with a view to and under the condition of death: namely by which something is actually given to another, yet so that the donation can be revoked up to the death of the donor. Hence it differs from donation inter vivos, which cannot be revoked except in cases determined by law; and from testament, by which a right is not actually transferred, but only after death. Whence it holds a middle place between each: for while donation inter vivos actually confers an absolute right in the thing, and testament grants a right for the future, and indeed a right to the thing, this donation actually confers a right in the thing, although conditioned, insofar as it is made under the condition that it have force if it is not revoked before the death of the donor: here and now I give you 1,000 fr. to be had after death, unless I shall have acted otherwise.

Today in many laws it is not recognized: French and Belgian law (a. 893, 944, and 946), Italian (a. 1050), Dutch (a. 1703) altogether exclude it; Austrian (a. 956), German (a. 2301 [Original misprint: printed as 230X]), Spanish (a. 620), and Lusitanian (a. 1457) assimilate it to a legacy while it fulfills the same conditions; Swiss law passes it over in silence; - conversely, in English and American law of the United States it is admitted. In Canon Law for pious causes it is explicitly recognized, and can. 1513 has force.

Nevertheless a donation can validly be made under a condition which does not depend on the will of the donor, whether resolutory: unless the donee (or also the heirs) should die before the donor (a. 951); or suspensive: if the donor does not escape the danger of death.

489. Dispositions of Canon Law. - Let the canons be noted:

1535: "Prelates and rectors are not to presume to make donations from the movable goods of their churches, except small and modest ones according to the legitimate custom of the place, unless a just cause of remuneration or piety or Christian charity intervenes; otherwise the donation can be revoked by successors."

1536: "1. Unless the contrary is proved, those things which are donated to rectors of churches, even of religious, are to be presumed to have been donated to the church.

2. A donation made to a church cannot be repudiated by its rector or superior without the permission of the Ordinary.

3. If a donation has been repudiated illegitimately, on account of damages which have arisen from it there is given an action of restitution in entirety or indemnity.

4. A donation made to a church and legitimately accepted by the same cannot be revoked because of the ungrateful mind of the prelate or rector."

§ 2. In last wills for the good of the Church, the solemnities of civil law are to be observed if it can be done; if these have been omitted, the heirs are to be admonished to fulfill the will of the testator."

Question Three: On Testament

490. Testament is an essentially revocable act by which the testator disposes of his goods, or of a certain part of them, for the time following his death[1] (a. 895). It is said:

[1] Roman law and many modern laws still distinguish between testament, codicil, and legacy. Testament is an act or disposition of last will by which someone appoints an heir of goods. Codicil is a declaration of last will by which, without institution of an heir, one decrees something concerning succession, especially a secondary disposition, an explanatory or modifying addition directly adjoined to a testament already made. Legacy is a last disposition by which the testator directly leaves something from the goods of the whole inheritance to another, to be handed over or furnished to him by the heir. But in French law (a. 895), generally every disposition concerning one's own goods is called indiscriminately a testament.

1. an act, because strictly it is not a contract: for there is not an agreement between the testator and the legatee, which requires a twofold act, but one act by which the testator alone expresses his will, independently of any acceptance by another, so that the force is from the testator alone;

2. essentially revocable up to death, while donation inter vivos is of itself irrevocable;

3. by which the testator, namely the very person of the testator, and not his delegate; indeed of itself an individual person: for if it were made by several in the same act, the testament would now be void, because joint and mutual testament has been suppressed by present-day law[2] (a. 968);

[2] Yet there are exceptions. The German code (a. 2274) and the Swiss (a. 512) permit mutual pacts in an authentic testament; and the Austrian code (a. 602) among spouses alone, just as it also permits parents to make testament for minor children concerning goods which they themselves leave to the children (a. 609); but the Lusitanian code (a. 1589) admits a general substitution of parents into the place of children. Nevertheless mutual pacts of spouses are generally admitted in the matrimonial contract itself.

4. disposes of his goods or of a part of them: for in the present matter the last will of the testator is considered in order to the dominion, use, and administration of his goods;

5. for the time following his death: for a testament does not transfer right and dominion actually, here and now, but only after the death of the testator.

And therefore testament differs from donation: a) the former is an act, the latter is a contract; b) the former is revocable, the latter irrevocable; c) the former does not transfer right and dominion actually but only for the time following death; the latter transfers these actually in the present. And nevertheless testament is deservedly reduced to donation, because it transfers dominion gratuitously, and because by the consent of the legatee it must be accepted while the will of the deceased has not been revoked.

491. Concerning the origin of the right of making testament there has been manifold opinion. Now:

1° It is certain that some hereditary right of itself is founded in nature, namely that by which children, parents, or even those closely joined succeed in the goods of the deceased (unless they have legitimately been excluded by him), because private dominion is necessary not only for individuals, but also for the family and on account of the stability of family goods: "If a son, also an heir," says the Apostle to the Galatians, IV, 7. Whence goods, by destination, already pertain to the family, by which it happens that there already exists a special bond by which there is born a right of occupying the goods of the deceased; otherwise the connection and perpetuity of the family would be endangered.

St. Thomas recognizes this, *Contra Gentiles* III, 123, and in IV Sent., d. 33, q. 2, a. 1; and at least it must be admitted, because, as Pius XI says in the encyclical *Quadragesimo anno*: "For always the natural right itself both of possessing goods privately and of transmitting goods by inheritance must remain intact and inviolate, since the state cannot take it away."

2° It is probable that the unlimited right of making testament, or of perfectly disposing of goods after death, is founded in natural law, on account of reasons similar to those for private dominion, of which it seems to be the complement. For the dominion of a private man on the one hand is exclusive and permanent, especially in things made or improved by him; on the other hand, the reason because of which the division of possessions was necessary, namely that there be a sufficient stimulus for labor, and greater care and progress in labor, also holds in some way for the right of disposing concerning goods after death, so that those things may be procured more efficaciously.

But this is not altogether certain, because it does not clearly appear how someone can dispose of his goods after death, or for a time in which he no longer has dominion. Whence some derive this right from human law; nevertheless it is certain that nature at least counsels the right of making testament as most fitting.

3° Yet many things regarding it from natural law alone remain indeterminate and uncertain, especially concerning the manner of exercising that right, and concerning the limits by which it is circumscribed lest it turn to the detriment of society, civil or familial. Whence most certainly there must be recognized in the civil legislator the power of determining that right and establishing its limits, even under penalty of nullity of testaments in the forum of conscience.

492. Conditions required for the value of a testament are determined by civil law. - In law a testament is wont to be distinguished into one in extraordinary external form, and one in ordinary form.

A. A testament in extraordinary form is that which, by reason of privilege, has force even when made without legal forms: thus testaments of soldiers, of those sailing beyond the sea, and in time of plague[3] (a. 981-998). But when the necessity ceases, these testaments must within a brief time be clothed with ordinary form.

[3] Swiss law also permits this when, on account of the lack of a public official and the impediment of the sick person, ordinary form cannot be observed (a. 506); and similarly Austrian law, admitting a private nuncupative testament before three witnesses simultaneously present (a. 585).

B. Testament in ordinary form is distinguished as threefold: holographic, solemn, and mystic.

1° Holographic (*eigenhandig*), as the word indicates, is that which has been written entirely by the hand of the testator with notation of the day, month, and year on which it was made, and with the signature of the testator[4] (a. 970).

[4] A holographic testament is admitted in French, Belgian, Dutch, Italian, Spanish, Austrian, German, Swiss law, etc.

Whence for its validity three things are essentially required:

a) That it was written entirely by the hand of the testator, with no word excepted. Interlineations added by his own hand do not vitiate the testament; those of another hand vitiate it if they make one body with the testament, as would be certain, for example, from the approval of the testator. Marginal additions are valid, even if they were not signed, if they were written at the same time as the testament itself; but if afterward, and they contain new dispositions, they must be signed with inscription of the day, month, and year. Erasures which are certain to have been made by the hand of the testator, because he approves them or because the testament is found in his possession signed with a seal, only invalidate the deleted dispositions.

b) That the day, month, and year on which the testament was made be rightly designated, at the beginning or end of the document; this is required so that it may be known whether it was written at a time when the testator was capable of making testament, and which of various testaments is valid. But these things must be noted before one's own name is signed, so that the signature of the writer may be the conclusion of the testament; otherwise it would easily be doubtful. But designation of place is not necessary, for a testament can be made anywhere[5] (a. 999).

[5] Yet by German law (a. 2231), and Swiss law (a. 505), indication of place is required; conversely, by Austrian law not even indication of date is demanded (a. 578).

c) That the testator append his own name by his own hand[6] at the end of the document, even by the family name expressed in full letters; nevertheless the first name could suffice if it sufficiently indicated the person, as for example for bishops.

[6] In English law it can also be signed by another, but under the direction of the testator. But the signature is to be made or acknowledged by the testator before at least two witnesses, simultaneously present, who, before the testator, sign the testament.

That it may obtain its effect, it is rather often required that the testament be exhibited to the tribunal, or deposited with a notary. It is also to be counseled, lest it be taken away or destroyed, that

two copies of it be written, of which one is handed to the heir or legatee, the other to the notary.

2° A public or solemn testament (*par acte public; plechtig*) is that which is made by an authentic or public act by a notary or competent official before witnesses, while the testator orally declares or dictates his last dispositions; whence it is also called nuncupative (C. Germ., a. 2250; *mondeling*).

The form in diverse regions is diverse. In French law it is received by two notaries before two witnesses; or by one notary before four witnesses; it is dictated by the testator, written by one notary, and signed by that notary, at least two witnesses, and the testator (a. 971-975).

In Belgium, from the law of 16 Dec. 1922 modifying the civil code, two notaries or one notary with two witnesses now suffice; moreover, the conditions required that a solemn testament be valid are: a) that it be dictated by the testator, b) that it be written by one notary just as it was dictated, c) that it be read beforehand to the testator, and indeed before two witnesses if it is received by one notary; d) that mention be made of all these things; e) that it be signed by the testator, and if he cannot do this, that this be expressly declared in the act together with the cause which impeded signing; f) that it also be signed by the witnesses, in the case in which it is received by only one notary; g) the witnesses cannot be legatees, nor their spouses, nor their blood relatives or relatives by marriage (up to the fourth degree inclusively), nor the wife, clerks, or servants of the notary. - Moreover they must be Belgians and adults, and they can be of either sex, yet so that husband and wife are not witnesses together in the same testament (a. 980).

3° A mystic or secret testament (*geheim, besloten, verzegeld*) is that by which the testator secretly disposes concerning his goods, and which, closed and sealed, he offers to a notary or public official before witnesses.

In French law, it is required that the testator offer it to a notary before six witnesses, declaring this to be his testament, written and signed by his own hand, or written out by another and signed by himself; - of which declaration an authentic act is made, to be signed by all (a. 976-979). In Belgium, by the law of 16 Dec. 1922, this was in some way modified, so that it must be offered to two notaries, or to one notary and two witnesses.

493. Concerning the value of an informal testament, or one lacking legal forms, the principles hold:

1. If the testament regards profane causes, it can be held as valid by the legatee until it is declared null by a judge, because many judge that a testament of this sort is not legally nonexistent but only invalid; in the same way as we said concerning informal donation.

2. Nevertheless the natural heir can petition for the annulment of the testament; - unless he has explicitly promised the testator that he would not attack the testament, and the testator, relying on this promise, has abstained from changing the testament: for then by attacking it he would deprive the legatee by unjust fraud of the right which he otherwise would legitimately have obtained.

3. But the legatee can use no fraud to deceive the judge, for example, by supplying the designation of day or year omitted, or by appending the name of the testator who was impeded

by death from signing; but if he has used fraud or another unjust means, he is held to restitution toward the heirs who have the right of prosecuting the annulment of the testament.

4. But if the testament regards pious causes, it is certainly valid in conscience from can. 1513, § 1: "In last wills for the good of the Church, the solemnities of civil law are to be observed if it can be done; if these have been omitted, the heirs are to be admonished to fulfill the will of the testator" (cf. can. 2348).

And although it is not explicitly said: let them be admonished concerning the obligation, nevertheless this is sufficiently indicated implicitly, because admonition is not made concerning counsels but concerning precepts; this is now altogether certain from the authentic declaration of the interpretation commission, 17 Feb. 1930. This declaration besides confirms traditional Roman jurisprudence (Alex. III, Decr. l. III, tit. 26, c. 2; S. Poen. 23 Jun. 1844 and 19 Jan. 1901).

If pious legacies seem too onerous to the relatives of the deceased, they can approach the Holy See to obtain reduction or composition; but in a case of necessity, or if the testator has thus disposed, the Ordinary also is competent (can. 1517).

494. Rights and burdens of legatees. - In law there are wont to be distinguished heir, legatee, and testamentary executor.

An heir is he who naturally or legally succeeds to the goods of the deceased, even without a testament; whence he is called heir ab intestato (*bij versterf*). A legatee is he who receives from the goods of the deceased by force of legacy or testament. A testamentary executor is the mandatary whose office is to watch faithfully over the execution of the testament. Nevertheless, in present-day law, he also is called heir who succeeds from a testament, but by a universal title, not a particular legatee: thus the Italian Code (a. 760), German (a. 2087), Spanish (a. 668); but in French (a. 1002), Belgian, and Dutch law, no distinction is made between testamentary heirs and legatees, and all are called legatees. And therefore there are distinguished: heirs or universal legatees, - heirs or legatees by universal title, - particular legatees, - testamentary executors.

The dispositions of French and Belgian law follow:

A. An heir or universal legatee (*eenige erfgenaam of algemeene legataris*) is said to be he to whom the universality of the goods of the deceased is given. The testator can select one universal legatee, or several jointly; but if there are several, it is necessary that no part be assigned among them. To the universal legatee: a) there is the right, if necessary heirs are lacking, of obtaining at once dominion of the goods of the deceased and possession (*la saisine; bezitrecht*); - but if necessary heirs are present, these obtain possession, and the legatee must petition from them the handing over of the goods (*la délivrance; de uitlevering of overhandiging*). b) But the office is: if he alone accepts the inheritance, of paying all legacies and debts, even beyond the powers of the inheritance, unless he has accepted the inheritance under the benefit of inventory; but if he concurs with a necessary heir, of paying all legacies, but debts only proportionately to the part of the inheritance (a. 1003-1009).

B. Legatees by universal title are those to whom the testator gives an aliquot part of his goods, for example, a third or fourth part, or all movables or immovables. Now a) they do not have a right to possession, but must petition the goods given to them from the necessary heirs or from the universal

legatee; b) but the office is theirs of paying debts and particular legacies in proportion to the part of the inheritance which they receive (a. 1010-1013).

C. Legatees by particular title are those to whom the testator gives a determined thing: a) they have a right to the goods bequeathed to them at once after the death of the testator, but generally cannot enter into possession or exact fruits except from the day on which they petitioned for the handing over of the goods, or this was voluntarily conceded by the heirs; b) but they do not have the office of paying debts and burdens of succession, unless the testator explicitly declared this, or the goods given to them have been burdened with mortgages (a. 1014-1024).

D. A testamentary executor (*uitvoerder*) is a mandatary selected by the testator himself to this end, that he faithfully watch over the execution of the testamentary dispositions. The testator can also designate several; but if he has designated none, the executor will be the heir. The rights and offices of the executor, whose office does not pass to heirs, depend partly on the intention of the testator, partly on the disposition of law: this demands a) that he take care that seals be applied, if among the heirs there are minors, interdicted persons, or absent persons; - that an inventory be made, the nearest heir being present or duly called; - that movable things be sold if money for paying legacies is lacking; - and that the testament be executed; - b) but the expenses made by the executor in fulfilling his office must be paid from the things of the inheritance (a. 1031-1034).

It is evident that legatees of diverse species can concur at the same time.

495. A testament can cease in three ways: by revocation, lapse, and rescission.

1. By revocation (*herroeping*): for a testament by its nature is revocable, and man can change his will up to death.[7] But a testament is revoked (a. 1035-1038):

[7] This does not hold, however, concerning mutual pacts, where they are admitted: these cannot be revoked except by mutual consent.

A. Explicitly, by a new testament in which the preceding one is formally rescinded, either entirely or as to certain dispositions, or by an act before a notary, by which a change of will is declared;

B. Implicitly or tacitly: a) by making a new testament in which nothing is said about the former, but dispositions are contained contrary to those which were had in it (*tegenstrijdige schikking*);

b) by any alienation whatever of the thing bequeathed (*vervreemding*), even if the alienation is null or the testator afterward has recovered the thing: for alienation clearly signifies a change of mind;

c) by tearing, obliteration, or destruction of the testament (*verscheuring of vernietiging*), carried out by the testator himself or at his command.

If the testator under vow or under the faith of an oath has proposed or promised to another accepting that he would not revoke the testament, and nevertheless without legitimate reason he revokes it, he sins against religion; but not against justice, because a vow or oath cannot change the nature of a testament, which is essentially revocable. And therefore in this case revocation has force; all the more because a simple promise of not revoking is invalid from a. 1130.

2. By lapse (*verval*), which is verified when dispositions valid from the beginning cannot obtain their effect because of a supervening impediment (a. 1039-1043):

a) If the legatee dies before the testator: for testamentary donation is made with a view to the person, and therefore does not pass to heirs.

b) If the legatee dies before the condition of uncertain event on which the legacy depended is fulfilled.

c) If the thing bequeathed has totally perished while the testator was living; or after his death, but without any fault of the heir: for then the thing perishes to its owner.

d) If the legatee renounces the legacy after the death of the testator, or becomes unable to receive it.

3. By rescission or annulment (*verbreking*), which heirs can petition for a threefold cause (a. 1046-1047):

a) If the legatee does not execute the conditions imposed by the testator (a. 954).

b) On account of grave ingratitude of the legatee toward the testator, as if he has plotted against the life of the testator, has been guilty of cruelties, delict, or grave injury against him, or has inflicted grave injury on his memory (a. 955, 1047, and 727 sq.).

c) If there is some cause of nullity from lack of legal forms or incapacity of the parties (a. 893).

Question Four: On Principles Common to Donation and Testament

496. The faculty of donating is limited:

1. by incapacity for donating or receiving in certain persons, whether absolute or relative;

2. by certain determinate modes of donating prohibited by law;

3. by legal reservation with respect to certain goods.

497. Incapacity for donating (*onbevoegdheid*). - In itself, all who are fit for contracting are capable of donating (n. 467); but by civil law the faculty of donating is restricted in various ways on account of the public good, namely in minors, wives, the insane or interdicted, ceders of goods, and those condemned to penalties.

1. Minors, even emancipated minors, cannot donate except in cases determined by law.

By French and Belgian law, a) after the sixteenth year of age, they can donate by testament, without the assistance of a tutor, one half of the goods which adults could give; but if they dispose of more, the testament is reducible; b) those contracting marriage, in the matrimonial contract, can give whatever adults are able to give; c) they can make small manual donations (a. 903-904 and 1095).

By Italian law, one who has not yet completed 18 years cannot make a testament; once these have been completed, he can do so like all others (a. 762-763); by Austrian law, the impubes cannot make a testament; after puberty and before 18 completed years, only orally and before a judge (a. 569); - by Spanish law, minors can make a testament after the completed 14th year (a. 663); - by German law, they can make a testament only after 16 years, and only orally before a notary (a. 2229); - by English law, minors are prohibited from making a testament.

2. Wives cannot donate inter vivos without the consent of the husband or the authority of a judge, except manual donations; but by testament they can dispose of their own goods; for a testament has force only for the time when the authority of the husband has already ceased (a. 905).

Thus, in conformity with the nature of things, in French, Belgian, Dutch, Spanish, Lusitanian, Romanian law, etc. - But in Austrian, Swiss, Italian, German, English law, they now have full or nearly full power, but with respect to those proper goods concerning which, according to the regime of marriage, they can dispose.

3. The insane and interdicted can in no way donate.

Indeed, after interdiction, even previous acts done while the cause of interdiction already existed notoriously can be annulled (a. 502-503). But those who have been placed under judicial counsel cannot alienate goods inter vivos without the assistance of this counsel, but they are able to make a testament (a. 513).

4. Ceders of goods cannot donate; indeed, it is rather often established in law that donations made within a few days before cession are invalid.

Thus by French law it is established that they cannot donate within the ten days which precede the judicial declaration of their state; and donations made before that can be invalidated, if it is proved that they were made in fraud of creditors (a. 1167; Belgian Commercial Code, a. 445 sq.).

5. Those condemned to perpetual penalties or legally interdicted cannot donate, unless the civil authority dispenses from this inability.

In Belgium, nevertheless, they can make a testament (Penal Code, a. 22).

Concerning the capacity of religious, this is stated in Canon Law, where religious are treated.

498. Incapacity for receiving is absolute or relative, according as it is toward every person, or toward a determined person.

A. Absolutely incapable are:

1. Infants not yet conceived at the time when the donation is made or when the testator dies; however, he is considered to have been conceived at the opportune time who is born within 300 days after the death of the testator (a. 312 and 315), provided, however, that he is born living and viable (a. 906).

2. Minors can receive nothing by themselves, but parents or tutors can receive in their name; emancipated minors cannot receive without the assistance of a curator.

3. Wives cannot accept without the consent of the husband or the authority of a judge; - unless in regions in which they have now obtained power with respect to their own goods concerning which, according to the regime of marriage, they can dispose, as was said in the preceding number.

4. Interdicted persons cannot receive without the consent of the curator and of the family council.

5. Those condemned to perpetual penalties.

In Belgium, nevertheless, a curator can receive for them, but nothing can be remitted to them (Penal Code, a. 23-24).

6. Societies which are not legally recognized, at least before civil law, cannot receive; the individual members, however, can, but in the same way as other citizens.

7. Legally recognized institutes cannot receive without the approval of the civil authority; for example, Seminaries, congregations, hospices, Universities, etc.

Thus in Belgium there is required the approval of the permanent provincial deputation for small sums which do not exceed 5,000 francs; for larger sums, the approval of the government (a. 910; municipal law, a. 76).

- Yet the prohibition regards not so much ability as the form of donation; whence it does not pertain to manual donations, which are not subjected to the forms prescribed for donation.

Concerning religious, this is stated in Canon Law.

B. Relatively incapable, at least in many regions, are:

1. A tutor with respect to a minor, until the latter has attained majority and the accounts of tutelage have been rendered to him (a. 907).

This is so, evidently, lest the tutor abuse his authority to the detriment of the ward. If, however, the tutor is one of the ascendants of the ward, by French law he can receive something from him.

2. Spouses with respect to each other (a. 1096-1099).

The question is evidently only of donations in legal form.

3. Physicians, surgeons, pharmacists, and ministers of worship (of any, even non-Catholic, worship), who have furnished to a sick person, in his last illness, the service of their art or ministry, can receive nothing from him by gratuitous title through a donation, even testamentary, made during that illness, unless they are direct heirs, or, these failing, collateral heirs at least in the fourth degree (a. 909).

The reason is that the aforesaid persons, in the given circumstances, can exercise too much power over the mind of the sick person. Remunerative donations are excepted, made by particular title, provided they are proportioned to the means of the donor and to the services rendered; likewise donations made to a priest that he may celebrate Masses.

But the following are not incapable: a physician who is called only for the sake of consultation, a pharmacist who sold medicines without furnishing his own service; nor a Catholic minister who was not confessor, but only supplied extreme unction or holy communion, or visited the sick man as a friend.

4. Illegitimate children, even legally recognized, receive only a smaller part of the inheritance than legitimate children (a. 908 and 757); but if they have not been legally recognized, they are held as strangers. - Incestuous and adulterine children, however, when they are legally shown as such, which rarely occurs, can receive only an alimentary pension (a. 762).

499. Prohibited modes of donating are interposition, substitution, and an illicit condition.

I. Interposition (*schijnoverdracht, tusschenerfstelling*) is that prohibited interposition by which a donation is made to a capable person, with the obligation of handing over the thing to a person who is legally incapable of receiving, so that the donation is made in fraud of the law.

Interposition must generally be proved by him who impugns the validity of the donation, by showing that at least a tacit pact had been entered into, by which the donee obligated himself to hand over the thing to the incapable person, or that the donor ordered this: for it is not enough that he manifested a mere desire, because a desire does not induce an obligation. Yet the law sometimes presumes interposition in certain persons: thus the father and mother, descendants, and spouse of an incapable person are presumed to be interposed (a. 911); which presumption is of law and from law, so that proof to the contrary is not admitted.

II. Substitution (*onderschuiving, ondererfstelling*) is a disposition by which the donor designates a double person: one who is to receive the gifts or legacies immediately, another who is to receive them in default of the former or after him. Now substitution is twofold:

1. Improperly so called, direct, or vulgar substitution (*gewone, rechtstreeksche, aangeduide*) designates the person who will obtain the gift or legacy if the donee or legatee does not wish or is not able to obtain it; for example, I give a house to Peter, but in his default to Paul. This is nothing but a conditioned donation, which is valid (a. 898).

2. Substitution properly so called, indirect, or fideicommissary (*vertrouwde*), hands over the dominion of a thing (not the usufruct) to another, with the burden of preserving the donated thing for a certain time or until death, and afterward of transmitting it gratuitously to a third party; hence the other is called the burdened party or fiduciary, but the third is called the fideicommissary or the one called. This, in present-day law, out of hostility to mortmain, or also to the stability of goods among nobles, is wont to be prohibited as harmful to the equality of citizens, to the free transfer of goods, and to agriculture, and indeed generally in such a way that not only the substitution, but the donation itself, is annulled; and therefore the fiduciary can neither retain the donated goods for himself nor hand them over to another. This law does not seem certainly unjust. Thus in French and Belgian law (a. 896 and 899), and Dutch law (a. 926). - By Italian (a. 899-900) and Lusitanian law (a. 1869), the principal disposition remains, but the substitution is annulled.

Yet a twofold substitution is permitted by civil law, even French law, lest prodigals dissipate goods bequeathed to them: a) father and mother can give goods of which they have free disposition to one or several of their children with the burden of rendering them to all children born or to be born from them, without any distinction, and in the first degree only; b) those who have no descendants can

leave goods of which they can freely dispose to brothers or sisters with the burden of rendering them to all children born or to be born from them, and in the first degree only (a. 1048-1051).

III. An impossible or illicit condition annexed to a donation or testament, although it is illicitly added, nevertheless does not invalidate it unless, by a predominant will, the donor wishes the donation to depend on the condition. Whence it generally does not render the act invalid; but (unlike an onerous contract) the condition is held as not written, so that the donee is not bound to fulfill it (a. 900). Nevertheless the donation would be invalid if the illicit condition were the true and sole cause of the contract, because then consent would be bound to such a condition and would truly depend upon it (a. 1131 and 1172).

Thus French and Belgian law. By Italian law, those conditions in a testament or legacy are held as not written (a. 849), but they invalidate a donation (a. 1065); by Swiss law, illicit conditions invalidate a legacy, the others are held as not written (a. 482); by Austrian law, a legacy under a suspensive impossible or illicit condition is null, but if it is a resolutory condition, it is held as not written (a. 698); by German law, an impossible mode invalidates a legacy only when it is clear that the liberality would not have existed without such a burden (a. 2195).

500. On the force of prohibitions of civil law, the same thing must be said as we said about the force of informal testaments (n. 493). - When there is question of pious causes, Canon Law has force, in which substitution is not prohibited; for example, Peter bequeaths his house to John under the condition that John leave it after death to the parish church.

What therefore if, at the petition of the heir, that donation is annulled by a civil judge and the house is handed over to the heir? R.: The heir will not be bound to leave the house to John, because under this respect there is question of a profane cause; but he must take care that the parish church receive that which was established by the testament of Peter, because under this respect it is a pious cause. Therefore the heir can, while John is living, retain the house, provided that he takes care that after his own death the house be handed over to the pious cause, or, if this is impossible or dangerous, that an equivalent thing be handed over.

501. Legal reservation of hereditary goods (*wettig voorbehoud*) is that part which devolves to the natural heirs by the law itself according to the proportion defined by law. It is opposed to the disposable part or quota (*beschikbaar deel*), concerning which the owner can dispose at will, while concerning the reserved or legitimate part (*voorbehouden of onbeschikbaar deel*) he cannot dispose gratuitously, but only by onerous title.

In England, with the exception of the transmission of certain estates, and in the United States of America, generally full liberty of making a testament is in force; but in many regions of Europe it is limited: thus in Italy (a. 805 sq.) and Austria (a. 765 sq.), one half of the inheritance is owed to descendants, one third to ascendants in default of descendants; in Germany (a. 2303), one half of the goods is disposable and the other is reserved to children, parents, and spouse; in Spain, one third part of the goods is disposable, one third part is to be distributed equally among the children, but the last may be freely donated to any of the children, though not to strangers (a. 808 sq.).

But by French-Belgian law (a. 913-914), and Dutch law (a. 960 sq.):

1. The disposable part depends on the number of children: if there is one child, the parents can freely dispose of one half of the goods; if two children survive, they can dispose of one third part; if three or more, the fourth part is disposable. Under the name of children there come also legitimated and adopted children and grandchildren (*kleinkinderen*) and their descendants, yet in the sense that all those born of one child are counted for only one child, whom they represent.

If natural children legally recognized survive, but not legitimated, a quota part is reserved to them, but smaller than if they were legitimate.

According to Belgian law, they are only heirs of the father and mother (a. 756): to them is given 1/3 of the portion which legitimate children would have obtained, if other legitimate children are present; 1/2 if the deceased has brothers, sisters, or ascendants; 3/4 if he has at least other heirs (a. 757). They do not succeed to the entire inheritance unless no other heir survives (a. 758). - In France, from the law of March 25, 1896, they receive 1/2 of the portion of a legitimate child if others are legitimate; 3/4 if the deceased has brothers, sisters, or ascendants; otherwise the whole inheritance.

2. In default of descendants, if ascendants survive in both lines, paternal and maternal, one half of the goods is reserved to them; if in one line, one fourth part is reserved (a. 915).

3. There is no reservation in favor of collaterals;[1] in practice, however, if poor collaterals complain that several legacies have been made to their excessive detriment, the public authority is wont to reduce these legacies; and rightly: for piety demands that something be left to relatives in necessity, especially brothers and sisters.

[1] It is proper to Swiss law that brothers and sisters are necessary heirs (a. 470-471).

4. To the surviving spouse there is not conceded reservation properly so called, but the right to the usufruct of a certain part of the goods (a. 767); this varies according to different laws.

From the Belgian law of November 20, 1896, a spouse not separated from bed has the right to the usufruct either of the portion of a legitimate child (which does not exceed the fourth part of the goods), if the deceased has children from another marriage; or of the totality, if the deceased does not have heirs except collaterals other than brothers or sisters or their descendants; or of one half of the goods, in other cases. In France, from the law of March 9, 1896, the usufruct of 1/4 part of the goods is attributed to the spouse if legitimate children are present; of 1/2 part if there are other heirs.

It should be noted that donations inter vivos or testamentary donations exceeding the disposable part are not absolutely void, but can be reduced (a. 920) if the reserved heirs or their successors or those having cause from them petition this (a. 921). In this case, first the testamentary dispositions are reduced according to the proportional part of the value; then, if the legacies do not suffice for paying the reserved part, donations are reduced, not indeed according to proportional part, but in chronological order, beginning from the most recent and going back as far as the first (a. 923 sq.).

502. What force does legal reservation have for the forum of conscience? - Resp. Civil law proceeds further than natural law; and since it establishes a matter not sufficiently determined by

natural law alone, it in itself obligates in conscience. But it can be asked what kind and what quantity of obligation of conscience it produces. Therefore those who by donations or testaments injure the legal portion of necessary heirs:

1. Do not seem to sin against commutative justice, because the testator disposes of his own thing and the heir only after the death of the testator has a strict right in that thing. The case is excepted in which someone would use unjust and fraudulent means, for example, a fictitious sale, to prevent the necessary heir from prosecuting his right.

2. Generally they sin against legal justice or obedience, since they violate a just law and one almost necessary for the common good, for example, lest legitimate children born of first nuptials afterward, on account of the excessive love of the father toward a second wife and her children, be excluded from the whole inheritance. This sin in itself is light; by accident it can be grave, if the necessary heir were thereby cast into at least relative poverty.

3. Sometimes such a testator does not sin in any way, especially a) if he favors one child for a just cause, namely to procure a greater good or to avoid a greater evil; for example, if only by violating the legal part of the children someone could fulfill an office of piety, charity, or justice, such as providing for the education of an illegitimate child or sustaining parents in grave necessity: for then the natural law prevails. Likewise b) if observance of the law which was enacted for the good of the family would turn to its detriment: for then the law ceases contrariwise, because it becomes harmful; as if, because legal equality were preserved, none of the children could any longer carry on the paternal business or agriculture; or if one son is foreseen shortly to dissipate all things while the brother, to whom more is attributed than the law permits, is deservedly hoped also to provide for the prodigal brother and his children. This can easily occur in our regions, in which the liberty belonging to a prudent father of a family is narrowly restricted.

503. Questions. - I. Whether it is licit to injure the legitimate portions of necessary heirs by donations or legacies for pious causes, for example, foundations?

Resp. This is probably licit, or at least is not unjust, provided the necessary heirs obtain that which belongs to them by the law of nature for honorable sustenance and state. Nevertheless heirs whose legitimate part was injured do not seem to sin if with just means they make a claim before a tribunal, because civil law has the right of determining the legitimate part. For in the case it does not directly declare null a legacy made to the Church (which it would not be able to do), but directly establishes the legitimate portion of the children, from which then indirectly follows the nullity of the other legacy.[2] It would have to be said otherwise concerning pious donations and legacies made outside the legitimate part, because civil law does not have the right to impede directly or generally all pious donations, just as neither does it have the right to impede the Church's right of possessing goods.

[2] It should be noted that already formerly under Roman law a probable opinion conceded this; which holds a fortiori now, because the disposable part is much smaller. Besides, many, even older theologians, teach that inofficious donations can probably be reduced to the disposable part.

II. What if someone, from hatred or inordinate affection, wished to leave only the legitimate part to his children; or if without just cause he favors one child from the disposable part?

R. He is bound under grave obligation to put aside hatred or inordinate affection, and he is to be exhorted to leave something more to his children. Hatred and gravely inordinate affection of partiality being set aside, if he favors one child before the others without just cause, such as can be if he merits more by virtue or service, if he has done more, if he seems to be in greater need, for example for sustenance or for study, he does not sin gravely, unless perhaps by accident if for this reason grave hatreds and dissensions arise, and these are not rather to be attributed to the malice and avarice of the heirs than to the father who uses his own right. This is especially true if the father acquired the goods by his own labors; but if he had not acquired them by his own labor, it is better that they be divided equally among all the children, unless there are special circumstances concerning which it was said above. Cf. also n. 502, 3).

III. Whether a testator is bound to provide also for certain heirs who are not necessary?

R. 1. There is a grave obligation that there be left to brothers and sisters that which suffices to relieve their grave want; civil law also recognizes this to some extent. Thus Civil Code, a. 767, modified by Belgian law.

2. There is a light obligation that provision be made for the necessity of other relatives gravely in need.

All these are obligations of piety, obligating under grave or under light obligation according to the degree of necessity and the degree of nearness of kinship; these obligations indirectly affect the goods of the deceased, and therefore pass with them to the heirs.

Question Five: On Legal Succession

504. Legal succession, or succession ab intestato, is the transmission of the goods of the deceased to one or several persons according to the order defined by law. For when someone does not dispose integrally of his things by donation or testament, the goods which remain pass to natural heirs by way of succession confirmed or established by law. Yet this succession is reduced to donation and testament: for there is present in itself a presumed donation which the law supposes and recognizes.

505. Legal successors are called to the inheritance in a certain order. - First there must be distinguished regular heirs, who by the fact itself succeed to the person of the deceased and immediately acquire all his rights, provided they take upon themselves the burdens of succession; and irregular heirs, who are placed in possession of the goods by a judge.

Regulars, however, can succeed in a threefold way: by heads (*par tête; hoofdsgemijze*), by stocks (*par souche; staaksgewijze*), and by lines (*par ligne; stamsgewijze*). They succeed either by their own right, that is, on account of a personal degree of consanguinity, or by right of representation, because they have obtained the right of their deceased parent. Now there are five orders of regular heirs, so that there is no transition from one order to another unless the heirs of the prior order are entirely lacking.

A. As regular successors there are called to the succession:

1. Descendants of the deceased, namely: legitimate or legitimated children (a. 331-333), or recognized natural children (a. 756), or adoptive children (a. 350), and indeed by heads; then grandchildren, etc., but by stocks (a. 745).

By French and Belgian law, legitimate children divide the inheritance equally among themselves, because they succeed by heads. If one of them has died, his posterity are called to the inheritance by representation and succeed by stocks (a. 745). Recognized illegitimate children obtain only the part of the inheritance determined by law (a. 756-761), if legitimate heirs survive, as was said in n. 501. An adoptive child receives the part of a legitimate child (a. 350).

2. In default of descendants, the father and mother of the deceased are called together with his brothers and sisters, according to the proportion defined by law.

By French and Belgian law, 1/2 part yields to the parents, the other to the brothers and sisters; if only the father or mother survives, 1/4 part yields to this one, 3/4 to the brothers and sisters (a. 748-752).

3. In default of descendants and parents, the brothers and sisters of the deceased divide the whole inheritance among themselves in the way defined by law.

By French and Belgian law they succeed by heads if they are of the same bed; otherwise by lines, so that full siblings participate from both lines (a. 750 and 752).

4. If descendants, parents, and brothers and sisters are lacking, the succession devolves to ascendants, and indeed by lines, so that the nearer paternal ascendants divide one half part among themselves, but the nearer maternal ascendants divide the other among themselves (a. 746-749).

But if one of the two lines of ascendants has become extinct, 1/2 part is divided among ascendants, the other among collaterals of the other line (a. 753).

5. If descendants, brothers and sisters, and also ascendants are lacking, the inheritance passes to collaterals (a. 750 and 755) up to the degree defined by law.[1]

[1] The orders are distinguished somewhat otherwise in German law (a. 1924 sq.), namely: 1. descendants of the deceased; - 2. parents, so that the descendants of the deceased parents or of one deceased parent hold their place; - 3. grandfathers and grandmothers, or likewise their descendants, to whom, however, the surviving spouse is preferred; - 4. great-grandfathers and great-grandmothers, in the same way as was said in 3; or in their default those nearest in kinship to the deceased; - 5. great-great-grandfathers and great-great-grandmothers, in the same way as was said in 4.

From the Belgian law of October 11, 1919, a. 47, blood relatives beyond the 4th degree do not succeed, unless they are called by representation; but representation is admitted in the direct line indefinitely, while in the collateral line it is admitted for the descendants both of the brothers and sisters of the deceased, and of his paternal or maternal uncle, paternal aunt or maternal aunt (Civil Code, a. 742 modified). - The French law of December 31, 1919, excludes collaterals beyond the sixth degree from succession, unless they are descendants of a brother or sister: then succession reaches as far as the 12th degree. The Dutch law of February 17, 1923, establishes almost the same. By Italian law collaterals are not admitted beyond the 10th degree.

B. There are two irregular successors:

1. The surviving spouse, provided he or she has not been judicially separated from bed from the other spouse, obtains the whole inheritance in default of the above-mentioned heirs; but if he or she does not obtain the whole inheritance, he or she acquires the usufruct of a certain portion of the goods (a. 767), as was said in n. 501.

By Italian law, the spouse, in default of children, has the right to a fourth or third part of the inheritance; if parents, ascendants, brothers and sisters also are lacking, to 2/3 parts, indeed to the whole if the relatives are more remote than the sixth degree (a. 754). By English law, the wife receives 1/3 part of the goods of the intestate husband, if he leaves descendants; otherwise as stated below.[2] By German law (a. 1924-1931), the surviving spouse in the first case receives only 1/4 part, in the second 1/2 of the inheritance and household goods; in default of ascendants, the whole.

[2] In the individual States of the United States of America the law is diverse. By English law, immovable and movable properties are distinguished. An immovable, if there is no offspring, is deferred to the nearest male heir; but if there is offspring, it is attributed to the eldest son or, if he has died, to his son; in default of all male offspring, dominion is assigned jointly to all the daughters. - Movables, in default of testament, are so divided that the third part falls to the widow, and both remaining parts to the children without distinction of sex. - If the wife herself dies without testament, her patrimony is attributed to the husband, or if he has died, to the progeny.

2. The State or public treasury (the fisc), which, in default of other heirs, natural or instituted, obtains all the goods (a. 768).

506. The following are excluded from the inheritance:

1. by reason of incapacity, and indeed by the fact itself, provided it exists at the moment when the succession begins: a) those not yet conceived; b) those who are born not viable; c) those who at the time when the succession began were already dead (a. 725);

2. by reason of unworthiness: a) those who were condemned for the perpetrated or attempted killing of the deceased; b) those who brought against the deceased a calumnious capital accusation, which was judicially declared as such; c) those of age who did not report to the judges the killing of the deceased known to them (not the killer), unless nevertheless they are excused from reporting as relatives or relatives by marriage of the killer (a. 727-728). Yet the children of the unworthy are not excluded, unless they succeed by representation (a. 730).

All the aforesaid are disinherited not by the fact itself, but only after the sentence of a judge.

507. Option of accepting and repudiating succession. - No one is bound to accept a succession, but he can repudiate it: for no one is an heir unless willing; whence no one succeeds except after he has accepted. But he can accept the succession either simply, or under benefit of inventory, or repudiate it (a. 774).

A. He who accepts simply, whether explicitly, by assuming the name of heir in an authentic or even private act, yet in such a way that it clearly stands that he accepted the succession; or implicitly, by placing an act which necessarily imports the will of accepting (a. 778-780):

1. immediately acquires all the rights of the deceased and can dispose of them (a. 777);

2. takes upon himself all burdens, even beyond the powers of the inheritance, so that he is bound to pay debts not only from the goods of the succession but also from his own. This last, however, does not seem to have force in the forum of conscience, at least before the sentence of a judge, which in the case rests upon a false presumption of fraud;

3. he accepts irrevocably, except in cases excepted by law, namely, when the acceptance was obtained by fraud, or when the inheritance is diminished by more than one half because of the discovery of a testament unknown at the time of acceptance (a. 783).

B. He who accepts under benefit of inventory must expressly declare this and have the declaration inscribed in the register of the tribunal (a. 793):

1. he receives only the administration of the goods, until the matter has been placed in a clear state and the burdens have been satisfied (a. 803);

2. he must take care that an inventory be made (a. 794); for making it three months are conceded, and besides 40 days for deliberating for acceptance or not (a. 795);

3. once the inventory has been made, he is not bound to pay burdens beyond the powers of the inheritance; indeed, he can free himself from every obligation by leaving all the goods to creditors and legatees, and he has the right of exacting payment of all things which are owed to him by the succession (a. 802).

C. He who repudiates the succession, which is not presumed but must be expressly declared in the same way as acceptance under benefit of inventory (a. 784):

1. is considered never to have been heir, whence his portion accrues to co-heirs of the same order, and, these lacking, devolves to the subsequent degree (a. 785-786);

2. is freed from paying debts, but creditors thereby injured can obtain from the judge that they accept the succession in his place; in which case the renunciation is invalidated only in favor of the creditors and for that sole end, that the things owed to them be paid (a. 788);

3. can retain gifts and legacies made to him, if they do not exceed the disposable part (a. 845).

Sometimes it is expedient to accept simply, when it is morally certain that the succession is not burdened beyond the powers of the inheritance: for thus many expenses are avoided. In doubt, it is better to accept under benefit of inventory. Finally, it is fitting to repudiate if it is morally certain that the inheritance is burdened with burdens which exceed the resources, or if a donation of great value previously made would have to be lost or notably diminished because it would have to be brought back to the common mass.

508. Partition of inheritance and collation of goods. Partition, in order to avoid lawsuits, can be made by the ascendants themselves in their life, under the form of donation or testament (a. 1075-1080), provided the rules of law concerning reservation and succession are observed. But if no partition has been made by the parents themselves, it must be instituted after their death, unless the co-heirs agree that it be deferred for a time; according to French law, this cannot exceed a five-year

period, yet in such a way that, once this has elapsed, the agreement can be renewed. But lacking such an agreement, no co-heir can be compelled to remain in undivided possession (a. 815).

But in order that relative equality be preserved among heirs, sometimes it is prescribed by law that a collation of goods be made (a. 843 sq.: *rapport; wederinbreng*). It consists in this, that each one must bring back to the common mass of the inheritance whatever he himself has received from the deceased by donation or testament, unless, however, the donor explicitly said that these things were not to be brought back, and at the same time they do not exceed the disposable part (a. 844 and 846), or the law itself has otherwise disposed.

Therefore it is the heir or legatee himself who is bound to collation, not his son, not his father, not his spouse, unless these act by representation (a. 847-849). But the law exempts from collation: 1. expenses of education (a. 852), namely those necessary for learning an art or trade, or nuptial expenses or customary gifts; but not expenses made for procuring some office or state of life (*frais d'etablissement*, a. 851), or for paying debts (a. 851); - 2. fruits and interest of the donated thing, which were received before the death of the donor (a. 856); - 3. immovable things which perished without fault of the donee (a. 855).

509. Whether the obligation of collation which is imposed by civil law has force in conscience? - It is answered:

1. For those things which the donor wished to give absolutely, the obligation of collation having been remitted explicitly or implicitly and the legitimate portion of necessary heirs being preserved, there does not exist an obligation of collation before the sentence of a judge; for example, if the deceased attributed a great sum of money but with the recommendation that this donation never be manifested to the other members of the family. After a sentence of the judge by which collation of such goods is imposed, there is an obligation of justice even in the forum of conscience, because the donation is declared invalid.

2. If the donor's will of remitting the obligation of collation is clear by no probable reason, collation must be made, at the petition of the heirs, even before the sentence of a judge: for civil law attributes this right; if the heirs do not petition, collation need not be made, unless nevertheless the donee has expressly obligated himself to making it.

3. Sometimes parents enter into a contract with their children that there be subjected to collation that which by force of civil law alone does not fall under it, for example, expenses for education which are truly extraordinary in comparison with the other children. A contract of this kind is in itself valid; nevertheless minors are not definitively bound by it unless, after attaining majority, they have ratified it. Thus, for example, concerning expenses for studies in a Seminary or University.

510. Remarks. - 1. Rescission of partition (*verbreking*). A partition once made can be rescinded: a) on account of force and fraud; 2) when one part is at least notably injured: according to the French code it is required that the injury exceed the fourth part of the portion which ought to have been attributed, according to the value at the time of partition (a. 887).

In the forum of conscience, every unjust injury must be repaired.

2. Guarantee of partition (*garantie des lots; vrijwaring*). To preserve equality, law establishes that if one of the heirs suffers total or partial eviction of the goods which had fallen to him, or is disturbed in their enjoyment, the other heirs are bound to hold him harmless, provided that a) the cause of eviction was prior to the partition, and is not to be attributed to the fault of the evicted heir; b) this eviction was not exempted from guarantee by an explicit clause of the act of partition (a. 884).

3. Proportion to be observed in the payment of debts. From natural and civil law, every heir must concur in the payment of the debts of the deceased according to the proportion of those things which he received from the inheritance (a. 870).

In the case in which one has received an estate subject to mortgage, creditors can compel him to pay the whole debt by which the estate is burdened; but then he himself has recourse against the other heirs for recovering the part owed by them (a. 874).

Chapter III: On Bilateral Onerous Commutative Contracts

Question One: On Purchase and Sale

S. Th. II-II, q. 77.

511. Purchase-sale (*achat et vente; koop en verkoop*) **is the type of an onerous contract.** - Purchase is an agreement of price for merchandise; sale is an agreement of merchandise for price. They are two partial correlative contracts making one whole. Purchase-sale is defined as a bilateral onerous contract by which the dominion of some thing is transferred for a determined price, or a contract constituted by mutual consent for handing over merchandise into dominion for a determined price, and price for merchandise (a. 1582). It is called:

1. a bilateral contract, and thus is distinguished from donation;

2. onerous, that it may be distinguished from loan for consumption and loan for use;

3. by which dominion is transferred: thus it is distinguished both from a promise of sale, by which no dominion or right in the thing is transferred, and from letting-hiring, by which only use alone is transferred;

4. of some thing or merchandise, that it may be distinguished from exchange, by which money is given for other diverse money;

5. for a determined price: thus it is distinguished from barter, by which merchandise is exchanged with merchandise. But it is necessary that the price be determined: for if it is left to be determined by the buyer, the contract is null.

Therefore three conditions are required for the essence of this contract:

a) the mutual consent of one who buys and of another who sells, unto the transfer of dominion;

b) a thing determined as merchandise, that is, a thing estimable by price, whether movable or immovable; and thus sale is distinguished from exchange, in which one kind of money is exchanged

for another kind of money, for instance French for English, silver for gold;

c) money determined as the determined price of the merchandise; and thus purchase is distinguished from simple barter, in which merchandise is given for merchandise, for example, a horse or ox for sheep.

Money, constituted by universal agreement, is the common measure of the value of things and thus a suitable means for comparing things with one another and exchanging them. Today it consists of coins or monies of gold, silver, etc., or of bank notes representing them; but in the first times it consisted of many other things, such as skins, ivory, shells, fish, cattle. Hence the name money (*pecunia*) is taken from cattle (*pecus*); and among certain nations coins were marked with the head of cattle.

512. Sale by its nature is a consensual contract, which is completed by the consent alone of the parties (a. 1583), so that the contract has force at once, before the thing has been handed over or the price paid. Therefore from the moment of mutual consent the dominion and risk of the thing are with the buyer; and the thing perishes for the buyer, unless it perishes by an intrinsic defect (a. 1647), or unless it happens from culpable delay of the seller because it was not handed over in due time (a. 1138-1141).

Exceptionally, however, sale is not completed by the consent of the parties:

a) if it is explicitly stipulated thus in the contract;

b) when things are not sold in bulk, but according to weight, number, and measure, for tasting or testing: then the contract will not be perfected until the things have been weighed, numbered, measured, tasted, and tested (a. 1585-1588);

c) if positive law so establishes generally: thus formerly Roman law; today, however, this obtains only in German and Austrian law. Then, namely, sale is not perfected until the thing has been handed over.

In these cases, as long as the sale has not been perfected, dominion of the thing and risk are with the seller, and the thing perishes for the seller.

Article I: On Purchase and Sale in General

513. The matter of sale is merchandise for a price. Merchandise is everything which can be measured by a price of money and alienated. Whence under this name come all things which are placed in commerce (a. 1598), and are not prohibited from being sold by particular laws, whether corporeal goods, or even incorporeal rights, such as credits, promissory notes, rights against a third party, or a right in an opened inheritance (that is, after the death of the deceased), even litigious rights according to the rate of probability of obtaining the thing (a. 1689-1701); not, however, the right of mere use and habitation (a. 631 and 634).

But a) in modern law sale is declared null:

1. if the inheritance of a living person, even one consenting, is sold (a. 1600), lest, namely, abuses, frauds, killings, or even desire of death follow;

2. if the thing sold was another's, not the seller's. In this case, if the seller knew, but the buyer was ignorant, that the thing was another's, the former, on account of fraud, will be bound to

repair the damage inflicted (a. 1599);

3. if the thing had totally perished at the moment of sale. But if it had perished in part, the buyer can at will either withdraw from the contract, or demand the surviving part of the thing for a price to be determined according to the proportion of the whole price (a. 1601).

Those rules have force in the forum of conscience.

b) Besides, from natural law a sacred thing cannot be sold as sacred, or a spiritual thing as such: for thus it is not estimable by a temporal price. This sin is called simony.

514. The matter of purchase is the price for merchandise. Price is the value of a thing expressed in money, or the expression of saleable value through a sum of money, and therefore it is the measure of the quantity of the value of the merchandise itself. Therefore a just price is that which is adequate to the thing, or commensurate with its value; by it there is effected an objective equivalence between what is given and what is received. For a thing is worth neither more nor less than its just price.

Value is of one kind as useful value, of another as economic or saleable value. Saleable value supposes useful value, which is diverse in diverse things and does not have a univocal measure. Useful value, namely, is from the intrinsic dignity of the thing and the intensity of individual necessity; but saleable value is the aptitude which a thing has so that it may be exchanged in commerce with others (*ruilwaarde*), or the estimability of the utility and facility which a thing has for satisfying needs, that is, the appetite and common desires of pleasure, utility, necessity: aptitude for satisfying common necessities.[1]

[1] Economists dispute about the causes of value. Some, as many liberals, hold value as merely subjective, namely from the utility and estimation of the contracting parties. Others derive it from the very intrinsic utility of the thing, either absolute or relative to the buyer, with simultaneous attention to the abundance or scarcity of merchandise and money, and to the proportion between things offered and things sought. Others, as many socialists, reckon the value of a thing from the labor alone which in itself is necessary in making, preserving, or also transferring it.

Value, and therefore price, does not depend on the subjective estimation of the seller (since he ought not to be judge in his own cause), nor on the subjective advantage of this or that buyer in particular, nor on the intrinsic perfection or natural dignity of the thing itself considered in itself; for wheat is sold more dearly than mice, gold than a dog, a gem than fleas, a house than a horse, or even than a slave. But it depends on the objective utility of the thing with respect to human uses, and indeed not absolutely, but according as men are able to estimate that use, and this utility is appraised and measured by common estimation: for a gem for ornament is worth more than a great quantity of wheat for consumption. - The foundation of the whole matter seems to be the reality of the social order. But the necessity of exchanging things, goods, and services according to certain and determined qualities is the objective reason of equality and economic value.

Value depends on the utility of the thing, that is, on its fitness for human uses of convenience, pleasure, necessity; and this is estimated more or less a) from the labor expended, costs, industry, and dangers, in themselves and commonly necessary for producing, preserving, and transforming things; b) from the abundance and scarcity of things, and the frequency or rarity of buyers or sellers; and c) from the intensity of common desire or the common will of acquiring and selling.

Whence price can vary and be increased or diminished from various causes:

a) on the part of merchandise, on account of abundance, which diminishes the value of merchandise, and scarcity, which increases it: for that is esteemed more which is sought by more persons and which is found with greater difficulty or in lesser supply, but that is esteemed less of which there is greater supply and which is less sought;

2. on the part of buyers: a) from their frequency. If there are many, merchandise is sold more dearly than if they are rare: for the more buyers there are, the more things are esteemed, since frequency of buyers induces scarcity of merchandise; b) from their capacity and the quantity of money of which they can dispose;

3. on the part of sellers, for those who sell by office sell more dearly than those who sell by accident. For it is estimable by price that some persons continually take care of seeking out, preserving, and distributing things, and are compelled to omit other ways of making gain. And likewise expenses, dangers, and damages which commonly occur increase the price: commonly, I say, for from the fact that one merchant suffers a singular loss in his merchandise, for example, by shipwreck or fire, the price is not thereby justly increased for him;

4. from the mode of selling. For things are sold more dearly, or on the contrary at a cheaper price, according as they are sold a) by office, or by accident; b) by retail, or together in a great quantity: for this frees merchants from many cares and makes them ready for acquiring new things; c) in one's own shop, or under the hammer, by public auction; d) in a shop sought out, or brought by free offer: for merchandise offered spontaneously becomes cheap, since this mode of selling indicates moderate utility and means on the part of buyers.

By all these the just price can be determined.

From these things it can be understood:

1. That the principle is false: a thing is worth as much as it can be sold for, or as much as can be had from buyers. This is true only within the latitude of the estimation of the just price, namely in such a way that one can seek up to the highest just price, but not beyond the highest.

2. "That those rules of merchants are false by which they are wont to justify the prices of their merchandise: that they bought for so much, that they made such expenses, that they underwent dangers, unless these are of the kind which commonly occur in the purchase of such merchandise. For some merchants are foolish and imprudent, and rash, who either easily suffer themselves to be deceived, or make useless expenditures, or rashly expose themselves to dangers. There is added that, even if the merchant proceeded rightly, nevertheless because of a supervening abundance of the same merchandise, it happens that the price is diminished, and therefore he cannot sell for as much as they cost him: just as also when scarcity supervenes unexpectedly, the price increases, and he can sell for more than he bought" (Sylvius, on q. 77, a. 1, q. 2).

c) That an individual merchant cannot, from the fact that he suffers a singular loss in merchandise through misfortune, theft, or fraud, exact even above the highest just price: for a thing is worth as

much as it is commonly estimated, not as much as it cost a private person. But if the misfortune were common to many merchants, so that it induced a loss of merchandise, then the price would increase.

d) That the practice of merchants is of itself inequitable when, selling at the lowest price or below it, they do not hand over a full measure or hand over merchandise not whole but adulterated. Nor can this be called licit as an occult compensation against buyers, because they have not harmed the sellers, unless they have unjustly compelled them to sell at a cheaper or the lowest price.

e) That those are unjust who are wont to give gifts to servants, and afterward secretly compensate themselves by increasing the price beyond the highest just price, unless, however, the practice is known to the masters and they do not contradict it.

f) If certain things are very highly esteemed among uncivilized nations, it is not unjust to sell them there at a very high price: common estimation in some region renders the price just.

Finally, others, as many Catholics, judge that value depends on the intrinsic utility of the thing together with labor, and besides on the more or less vehement desire of buyers to procure the thing for themselves on account of its utility, pleasure, or necessity.

515. Principle I. A sale is just if there is equality between merchandise and price, or if the price is just; so that to sell a thing more dearly and to buy it more cheaply than it is worth is in itself unjust and liable to restitution.

It is proved: 1. from St. Thomas, q. 77, a. 1: "Purchase and sale seems to have been introduced for the common utility of both, namely while one needs the thing of the other and conversely. But that which has been introduced for common utility ought not to be more to the burden of one than of the other, and therefore a contract ought to be established between them according to equality of thing. But the quantity of the thing which comes into the use of man is measured according to the price given; for this purpose money was invented. And therefore if either the price exceeds the quantity of the value of the thing, or conversely the thing exceeds the price, the equality of justice will be taken away. And therefore to sell a thing more dearly or to buy it more cheaply than it is worth is in itself unjust and illicit";

2. from the liberty of contract: the seller in some way is reasonably unwilling that the thing be estimated at a cheaper price, and the buyer similarly that it be estimated at a greater price, than is just. And therefore to force the other party to an unequal contract and as it were thrust it upon him is unjust, because in reality he does not consent to it except as coerced or deceived.

516. Principle II. By accident it is licit to sell at a greater price or to buy more cheaply than the just price. Thus on account of extrinsic titles, of which three are reckoned on the part of the seller and three on the part of the buyer.

A. On the part of the seller the reasons for increasing the price are:

1. emerging damage, as if he sells flour which he needs, or an instrument useful for exercising an art, while he himself afterward can buy it only more dearly;

2. ceasing gain, as if in favor of the buyer he sells merchandise which he wished to keep for the time when it would have been dearer, or permits payment to be deferred for a longer time;

3. special affection for the thing on account of the special advantage or enjoyment which it brings to him, because the lack of a thing specially loved is something estimable by price.

Yet concerning these he must forewarn the buyer.

B. On the part of the buyer the reasons for diminishing the price are:

1. a purchase made in favor of the seller, with damage, ceasing gain, or inconvenience to the buyer; for example, if someone in favor of the seller buys now a thing which he needs only at a time when it will be of lesser price. Concerning this, however, the seller must be warned;

2. spontaneous offer, for things spontaneously offered become cheap: for this indicates either a scarcity of buyers and abundance of merchandise, or the danger of a latent defect or of covered-up superiority;

3. anticipated payment, in present-day economic circumstances, because thus there is afforded to the seller an advantage which is estimable by price.

517. A threefold price is distinguished: legal, common, and conventional.

a) Legal price (*wettelijke prijs*) is that which is fixed by public power on account of the common good, so that the greed and frauds of sellers and buyers may be met and the exploitations of the poor impeded:[2] thus in certain states, by the authority of magistrates, the price of bread, meat, or other foods of daily necessity is defined.

[2] Bannez excellently justifies legal price.

That price is wont to be used, for example, in railway tickets, in postal stamps, in foods which are served in certain public places, in medicines which are sold by pharmacists, in the hire of public carriages, in some monopolies of the government, etc.

b) Common price (*gewone of gemeene prijs*) is that which, independently of every coercion, is determined by the common estimation of men, according to the variety of places and times. And because various men do not judge entirely alike about the same things, common price does not consist in an indivisible point, but has a certain latitude; whence a threefold price is usually distinguished: the highest, above which honest merchants are not wont to sell; the lowest, below which honest buyers generally do not buy; the middle, which consists between both.

In things necessary for life, concerning which contracts are made often, generally the lowest price is not much distant from the highest in the same region, and the middle price is easily known to all by that which is called the current price; - but in superfluous things, especially when they are rarely sold, there is a greater latitude, and a well-determined current price is found more rarely.

c) Conventional price (*prix convenu; overeengekomen of afgesproken prijs*) is that which is determined by the free agreement of buyer and seller.

By agreement the price is wont to be established for things which are outside ordinary usual commerce and therefore do not have a common price, such as works of extraordinary art, precious gems of extraordinary magnitude, very ancient manuscripts, and other things of this kind which are sold most rarely; as also cheap things and things worn by use which are sold by dealers in old wares.

These things being posited, we say:

I. Given a legal price, one must stand by it in conscience, because it is established by authority for the common good, and thus it is the more certain rule; - unless nevertheless it is manifestly unjust (which scarcely happens), or, things being notably changed, it becomes unjust; or it is not observed by the greater part of the people and has gone into desuetude; or the merchandise is notably more precious or worse, which is an extrinsic title. Therefore he who without a special and just reason exceeds that price commits injustice and is bound to restitution toward the buyers; indeed toward other sellers, if he diminishes the price and that price had been established not only in favor of buyers, but also in favor of sellers.

II. Failing a legal price, one must altogether stand by the common price, so that to sell above the highest and to buy below the lowest is unjust, unless there is a special reason of an extrinsic title. Common estimation is a more certain rule than private estimation, especially because price expresses the value of the thing with respect to common uses and necessities, which therefore is to be measured by common estimation; whence also contracting parties commonly intend to bargain according to that price: for men are not wont, in onerous contracts, to buy beyond the highest price or to sell below the lowest, unless perhaps deceived or coerced by necessity. But if it happened otherwise, equality of the thing to the price would not be preserved, and therefore neither would justice.

III. Failing both legal and common price, conventional price can be held as just, provided it is established freely and moderately, without fraud, force, fear, and other unjust means. The reason is that then there is no other way of determining the price. Thus with respect to things whose price both contracting parties altogether do not know, when each exposes himself entirely voluntarily in an equal way to uncertainty and the danger of erring: for then the contract is aleatory; or with respect to those things which are sold most rarely and do not have a common price, provided, however, that the conventional price is not beyond all proportion and of excessive magnitude or cheapness, but is determined moderately and reasonably, so that the estimation in some way, as far as possible, is made by comparison to other things which have some likeness.

518. Question: Is the special utility of the buyer a title for increasing the price? - The older authors commonly deny this, with St. Thomas approving, a. 1: "the utility which accrues to another is not from the seller, but from the condition of the buyer; but no one ought to sell to another what is not his." Yet some modern theologians hold that title legitimate, provided the seller does not abuse the buyer's necessity; because price also is determined partly from the extrinsic and relative utility of the thing, and from the more vehement desire of having it, as common estimation itself feels; - but general utility and common desire can increase price, not so mere private utility and particular desire.

Perhaps one can distinguish: utility from the subjective condition of the buyer, and utility from the relative condition of the estate, because, for example, the estate is near the house or field of the buyer. In this case the price perhaps can be increased, because the greater estimation comes from the

objective respective situation of the estate itself to the house; but the price cannot be increased in the first case. For if a craftsman needs some instrument which brings him greater utility because of his knowledge, so that he can make a thing invented by his own genius, the seller cannot therefore increase the price, because the greater utility is wholly from the knowledge of the buyer; - likewise it cannot be increased on account of the buyer's necessity: his mere need is not estimable by price.

In practice, those who act in good faith in this way are not to be disturbed, unless they increase the price so that it is exorbitant. Nevertheless, even with the stated limitation added, the opinion of the moderns is not safe; the doctrine of St. Thomas is far more probable, if not certain.[3]

[3] This too is admitted by P. Vermeersch, in *Quaest. de Iustitia*, where he offers two direct arguments for the opinion of St. Thomas:

1. The special utility of someone does not increase the value of the thing, since it is not commonly estimated. Therefore it does not enter into the just price, nor can it be computed unless there is question of damage to be prevented or repaired. There is no damage where there is utility of the buyer. Therefore.

b) Price is to be paid insofar as the thing pertains to the seller. But the thing pertains to the seller according to value and according to the utility peculiar to himself, but in no way according to the utility which first arises in the buyer.

But he attacks the other opinion on account of absurd consequences:

1. A just price not only can be exacted but must be paid. If therefore the special utility of the buyer were to change the reason of the just price, the buyer either ought besides to increase the price, or at least to indicate his utility, so that the seller could use his right of increasing the price. Yet no one would say this; buyers have recourse to various arts so that this utility may be unknown.

2. Just as a thing can be specially useful to a buyer, so not rarely money brings to a seller a special advantage of gain. Yet for this reason he does not judge himself bound to deduct something from the price, even if he tries to compute the special utility of the buyer. Are not these things altogether arbitrary?

3. As Molina already argues, *De Iustitia*, c. 2, d. 348, n. 6, then it would be lawful to sell more dearly to the poor man than to the rich. For does not special need reveal special utility? Therefore gratuitously do the adversaries themselves distinguish the case of necessity, which they do not wish to be considered by the seller, from gainful utility or utility of affection. Nor let them object that he who is pressed by necessity lacks liberty. For both he who wishes to recover from his own necessity, and he who wishes to seize an occasion of gain, are pressed by the necessity of the end or of the intended good, to which one way lies open: the procurement of the thing. From this the obligation of charity can vary, not that of justice.

519. Remarks on the just price. - 1. Common estimation makes a price just even if it seems imprudent; hence among uncultivated nations gold or ivory can justly be exchanged for glass or cloth: for common judgment attributes great value among those nations to things which elsewhere are of

the least value. The contrary holds of private estimation; hence it is illicit to sell colored glass to an ignorant person for a great weight of gold, or to buy at a cheap price a thing commonly esteemed precious, when the seller is ignorant that it is such, for example, a precious gem.

2. It can happen that a price which does not exceed the highest is unjust:

a) if, once an agreement has been made concerning the middle or lowest price, someone secretly procures the highest for himself by deceiving the buyer in the counting of money or in weight or measure;

b) if before an agreement has been made he deceitfully induces the buyer to give a greater price than he otherwise would justly have given: for anyone has the right to demand that he not be impeded by frauds or other unjust means from buying at a just price, such as the moderate or lowest price which he would have wished to give.

3. Nevertheless, pure lies (or oaths) by which merchants exaggerate the price, or affirm that the saleable thing cost them so much or that they sold it to others for so much, just as those by which buyers affirm that elsewhere they can or could buy for less, generally are not to be held as true frauds: for no one is wont to trust such things much, which have been customarily used so that one may arrive at a moderate price. Whence they are a sin against truth (or also religion), not against justice, provided the price is not above the highest or below the lowest. The case would have to be excepted in which the buyer, on account of special confidence which he placed in the person of the seller, or on account of extraordinary protestations of sincerity (for example, false documents) emitted by the other party, could in no way guard himself from error.

4. St. Alphonsus asks, l. III, n. 822: "Whether he is excused (from injustice) who uses a diminished measure in order to obtain the just price, which otherwise he would not obtain because of an unjust legal tax, or an unjust monopoly of buyers? Very probably they affirm... because then he justly redeems his own vexation." Concerning these things Prummer, II, n. 294, notes that they are to be understood with a grain of salt and very rarely can be reduced to practice in our times: "It is said in Scripture: A deceitful balance is an abomination before the Lord (Prov. XI, 1). Especially, the excuse often brought forward by merchants is not sufficient, namely that they cannot sustain 'competition' if they do not diminish weight and measure. For no injury is inflicted on them by buyers. Nor let them say that the weight even thus corresponds to the just price. For although this is true absolutely, nevertheless it is false after there has once been a legitimate agreement about such a price and such a weight (Billuart, diss. 3, a. 3). But they can defend themselves against other 'competitors' by accusing them of illicit machinations. - Such diminution of weight or measure is licit only a) if universal custom so bears, and this can easily be recognized by buyers; b) if buyers by unjust means (for example, so-called Boycott syndicates) compel sellers to a truly unjust price; because then sellers can defend themselves" to compensate themselves, if another way is lacking. These things are not said in opposition to the doctrine of St. Alphonsus, but because the case is often diverse.

5. The confessor must beware lest material sins be changed into formal sins without utility. For often men in good faith judge that every price which is freely and without fraud established between the parties is just. Yet this is false; for even he who in good faith sells at a price greater than just, or buys at a lesser price, is bound to restore that in which he has been made richer. The confessor ought not disturb this good faith unless the error is evident and the fruit of the admonition is probable.

6. There are almost innumerable frauds which are wont to be committed in the sale of things. But in so great a variety of cases the confessor will not wander much from the right if he especially attends to what among truly honest men is customarily done in such a case (unless, however, there is a grave reason for doubting). But that he may discern whether in practice a grave obligation of restitution arises, let him attend to three things: a) whether the damaging is truly, formally, and effectively unjust, and that in grave matter; b) whether the thing sold is at least morally the same as that which the buyer thought he was acquiring; c) what custom is in force in such a sale. Yet let the unjust mode of acting of certain merchants not be called an accepted custom.

520. Cases. - I. Sometimes merchants sell below the common price in order to attract buyers, and thus inflict damage on other sellers.

Resp. In themselves, these do not injure justice, because by selling merchandise at a cheaper price they use their own right; - but by accident, namely if they attract buyers by lies and frauds, simulating a price lower than the common price, and at the same time adulterating merchandise or diminishing weights or measures, they commit injustice against other sellers, whom they impede by unjust means from making gain; indeed, in itself also against buyers, as was said in n. 519, 2, not however always if they do this in such a way that the thing can be recognized and they diminish the price in the same proportion as the quality or quantity of the merchandise, unless extraordinary protestations of sincerity are made, so that the buyer could in no way guard himself from error.

II. Contracting parties from private knowledge know that the price of some merchandise is shortly to be increased or diminished, and nevertheless buy or sell at the common price actually current.

Resp. If they know that the price is to be increased or diminished on account of a cause intrinsic to the thing, it is unjust, because then the thing itself in itself is of greater or lesser saleable value, for example, if someone knows that his horse is about to die from a hidden disease, or that wine is about to become corrupted. But if it is foreseen on account of an extrinsic cause, for example, on account of the scarcity or abundance of things, or on account of other events, it is not unjust, provided one guards against every force, deceit, or fraud. For no one is bound to communicate his own private knowledge to others, but he can use it for his own advantage, for rights assist the vigilant; besides, those who contract here and now are not bound to look to the future value, but to the present. Whence St. Thomas, a. 3, ad 4: "The seller who sells a thing according to the price which he finds does not seem to act against justice if he does not disclose what is future." Although he can sin against charity, if altogether great damage would come to the other, as if one buying a great quantity would be reduced to great misery, or if a seller could sell the merchandise to many and sold it to one, or when he could sell to one who would immediately hand over the thing to others who would consume it, he sold to another who would keep the thing until the time of diminished price.

But those who have acquired knowledge by force of their office act unjustly if they manifest the same first to a few friends rather than to other citizens, or if they deliberately defer making the knowledge public so that from this they may be able to receive great gain: for thus they abuse a public office and unjustly favor themselves or others to the detriment of others. Yet they are not demonstrated to be certainly unjust if they merely use that knowledge before its publication for their own advantage, even if indirectly some detriment of others follows; - unless, however, such use is positively prohibited to them.

III. It can sometimes happen that the current price is unjust, whether on account of lies and frauds, or on account of monopolies which have been instituted by the principal sellers of some merchandise, so that they may unjustly increase or depress the price.

Resp. In the case of lies and monopoly, the promoters sin against justice; but other merchants can be immune from injustice, not always, but if they are merely deceived by those frauds, or are compelled to stand by unjust prices lest they withdraw from the market and suffer ruin.

IV. Sometimes buyers buy at a cheaper price than better informed sellers would concede, by asking sellers to consent to the price entirely voluntarily.

Resp. The buyer sins against justice if he knowingly buys below the lowest price, asking an ignorant seller to yield what is worth more; because such a remission, since it proceeds from ignorance, is null. - But otherwise, if when asked concerning the value of the thing he simply remains silent, and pays the lowest price, because thus he employs neither force nor deceit.

V. It can happen that a precious thing is set out among common things and acquired at a cheaper price.

Resp. 1. If each contracting party is ignorant of the special value of the thing, the price freely agreed upon by them can be held legitimate, because each incurs an equal danger of loss and an equal hope of gain: in the case, namely, there is an aleatory contract.

2. If the buyer alone knows the value of the thing, but the seller is ignorant, a distinction must again be made:

a) Either the thing is set out by a dealer in old wares or another merchant who by force of his office is considered to know the true value and price; and then the stipulated price does not seem unjust, because no injury is done to the seller, since by force of his office he can and ought to know the price of the things offered, and common estimation bears this: for such saleable things publicly set out are already esteemed at less and receive the greatest latitude of price, so that they are wont to be awarded for the price offered or agreed upon.

b) Or the thing is bought from a private person, who in his simplicity is ignorant of the true value, and then the price is unjust, because it is to abuse the ignorance and simplicity of the seller, and between the thing and the price there is no proportion of equality: in the case, namely, there is a common price of the common estimation of experts, by which one must stand.

Yet an exception is made if the value of the thing is so hidden that scarcely anyone in the place could know it, and the buyer owes it to singular skill that he has discovered it: for then a determined

common estimation of the common price is lacking and the conventional price becomes just; but if this is cheaper, it must be held as the fruit of the buyer's industry.

But if the precious thing lies hidden in another, then it will have to be held as a thing abandoned or lost, and, the conditions being given, can become the property of the first occupant.

521. Duties of the seller. - The seller must: 1. furnish a thing of the same species, quality, and quantity as was agreed; 2. manifest the defects of the thing; 3. hand over the thing itself which was sold; and 4. secure it against eviction.

I. **The seller must furnish the same thing as that which was requested,** not only as to quantity, but also as to species and qualities, at least morally. For if the thing sold differs physically from the thing requested, but morally or commercially is the same, equally useful to the buyer and fit for the intended end, the contract has force; but otherwise it is invalid and of itself unjust, because there is not consent unto one and the same thing, since the seller hands over a thing which in common estimation differs substantially from that which the buyer requested.

Therefore a) in itself it is illicit to substitute an artificial thing for a natural thing requested by the buyer, for example, chemically made wine, not from the vine, or margarine in place of butter.

b) Nevertheless, if merchandise made by art which is sold as natural is not harmful, but is almost equally useful, if its sale is commonly tolerated in society and besides the price paid is equivalent to the value of the thing (namely, of margarine, not of pure butter), then the contract has force; provided the buyer has not explicitly determined that he wishes to buy only an altogether natural thing, for example, if someone goes to a merchant who publicly announces that he sells only natural things, in no way things made by art, and so declares that faith should be given to him.

c) But if the thing substituted is itself natural, for example, if for a requested fish one altogether similar is substituted, the contract has force in itself, since the thing is morally the same; nevertheless injustice can easily then be committed if the value of the thing sold is less than that of the thing requested: the buyer did not will this, whence consent is lacking, for example, if horse flesh is sold for beef.

d) Likewise, of itself it is illicit to adulterate things requested by the buyer, or to mix them with others of cheaper quality; thus he acts unjustly who so adulterates or mixes merchandise that buyers would not buy it for such a price if this became known to them.

e) But if such mixtures are of the kind as are generally made by merchants, and do not harm health, and besides the price is diminished proportionately, there is no injustice strictly so called, and therefore no obligation of restoring.

Whence it is licit to accommodate oneself to commonly received usages; but injustice is committed: 1. if adulterated things are infected with a substantial defect; 2. if from the contract a special obligation of a pure thing has been undertaken; 3. if an inequitable price is demanded.

Yet one must not think that the price is always inequitable if a thing mixed with a cheaper thing is sold at the current price. Thus indeed it is in itself, but not when certain circumstances are added: a) if the admixture of substance is moderate and is made on account of necessity, utility, or common custom; b) if the merchandise, in proportion to the price, is still sufficiently fit for the accustomed use or the use intended by the buyer; c) when the merchandise is of extraordinary goodness and

exceeding others commonly appraised, and thus is reduced to a state of equality with the others; d) if the merchandise, worse in itself, is so mixed by industry that the thing is better tempered; e) if on account of an unjustly fixed price, or excessive exactions, or the inequity of buyers, or common custom, sellers are compelled to sell for less than is just, and by selling pure things could not receive the just price: for then, up to the equality of the just price, they will be able to mix something cheaper with the merchandise or to diminish in measure.

II. **The seller must manifest the vices and defects of the thing to the buyer,** both 1. substantial defects, namely those which affect the substance of the thing and render it harmful or unfit for the known end of the buyer; otherwise the buyer's consent is lacking, since no one intends to buy a harmful or plainly useless thing (a. 1641 sq.); and 2. even accidental defects of some moment, but hidden, namely those which regard only the quality of the thing:

a) if the buyer asks specially concerning them or expressly binds his consent to the quality: by being silent when he ought to speak, the seller would use deceit and fraud and thus would injure justice, and the contract would be rescindable; which would be verified a fortiori if he positively deceived the buyer by words or deeds, using bad arts so that the merchandise would seem better;

b) if from the defect there threatens danger of grave damage, as if a furious or asthmatic horse is sold, or a ruinous house: such a defect of quality redounds into the substance;

c) if from this the thing becomes useless for the buyer's end, for example, by selling an expired medicine.

Yet he is not bound to manifest defects, although he cannot deceive concerning them by positive artifices:

1. if they are manifest and evident (a. 1642), for example, that a horse is one-eyed; unless the buyer is inexperienced and by himself could not recognize the defect;

2. if the thing equally serves the buyer's end, even if he is asked about defects in general;

3. if the defect is concerning quantity, for instance concerning measure and weight.

What, therefore, concerning the practice of those who are wont to conceal all defects?

R. According to the above, if such a seller is not asked about defects, and the defect itself is accidental and hidden, he is not bound to manifest it, provided the thing is still worthy of such a price and the buyer does not directly signify that he intends a special use, which cannot be had because of the defect; for example, if someone sells wine which cannot be preserved for a long time, while the buyer manifests the intention of preserving it for a long time. Besides, charity sometimes obliges one to declare a defect, at least after the sale, provided it can conveniently be done. - But if such a defect is positively concealed (at least in a manner not customary), there is unjust deceit, for example, if in a fish shop, where freshly caught fish are commonly sold, salted fish are forced upon the buyer.

In practice, however, civil legislation also must be considered: for on account of the common good, because of the security of commerce and for removing lawsuits, law can hold certain contracts which of themselves are rescindable as valid and firm; and then they also will be just, provided no more than the just price is exacted.

A. By French and Belgian law there are recognized redhibitory defects, which permit redhibition, that is, recovery of the price (*vices redhibitoires; koopvernietigende gebreken*): when these are present, the buyer can return the thing and demand restitution of the price, or keep the thing and recover part of the price according to the estimation of experts (a. 1644). For redhibitory defects four conditions are required: a) that the defects be hidden; b) unknown to the buyer, otherwise he is considered to have wished to buy the thing notwithstanding the defect; c) existing at least virtually at the time of sale, for once the sale has been completed the thing becomes the buyer's; d) impeding the utility of the thing, or so diminishing it that the buyer would not have bought it if he had known the defects (a. 1641-1642). These things being verified, the seller is held for redhibitory defects, whether he knew them or not (a. 1645-1646). Nevertheless, if he is of good faith, by a special pact he can exempt himself from every obligation as to defects, by declaring that he sells at the buyer's risk (a. 1643); if he has not done this, he is bound only to restore the price of the thing and the expenses arising from the contract (a. 1646); but if he is of bad faith, he is bound besides to compensate all damages inflicted on the buyer (a. 1645). But if the thing sold has perished from a redhibitory defect, the seller is bound to return the price and compensate damages; otherwise if it perished by a fortuitous case or by fault of the buyer (a. 1647).

B. Indeed, when there is question of public fairs, or of those things which are wont to be sold and bought in fairs, sometimes, to avoid lawsuits, customs still broader can be justified, provided, however, merchants do not sell beyond the just price.

Thus in Belgium, for the sale of domestic animals, for example, horses, asses, cows, sheep, no defects are admitted as redhibitory except those which are enumerated in the royal edict of September 3, 1885, completed July 3, 1894, from the law of August 25, 1885.

III. **The seller is bound to hand over the thing sold to the buyer,** that is, to transfer it into his power and possession (1604); and indeed in that state in which it was at the time of sale, with all the fruits which he received from the day of the contract begun (a. 1614), accessories, and all things which are destined for its perpetual use (a. 1615) - unless the contrary has been stipulated or received by custom - at the predefined time and in the predefined manner, and, lacking a pact, according to the prescriptions of law or accepted custom, and in the place where the thing was at the time of sale, unless it has been otherwise established (a. 1609). Otherwise the buyer has a personal action against the seller and a real action concerning the thing sold: he can, namely, demand rescission of the sale or immediate possession of the thing, and reparation of the damage caused by delay (a. 1610-1611).

It should be noted: a) that handing over is made in diverse ways according to the diversity of things: by real delivery from hand to hand, unless the thing is already with the buyer, for example, deposited or lent for use, in which case consent alone suffices; by designation of the thing present, or by sealing, as in trees or sheep; by delivery of keys; by delivery of the writing or instrument by which the title and right are established (a. 1606);

b) that the seller is bound, as a depositary, to guard the thing faithfully until it is handed over; whence if by his fault it perishes or suffers detriment, he is bound to repair the damage; on the contrary, if it perishes by a fortuitous case, because then the owner suffers the damage, who ordinarily is the buyer even before handing over;

c) that the seller is not bound to hand over the thing if the buyer does not pay the price at the appointed time, or falls into a state of bankruptcy (a. 1612-1613);

d) that from handing over of the thing (*la delivrance; de uitlevering*) there differs carrying away (*l'enlevement; de oplichting*): the former is done at the seller's expense, but the latter at the buyer's expense, unless otherwise established by agreement or custom (a. 1608).

But what in the case in which, before the thing is handed over, it is sold again to another?

R. As long as the thing has not been handed over to the second buyer, the right of the first buyer remains entire. But if the thing has already been handed over to the second buyer, a distinction must be made according as this one acted in good or bad faith. If he obtained the thing in good faith, he is considered owner of the thing (a. 1141 and 1599), and the seller must make the first buyer harmless: thus for preventing lawsuits. But if he obtained it in bad faith, the right of the first buyer remains.

IV. **The seller is bound to secure the thing against eviction,** just as against hidden defects, or to furnish security concerning tranquil possession of the thing (a. 1625). To evict is to take away a thing by conquering; whence in the case eviction is the legitimate disturbance of the buyer from possession of the thing which he bought, so that juridically he is compelled to hand over the purchased thing to another, either wholly or in part, because, for example, a mortgage creditor claims it. But since the buyer intends to obtain possession of the thing, in itself the seller is bound to furnish him security of this possession, under penalty of reparation of damages (a. 1626).

Nevertheless the seller will be excused from this security: a) if he expressly said that he did not wish to furnish security against eviction, provided he is of good faith (a. 1627-1628); b) if the buyer at the time of sale knew the danger of eviction or took that danger upon himself (a. 1629); c) if the cause of eviction arose only after the sale, for example, on account of prescription which the buyer, although warned concerning this matter, did not interrupt (a. 1640), or if the buyer is evicted by his own fault.

But it is asked what, in conscience, the seller is bound to restore in the case of eviction?

R. 1. In the case of total eviction: a) If he was of bad faith, he must restore the price of the thing, every damage which the buyer suffers, for example, the expenses of the contract begun and of the judicial action, fruits which the buyer perhaps must restore to the owner of the thing (deducting those things which he gained from the purchase), etc. (a. 1630 sq.).

Other things added in civil law do not oblige except after the sentence of a judge.

b) If he was of good faith, he must restore the price after the sentence of a judge, indeed even before the sentence if it were certainly established that the thing belonged to a third party.

2. In the case of partial eviction, one must see whether the part is such that without it the buyer would or would not have wished to buy the thing:

a) if he would not have wished it, he can obtain rescission of the contract (a. 1636) and has the same rights as above;

b) if he would have wished it, he can demand the price of the evicted part according to the estimation of value at the time of eviction (a. 1637).

But those things which are established concerning partial eviction are applied to the case in which the estate sold is burdened with non-apparent servitudes which were not declared (a. 1638).

522. The duties of the buyer after sale are: to pay the price, - to take away the thing, - and to furnish security concerning the money by which he pays the price.

I. **The buyer must pay the price** at the predefined place and time (a. 1650); and, if nothing special has been agreed, at the place and time at which the thing is handed over or ought to have been handed over (a. 1651): for if the thing perishes by a fortuitous case, the contract having already been perfected, the buyer is not freed from paying the price, because the thing perishes for him as owner.

If payment is deferred beyond the predefined time, the legal increase is owed if a) it was so agreed; or b) payment was expressly required; or c) the thing is fruitful; - for otherwise damage is inflicted on the owner (a. 1652). And if the buyer in no way pays the price, the seller can petition for rescission of the contract, lest otherwise his rights be injured (a. 1654).

II. **The buyer must take away the thing** at the determined time; and, if nothing has been established, as soon as morally possible, lest from delay the seller suffer damage.

If the buyer has neglected to take away the thing, the seller is no longer bound to guard the thing; and if he has preserved it, he can recover the expenses made for this reason. Indeed, by French law, when there is question of movable things, the contract is resolved in favor of the seller if the thing has not been taken away after the predefined time (a. 1657).

III. **The buyer must furnish security concerning the money by which he pays the price.** - For just as the seller must secure the purchased thing, so also the buyer must secure the equivalent price; otherwise equality is lacking; whence also he would have to manifest the defects of the price in the case in which money were here and now of doubtful value.

What, therefore, if in payment of the price the seller has received false money from the buyer?

Resp. No one can use false money received for paying a debt: for if he himself was deceived, he does not therefore have the right of deceiving another. Whence he who handed it over to another as the price of a sale must recover it or make him harmless. - The same holds of money already obsolete (or foreign), whose value is much inferior to the value of corresponding legitimate money. Indeed, regularly it is not licit to give false money to others, lest an incitement to injustice be furnished.

But if someone in good faith accepted and spent false money, and was not thereby made richer, more probably he is not bound to a repeated payment when he to whom he handed it over suffered no detriment from it, for example, because he again handed that money to other unknown persons.

523. For what causes can purchase-sale be dissolved? - Resp. according to art. 1658:

a) by mutual consent, the things still being entire; - b) on account of fraud, error, fear, as was explained above; - c) on account of defect of the thing sold; - d) by fulfillment of a resolutory condition, if the contract was entered under it, for example, for the case of death; - e) if the thing was sold for a price much cheaper than is just: for then the seller is considered deceived concerning the value of the thing sold. This rescission by our civil law is conceded only for immovable things, and indeed not to the buyer (a. 1683), but to the seller alone, if he has been injured beyond seven twelfths (7/12) parts of the price (12,000-5,000 fr.), even if he has renounced his right (a. 1674 sq.).

In other cases civil law denies an action for rescission of the contract or for reparation of damage, to avoid lawsuits being multiplied too much; one must not conclude from this that the price is just in the forum of conscience. For in conscience every unjust notable injury must be repaired; for, as St. Thomas says (a. 1, ad 1): "human law is given to a people in which there are many deficient from virtue; but it is not given to the virtuous alone. And therefore human law could not prohibit whatever is against virtue; but it suffices for it to prohibit those things which destroy the living together of men; but other things it holds as quasi-licit, not because it approves them, but because it does not punish them. Thus therefore it holds as quasi-licit, inducing no penalty, if without fraud the seller oversells his own thing, or the buyer buys more cheaply, unless the excess is too great, because then human law compels one to restore... But divine law leaves unpunished nothing which is contrary to virtue. Whence according to divine law it is reckoned illicit if in purchase and sale equality of justice has not been observed; and he who has more is bound to recompense him who has been harmed, if the damage is notable. I say this for this reason: because the just price of things is not punctually determined, but consists rather in a certain estimation, so that a small addition or diminution does not seem to take away the equality of justice."

Hence, although an action for rescission on account of injury is conceded by law to the seller alone, nevertheless natural justice demands that even a gravely injured buyer can exact in conscience reparation of damage, or perhaps even rescission of the contract.

524. Remarks. - A. From our law, in order that the price of the thing sold can be exacted, there is required an act before a notary or under private writing (*sous seing prive*), so that before a judge the obligation of paying a sum beyond 1500 francs may be established (a. 1341 modified); otherwise it does not admit proof; - unless there is question of commercial agreements (Commercial Code, a. 25), for which every proof has force. Such an act evidently is not required for inducing an obligation of conscience, and therefore he acts unjustly who does not fulfill the conditions of the contract because no writing concerning it can be brought forward.

B. Canon law establishes certain special things for the alienation, exchange, and sale of ecclesiastical goods.

Can. 1530: 1. With due regard for the prescription of can. 1281 (concerning relics and precious images not to be alienated), for alienating ecclesiastical things, immovable or movable, which by being preserved can be preserved, there is required: 1. an estimation of the thing made in writing by upright experts; 2. a just cause, that is, urgent necessity, or evident utility of the church, or piety; 3. license of the legitimate superior, without which the alienation is invalid.

2. Other opportune precautions also, to be prescribed by the superior himself according to diverse circumstances, are not to be omitted, so that damage to the church may be avoided.

Can. 1531: 1. The thing ought not be alienated for a lesser price than that which is indicated in the estimation.

2. Alienation is to be made by public bidding, or at least made known, unless circumstances suggest otherwise; and the thing is to be conceded to him who, all things considered, has offered more.

3. Money received from alienation is to be placed cautiously, safely, and usefully for the advantage of the church.

Can. 1534: 1. A personal action belongs to the Church against him who has alienated ecclesiastical goods without the due solemnities and against his heirs; but a real action, if the alienation was null, against any possessor whatever, with due regard for the buyer's right against the one alienating badly.

2. Against the invalid alienation of ecclesiastical things there can act the one who alienated the thing, his superior, the successor of each in office, and finally any cleric ascribed to that church which has suffered damage.

Can. 1539: 1. In the sale or exchange of sacred things no account of consecration or blessing is to be had in the estimation of the price.

2. Administrators can exchange securities payable to bearer, as they call them, for other securities more or at least equally safe and fruitful, with any species of commerce or negotiation excluded, and with the consent of the Ordinary, the diocesan council, and others whose interest it concerns.

Can. 1540: Immovable goods of the church are not to be sold or leased to their own administrators and to those joined to them in the first or second degree of consanguinity or affinity without special license of the local Ordinary.

Article II: On Sale Through Brokers

525. Sale, or purchase, through brokers is that which is not made immediately by him to whom the thing to be sold pertains, or who intends to acquire it for himself, but from his mandate or commission is made by others, who are called brokers, that is, intermediary negotiators, whether they are legally constituted or simple mandataries.

Therefore brokers or factors are all those who undertake for another the care of buying or selling a thing; or those to whom something is committed to be sold or bought in the name of the one committing it, and who buy or sell something in the name of another. Whence they are as it were mandataries of those in whose name they act, and therefore they have the obligations of mandataries to be fulfilled.[1] They are called by various names: *courtiers, commissionnaires, entremetteurs, commis voyageurs, representants de commerce*; - *makelaars, zaakvoerders, bemiddelaars, reizend-bedienden*, etc.

[1] Concerning these, cf. Civil Code, a. 1984 sq., and Belgian Commercial Code I, tit. V and VII.

526. Principles concerning the obligations and rights of brokers. - I. Brokers must faithfully carry on the business committed to them, with that diligence which they are wont to employ in their own affairs of the same kind.

For to this end they are selected and employed and receive a stipend, that they may faithfully conduct the affairs of the mandator, and that purchase or sale may be made in the manner more profitable to him. Wherefore they are bound to repair damages inflicted on the mandator on account of their culpable negligence in conducting the business.

II. Brokers as such, in themselves and regularly, have a right only to the stipend of their labor (unless they wish to act gratuitously), but not to a part of the benefit. For they do not act in their own name, but in the name of the owner from whom they receive salary, and therefore whatever they gain by negotiating they acquire not for themselves but for the owner. Therefore every gain which they receive in conducting the business they must hand over to the mandator, and they can retain nothing for themselves, even if they buy below or sell above the established price.

Yet by accident they can retain part of the gain for themselves: a) if a special agreement so bears, by which, for example, five percent is conceded to them; b) if by extraordinary diligence to which they were not bound by force of office they sold more dearly or bought more cheaply than had been predetermined by the owner, if this is certain: for this is not presumed, and in this matter one must especially beware of illusions easily arising; c) if the owner explicitly consents by declaring that he demands nothing beyond the established price, or if he consents implicitly, as if he knows that this is done regularly and is silent, provided he is not silent from fear.

III. Brokers in themselves can retain gifts for themselves which are conceded to them by merchants in mere favor of themselves. For these are conceded by merchants so that they may frequent their shops rather than those of others, and they would not be attributed to the owners themselves buying or selling; this also holds concerning a diminution of price if it is certain that it is made in favor of the brokers, for example, from an existing custom. Thus a music teacher, asked by another to buy an instrument of the value of 5,000 francs, which nevertheless he buys at the remitted price of 4,500 francs (the artisan's price), can retain the gain for himself; so also tailors buying cloth for a client can retain the diminution of price gratuitously given to them by the seller, from the price established for them, "the tailor's price."

Yet brokers could not retain these things for themselves if merchants therefore sell at a dearer price or cheaper merchandise, and thus the owner is compelled to pay more; - just as neither those things which would be given to them so that they conduct the owner's business badly or less vigilantly.

527. Applications. - 1. It is asked whether a broker can buy for himself a thing to be sold at an established price, and afterward sell the same thing as his own at a greater price?

Resp. a) Regularly this is not licit, as being against the intention of the mandating owner, who takes the broker precisely so that he may conduct his affairs in the best way that can be done; - b) sometimes it is specially prohibited by civil law under penalty of nullity (a. 1596), namely to tutors concerning the goods of wards, to mandataries concerning goods which they must sell from mandate, to administrators of common goods or of a public institute, to public officials by whose ministry national goods are sold; - c) apart from those things, in a determined case, if after diligence has been applied the broker could not find a buyer who would offer more, he can acquire the thing for himself, provided he does this not fictitiously but truly, so that he takes the risk of the thing upon himself, and, having suffered detriment, does not return the thing to the owner, but whatever happens pays the established price to the owner.

2. What must be judged concerning the practice of servants who, buying for the master, receive little gifts from merchants, or retain for themselves the gain from diminution of price?

Resp. The question must be solved from the same principles, and indeed:

1. The matter is dangerous, for a) merchants act unjustly (and the servants cooperating with them) who, in order to attract servants, unjustly subtract from masters what they concede to servants; b) servants act unjustly (and merchants cooperating with them) who indicate a greater price to the master, although not beyond the highest, with the merchant conniving, and retain something for themselves.

2. Nevertheless, if it is morally certain that something is conceded by merchants, without detriment being inflicted on the masters thereby, in mere favor of the servants, these certainly can retain it for themselves. This a) is easily admitted concerning little gifts, unless they were given so that the servant would conduct the master's affairs negligently; b) concerning diminution of price it can be admitted only with difficulty: for since servants receive a salary and do not buy many things as brokers do, such a diminution is not considered made with regard to them and in itself accrues to the master; and it is greatly to be feared lest merchants write down a greater price and impose on the masters, so that from this, under the pretext of diminishing the price, they pay something to the servants. c) If nevertheless it is clear that, without injustice toward the masters, this is conceded to the servants, they can accept; or if somewhere there is a universal custom, or if the masters know the practice and consent; not however if they undergo it unwillingly.

Article III: On Sale by Auction

528. Sale by auction or public sale (*vente aux encheres; openbare verkoop of veiling*) is that by which a saleable thing, publicly set out, is proclaimed by a herald and adjudicated to the one offering the greater price. It can be voluntary or judicial, according as it is made spontaneously by the owner, or is established by law or imposed by a judge, for example, for paying debts.[1]

[1] Cf. Civil Code, a. 826-827; 1686-1688; 2204-2218; Judicial Code, a. 673-677; 945-985.

It received its name from this, that formerly, by the judicial authority of a judge, it was made under some spear; it is also called public auction (*a la hausse; bij opbod of hooger aanbod*), because a later bidder increases the price of the earlier by ascending; also licitation, because by licitating, that is, by contending among several, the price is determined.

Therefore it is proper to this sale that the just price is not judged from common estimation, but is conventional, obtained from an honest contest among bidders; whence the contract is essentially aleatory, in which the seller and the buyer commit themselves to equal danger and hope, or take on an equal danger of losing and hope of gaining. Therefore, provided fraud is absent on each side, the price will be legitimate.

Such a sale can be made in two ways:

1. In itself, considering only the nature of the thing, the mode is fully aleatory, by which the seller establishes that the price, without any intervention, is to be determined by the bidding of buyers alone, and that the thing is not to be withdrawn, but handed over to the one offering more.

In this contract: a) it is illicit for the seller to send fictitious bidders who, without the intention of buying, increase the price of the thing (for thus he would impede what he had established: that the

thing be handed over to the one offering more); and even if the price is offered below the common price, he is bound to yield the thing.

b) On the other side, buyers cannot by fear, fraud, or other unjust means (though indeed by prayers and persuasions) impede others from bidding or offering more, nor make an agreement among themselves not to bid beyond such a price or with respect to such a thing: for thus they act unjustly toward the seller, who is deprived of greater gain, and toward bidders who are deprived of the hope of procuring the thing for themselves. All these things, namely, are repugnant to the perfectly aleatory nature of the contract.

2. By accident, on account of custom, the mode is not fully aleatory, and the contract is mixed, by which the seller reserves to himself the right of increasing the price by himself or through others, and of retaining the thing for himself, if no one offers a greater price.

In this case a) the seller will be able to use false bidders and withdraw the thing, if the price offered is below the lowest.

b) On the other side, buyers can protect their own rights and at the same time make an agreement with certain others[2] not to bid beyond such a determined price.

[2] With certain others; for if it were done among all, there would be a monopoly, concerning which below.

By these devices, since some answer to others, equality is constituted. - Yet bidders could not by force, fear, or fraud turn other buyers away from bidding, since these means are unjust.

529. Principles concerning the justice and injustice of public auction.

1. The seller injures justice if he does not hand over the thing adjudicated, or if he sets out one thing and hands over another of lesser price.

2. Heralds injure justice if by unjust means they inflict damage on the seller or on certain buyers, whether by beginning before the time, or by instituting the auction at a time when they foresee there will be few bidders, or by adjudicating the thing sooner or later so that they may favor friends.

3. Bidders injure justice if by unjust means they impede other buyers from increasing the price.

4. The seller furnishes security as to eviction of the thing; but not as to defects, even redhibitory defects: for he sells the thing as it has been set out, unless nevertheless otherwise established by law or pact.

530. Question: Whether in auction it is licit to buy back one's own things by oneself or through another?

Resp. If the bidding is forced, this certainly is licit, since creditors rather than the owner sell, and certainly it is not fictitious bidding. If the bidding is free, then today it is licit by oneself or through others to take care that things not be sold below the lowest price: buyers ought to know this, especially because custom now permits the thing to be withdrawn altogether; - but it is not licit to

send fictitious bidders for this end only, that the price be immoderately increased and buyers be deceived.

Article IV: On Retrovendition

531. Retrovendition, or sale with a pact of redeeming (*avec faculte de rachat ou de remere; met recht van wederinkoop*) is that in which the seller reserves to himself the faculty of recovering the thing within some time.

Considered according to natural law, such a sale can be made:

a) in favor of the seller, that is, on this condition, that if it pleases the seller, the buyer is bound to sell the thing back to the seller;

b) in favor of the buyer, that is, on this condition, that if it pleases the buyer, the seller is bound to buy the thing again;

c) in favor of a third party, so that if it pleases the seller, some third party has the right of buying the thing in question.

A pact of this sort contains nothing unjust of itself, provided that in the fixed price account is taken of the burden imposed, which is estimable by price, and due equality is preserved. Hence the price must be diminished if the pact of redeeming is made in favor of the seller or of a third party, because a burden is imposed upon the buyer; on the contrary, it must be increased if the pact is made in favor of the buyer; if it is in favor of both, the mean equality of price is to be observed. This being posited, the pact is licit: for when the seller alienates his own thing, he can add whatever honorable condition, even though burdensome. Thus of itself, and apart from the intervention of positive law.

Nevertheless retrovendition in favor of the buyer is a dangerous contract, not to be admitted in practice. It favors usurers, when from such a purchase the buyer intends to make gain, as if he compels the seller to redeem at a greater price than he himself bought, or at the same price, but meanwhile by receiving the fruits.

532. Dispositions of civil law. Present-day civil law, although it permits all honorable conditions in contracts, nevertheless does not expressly treat of these, but only of retrovendition in favor of the seller, which it does not call retrovendition but repurchase (a. 1659-73). That contract was retained so that persons, compelled for the moment to sell their goods because of adverse fortune, might have the hope of recovering them afterward. The law does not understand this contract in the same way as theologians, as if it were truly a new purchase; but it regards it as one contract, one sale under a resolutory condition. And thus, when the condition arrives, a new contract of sale is not made, but the first sale is annulled and all things are restored integrally as if the sale had not intervened (a. 1183). Hence the seller must restore the price without increase, pay expenses and make good the damages that followed and whatever the buyer expended on the thing necessarily or usefully (a. 1673); but he recovers his own thing free from any burden imposed by the buyer (for example, mortgage), except a lease, which he must sustain if it was not entered into by the buyer in fraud of the seller (a. 1673).

Our law establishes that the time for rescinding the contract is not extended beyond five years (a. 1660).

533. Observation. Under the appearance of retrovendition there can lie hidden a usurious contract condemned by Innocent XI,[1] which by its Spanish name is called *mohatra*. It is a certain retrovendition made in an instant with usury on the part of the seller; a contract by which someone, in place of a loan, sells his merchandise at the highest price with the intention that the buyer immediately sell it back at the lowest or at a mean price. Namely, the contract consists in this, that a certain thing is sold at the highest price (1,000 fr., for example) to him who needs money, but it is sold on that condition that the same thing be immediately sold back at a lesser price (800 fr.) to the former seller. Then the former seller pays this lesser sum, but the buyer remains obligated also for the difference which exists between the two prices (namely, 200 fr.). It is evident that it concerns a fictitious sale, not truly intended, and a fraudulent contrivance for extorting immoderate usury. Hence it is an unjust contract.

[1] "The *mohatra* contract is licit, even with respect to the same person, and with a contract of retrovendition previously entered into with the intention of gain," prop. 40.

Article V: On Monopoly

534. Monopoly of sale, as it were a singular trading or the sale of one alone (*alleenhandel*), generally is the power of selling certain wares exclusively, existing in the possession of one or a few. A private monopoly, or monopoly of fact, and a public and legal monopoly, or monopoly of right, are distinguished, according as it arises from the act of private persons or is claimed by public authority.

1. A legal monopoly is the exclusive power of selling certain wares, made by public authority, either to the treasury itself, which reserves to itself the manufacture and sale of some wares and thus imposes an indirect tax upon the community, or to one or a few private persons, to whom is given the privilege of selling certain wares to the exclusion of others (for example, to pharmacists), whether by selling that privilege or by granting it gratis.

2. A private monopoly exists when a few men a) by various means buy almost all the wares, and thus bring it about that they alone sell a certain kind of wares more dearly, at a price pleasing to themselves: a monopoly of direct engrossing; or b) make an agreement with other sellers not to sell a certain ware below a determined price: a conventional monopoly, or monopoly of price; or c) prevent other wares from being brought in, so that they may sell their own at a greater price: a monopoly of indirect engrossing. Therefore it is constituted in a threefold way.

Sometimes monopolies tend only to this, that the excess of competition be corrected; sometimes especially that a price greater than just be imposed upon buyers. They are instituted in various ways: sometimes sellers, or associations of sellers, entrust the whole administration of the matter to a few who arrange all things pertaining to the production and sale of the matter, in which case the institution is usually called a *trust* or *syndikat*, which has a wide diffusion in Great Britain and especially in the federated States of America; or, for this end, they create a certain governing company, which possesses a greater number of the shares of the individual associated companies, which is called a *holding*; or they only agree concerning limiting the production or sale of some ware, liberty being left in other matters, and this is usually called a *Kartell*, which especially comes into use in Germany or also in France; and if it is done merely occasionally and for a time, it is called a *pool*; finally, sometimes by common counsel they buy the greatest quantities of a determined ware, so that

they may be able to preserve or increase the price and thus receive a great gain, which among various peoples comes under the names *corner* or *ring*.[1]

[1] Tanquerey, *Th. M.*, *De Virt. Iustitiae*, n. 775 and following, where many useful things concerning monopolies are noted.

Nevertheless the sense of these names is not always so perfectly distinct.

535. Principles to be attended to in monopolies. I. Monopolies, even private ones, which are instituted for this end, that they may provide a remedy against the excesses of unbridled competition, and pursue that end by legitimate means and do not exceed the just price, are not of themselves illicit or unjust. For neither the end nor the means contain anything illicit.

II. On the contrary, those private monopolies are unjust which are instituted so that, competition being utterly destroyed, prices may be imposed upon buyers at the whim of sellers, or which use unjust means for overcoming other sellers. In the first case damage is unjustly inflicted upon buyers, in the other upon the other sellers.

III. A legal monopoly of the State or of the treasury, for a proportionate cause, within certain limits is legitimate, even if the legal price established is greater than the common one. For it is one of the means by which the State obtains for itself the money necessary for conducting public affairs; therefore, provided that the money is applied to the common good, and the taxation does not exceed just limits, the excess in price is nothing but an indirect tax.

More determinately:

A. In a private monopoly:

1. When it is made in the first way indicated above (n. 534), they sin against justice if they sell beyond the highest price which would have existed if they had not made the monopoly, attention being paid to the quantity of wares and the greater or lesser frequency of buyers; for the abundance of wares is as great as if the monopoly had not preceded, and likewise the necessity of buying. And also other merchants cannot without injustice sell wares at the unjust price which has been introduced by monopoly, because it is unjust for all, unless perhaps they themselves were forced to undergo an excessive price in acquiring them;

2. When it is made in the second way, they sin against justice if the price should be beyond the highest. But by demanding the highest price, they can sin gravely against charity if it concerns things which are not matters of pleasure or useful to few, but things which many need; for charity, although it does not oblige one to sell below the highest price, nevertheless obliges one not to impede others from selling at a lower price; just as also, when it does not command almsgiving, it forbids that others be impeded from giving it. Indeed they sin against justice if by unjust means they impede other merchants from selling for less;

3. When it is made in the third way, they commit injustice both against fellow citizens and against foreign merchants, if they impede importation by unjust means (for example, frauds, deceit, etc.), because each one has a strict right not to be impeded by unjust means from attaining an advantage; but if they impede by just means, it can be licit, provided the price is not above the highest.

In all the aforesaid monopolies, however, they can easily sin against legal justice and charity toward their own country or city.

B. A legal monopoly is licit, provided it is made with a just price and is conceded for a reasonable cause, for example:

1. Because there are certain wares for making which great expenses are required, which without such a privilege no one would easily undertake;

2. As remuneration to inventors or perfectors of some art: this of itself is just because it contributes to the common good, inasmuch as it gives an incentive to the industry of private persons; unless, however, the price is increased beyond every reasonable limit;

3. By way of tax, for obtaining the money which the government needs. This too is of itself just, as we have said; nevertheless by accident it can be opposed to commutative justice, if in it the conditions required for the justice of taxes were not observed, for example, if the price of those things which are necessary for sustenance were notably increased, or the burden were too unequal among subjects.

536. Observations. 1. Monopolies can have their utilities and advantages, both for lessening expenses in producing and distributing things, whether by the use of more perfect instruments or by a better division of labor; and also for restraining immoderate rivalry or an excessive abundance of things, and for checking the abuses arising therefrom and avoiding damages. Therefore there can be in them the character of a certain defense, by which the condition of masters and workers may be made more secure.

2. But there are also disadvantages of monopolies, as Vermeersch notes, *Th. M.* II, n. 467: if sellers demand a price without any proportion to labor and expenses, or increase it as much as they can, although they ought to have regard to that which they themselves paid; if they unduly depress the wages of workers or relatively diminish them, when prices are increased much more although no title of gain has accrued to the masters, for example, if wages are increased 5 percent while prices grow 10 percent; if by studied sales and purchases the common estimation in stock exchanges is vitiated, and it is obtained that the titles of companies are estimated above or below the value of the things.

3. Wherefore enormous gains are of themselves suspect of injustice; nevertheless sometimes they can be explained by a special reason, whether a) by sale in another region, where because of inequality of exchange or another cause wares are sold much more dearly; or b) by some invention by which someone is able to make things at a far lower price than they commonly are made; or c) by special skill and industry, by which, for example, because wares have been bought together in accumulation, many expenses are spared.

4. Hence, in order to protect the common good and defend other citizens, monopolies ought to be ruled by public power, namely, lest they pursue excessive gains, lest they increase the prices of things more than is fair with harm to proletarians and the poor, lest they extend their power too much and, to the detriment of social authority itself, obtain a certain economic potentate

in the republic, so that officials and magistrates depend upon them, or laws profitable to their private good and harmful to the public good are enacted.

5. Looking upon these things, Pius XI, in the recent encyclical *Quadragesimo anno*, complains: "Some have so hardened themselves against the goads of conscience that they have come to this opinion, that it is licit for them both to increase their gains in any way whatever, and to protect, by right and by wrong, against sudden turns of fortune the riches gained by great effort and zeal. The easy profits which come to anyone in a market freed from every law draw very many to exchanging and selling wares, who, desiring this one thing, that with the least labor intervening they may obtain ready profits for themselves, by unbridled trading so frequently increase or diminish the prices of wares according to their will and greed that they overthrow the prudent forecasts of manufacturers. Those things which have been established by law for promoting associated business undertakings, while they divide and limit the danger of conducting affairs, have furnished an occasion for the most shameful license. For we see that minds are only slightly touched by this diminished obligation of rendering accounts; moreover, by hiding under the protection of a certain common name, the worst injuries and frauds are perpetrated; finally, the managers of economic associations, forgetful of their office, betray the rights of those whose profits they had undertaken to administer."

Article VI: On Exchange and Trading

S. Th. II-II, q. 77, a. 4.

537. Exchange (*echange, troc; ruiling*) is a consensual contract by which the contracting parties give to one another some thing, namely, merchandise, in order to have another (a. 1702 and 1703). It differs from sale: for in this latter, money is given for merchandise; in the former, merchandise for merchandise. It is ruled by the same laws as sale (a. 1707); nevertheless rescission is not conceded on account of lesion (a. 1706).

538. Trading is an action by which someone procures wares for himself with the intention of selling them with gain. It is distinguished into trading broadly and strictly so called, according as things are procured so that, transformed or changed, they may be sold more dearly, or whole, without any change, they may be sold more dearly (C. Com., a. 2). This latter, according to St. Thomas (a. 4), is of coins for coins (exchange), or of things for coins for the sake of seeking gain, so that the coin and gain are the end of the commutation.

Trading strictly so called of itself is not honorable, nor is it illicit, because it does not imply anything vicious, but something indifferent, although evil-sounding and blameworthy; because, so far as it is of itself, it serves the cupidity of gain and has a certain baseness insofar as it does not imply an honorable end. Hence, that it may be licit, it must be rendered honorable by ordering the gain to an honorable end, for example, to the sustenance of the household, the relief of the needy, public utility lest things necessary to the fatherland be lacking. Yet it is dangerous, because someone easily intends gain alone as an end, and it is often an occasion of deceit, fraud, and injustice.

Nor should it be said that it is against justice because someone sells more dearly than he bought, or buys more cheaply so that he may sell the thing more dearly than it is worth. For "not everyone who sells something more dearly than he bought it is trading, but only he who buys for this purpose, that

he may sell more dearly. But if he buys a thing, not that he may sell it, but that he may keep it, and afterward for some cause wishes to sell it, this is not trading (strictly so called), although he sells more dearly. For he can do this licitly, either because he improved the thing in some respect, or because the price of the thing is changed according to diversity of place or time, or because of the danger to which he exposes himself by transferring the thing from place to place, or even by having it carried. And according to this neither the buying nor the selling is unjust" (ad 2).

The abuses which Pius XI recently denounced are to be attended to here, as we noted in n. 536, 4.

539. Observation. Let it be noted that trading strictly so called is forbidden to clerics and religious, because they must abstain from those things which have the appearance of evil, and because trading entangles one in secular cares and thus draws one back from spiritual things (can. 142 and 592).

Question Two: On Letting and Hiring

540. Letting (*louage; huurverdrag*) in general is a bilateral onerous contract by which someone grants his work or his thing to another for use for a certain wage, or by which the utility of a thing or person is handed over and is received by the hirer for a certain time for a determined price; hiring is the same contract on the part of the one receiving. Hence letting (*verhuring*) and hiring (*huring*) are two partial contracts making one whole. Moreover, it can be defined: a bilateral onerous contract by which the use or fruit of a movable or immovable thing, or certain works of a person, is promised for a determined time for a certain price, or by which a thing or person is granted for a price for use or for fruit (a. 1708-1710).

It is said:

1. A bilateral contract, and thus it is distinguished from donation;

2. Onerous, and thus it is distinguished from commodatum, by which the use of a thing is granted to another gratis;

3. By which for use or fruit: thus it is distinguished from sale, by which the dominion itself of the thing is transferred, while here only the utility is granted; moreover, any utility whatsoever can of itself be let, unless it is prohibited by law, as has been done for the right of use and habitation (a. 631 and 634), which can neither be let nor sold;

4. A thing or person: since it concerns a use estimable by price, there is to be understood a thing whose use is not consumption itself, such as a person also is; and thus letting is distinguished from mutuum, which concerns a thing consumable by first use;

5. For a determined time: for if a thing were granted for perpetual use, the dominion would be of almost no value; if the work of a person is granted in perpetuity, it is servitude, which is prohibited by positive law (a. 1780);

6. For a determined price, which, that it may be just, must be determined according to common estimation to the equality of what is given and accepted (n. 449 and 514); moreover, the price is not necessarily money (a. 1763 and 1818), unless in particular circumstances this is required by law, as for workers in factories (Belgian law, 16 Aug. 1887, a. 1 and 2);

7. Is promised: for letting is a consensual contract, which is perfected by the consent alone of the parties and of itself requires no external form. It can be made in writing or by words (a. 1714). If, however, it is made by words alone, proof by witnesses is not admitted in our law, unless execution has already been begun; but an oath can be tendered to him who denies the letting (a. 1715).

Therefore there is a twofold species of letting: letting of things, and letting of works, or of human industry and activity; this latter again is twofold: letting of services, or of labor; and the undertaking of a work, which is the effect of labor. These now must be spoken of one by one.

Article I: On the Letting of Things

541. The letting of things is a contract by which someone obliges himself to furnish to another the use or enjoyment of some thing for some time for a certain price (a. 1709).

Several species of it can be distinguished: the letting of buildings and movables (*bail a loyer; huis- of meubelverhuring*); the letting of goods (*bail a ferme; huurpacht of verpachting van land en goederen*); the letting of animals (*bail a cheptel; veepacht*); the letting of ships (*charte-partie, louage maritime; scheepsvervrachting*), etc. On these the civil or commercial code can be consulted; nevertheless the general principles are common to all, and we shall hand these down here, both as regards the lessor and as regards the lessee.

542. Obligations of the lessor (*bailleur ou loueur; verhuurder of verpachter*). He must:

1. Hand over the thing to the lessee, and indeed at the established time, so that he is held to repair damage arising from culpable delay, and in good condition, so that the thing is apt for the use for which it is destined (a. 1719).

Since, moreover, it must be in good condition, apt for use, hence the lessor must disclose those hidden defects of the thing to be let which can harm the lessee or impede its use, as was said concerning sale; for example, that a horse is accustomed to throw off loads when it is sought for transporting wares; that it is unfit for working; that the house is infectious. By civil law he is held to compensation even if he was ignorant of defects of this sort (a. 1721); nevertheless, if moral fault is absent, he is not obliged in conscience before the sentence of the judge, but after the sentence he is held by reason of the public good; indeed, if the matter is too clear, charity can oblige him to make repair before the sentence of the judge, so that useless expenses may be avoided for the other.

2. Preserve the thing in that condition in which it remains apt for the use for which it was let; hence the lessor a) must carry out the greater repairs necessary for the conservation of the thing (a. 1720), but not the small ones, or, as they are called, locative repairs, which must be furnished by the tenant; b) cannot change the form of the thing let (a. 1723), nor do anything else by which the lessee's enjoyment is diminished; c) must pay the real taxes imposed for the dominion of the thing, unless it has been otherwise agreed.

Which repairs are greater or small must be determined from the codes and the usage of places. But if the thing itself perishes, the contract is dissolved by that very fact; if part of the thing perishes, the tenant can seek a diminution of the price or a dissolution of the contract (a. 1722).

3. Furnish the tranquil enjoyment of the thing, and therefore hold the lessee harmless against hidden defects which impede the use of the thing, and protect him against eviction or a disturbance of right brought by a third party (a. 1725-1727).

543. Obligations of the lessee (*preneur, locataire, fermier; huurder, pachter*). He must:

1. Use the thing let as a good father of a family, and indeed only for that use for which it was let, whether explicitly, or implicitly insofar as consent is legitimately presumed from the circumstances (a. 1728).

Hence a) if he were to abuse the thing let, or use it otherwise against the will of the owner, he is held to the repair of the damage inflicted, and the contract can be rescinded (a. 1729). b) Nevertheless he can sublet the thing or cede the letting itself to another, who is suitable in this way, for the same end, unless this faculty has been forbidden by a special pact (a. 1717), or positive law prohibits it, as the German Code does (a. 49). c) He must make the lesser and usual repairs, or locative repairs (a. 1754); and pay the personal taxes imposed for the use of the thing, unless it has been otherwise agreed.

2. Pay the agreed rent at the established time (a. 1728), in the manner indeed fixed beforehand or customary in the region.

If he does not pay at the established time, the lessor can keep certain movables of the lessee so that he may be secure concerning payment. But if the contract ceases, the tenant must pay part of the price according to the proportion of the time during which he was not impeded in the use of the thing.

3. When the time of the letting has ended, and not before, return the thing let in that condition in which it was handed over, excepting those things which by age, legitimate use, or chance have collapsed or become worse (a. 1730 and 1731).

He must compensate damage inflicted either by the lessee himself, or by domestics or boarders who are under his care, or by subtenants (a. 1735), unless he proves that it happened without his fault: thus French law (a. 1732); or at least after juridical fault has been proved: thus German law. In conscience he must immediately repair damages arising from moral fault; only after the sentence of a judge must he repair those which arise from juridical fault, as from lack of vigilance or from a dangerous art exercised.

French law adds (a. 1733 and 1734): if a house perishes by fire, he is held concerning the fire, unless he proves that it happened without his fault; but if there are several tenants dwelling in this house, all must pay part of the damage proportionately to the price of the letting, unless they prove that the fire was started in the room of another, or could not have been started in their own place.

This disposition, contrary to natural equity, does not oblige in conscience those who know very well that the fire was not started by their own fault, at least juridical, or by the fault of those whose care they have. Nevertheless the lessor can use the benefit of the law as often as it is not sufficiently established that the lessees were sufficiently vigilant; but if this were established, he could not, because the judicial sentence would be founded on a false presumption of fact.

544. Observations. 1. In the letting of fields something particular is had in Roman and modern law, namely, some part of the price of the letting is remitted when, because of a sudden misfortune, for example hail, the fields have lacked fruits for the greater part; this is wholly consonant with natural equity, since the fruits of fields more than other things are, as it were, of themselves aleatory. In our law (a. 1769-1773) that remission is not conceded unless at least half of the ordinary harvest has been lost, and there is no compensation from preceding years; besides, the lessee can renounce this right by an express clause. But also outside that legal case and generally, in this matter the norms of charity and natural equity are to be observed, so that something of the price of the letting may readily be remitted, or a delay of payment conceded.

On the other hand, from justice it is required that commonly a price of letting be established which permits the lessee, in ordinary circumstances, to live with his family from the fruit of his labor; this generally is obtained if the price does not exceed that which commonly is asked in such a region by a Christian owner: for common estimation is accustomed to conform to this.

2. A special letting for a long time is emphyteusis (*erfpacht*). It is a contract by which the owner of an immovable thing transfers to another the useful dominion, or full enjoyment, for a long time, while retaining direct dominion, and under the burden of an annual pension to be paid to himself. In our country it is ruled by the law of 10 Jan. 1824 and cannot be entered upon for a time under 27 years or beyond 99; in other regions it is subject to different legislation, as was said in n. 164, note 1.

3. Certain dispositions of present-day civil law are to be noted:

a) The letting of things is not dissolved by the death of the contracting parties, but passes to the heirs (a. 1742), at least if it was entered into by an authentic act. Sometimes, however, an exception is admitted for the letting of fields, when the tenant has died, in favor of the heirs, as from the Belgian law of 7 March 1929, which permits them to renounce within a year.

b) If the lessor has donated or sold the thing, or wishes to occupy it himself, he cannot expel the tenant, but the constituted term must be awaited (a. 1743).

c) In certain regions there is the usage of letting rural farms by that law that the fruits are divided between the lessor and the lessee; concerning which pact see a. 1763 and following (Italian Code, a. 1647 and following). Likewise there is the usage of letting herds of larger and smaller animals under the same condition of dividing the profit, or under other special conditions; concerning which see a. 1800 and following (Italian Code, a. 1665 and following).

d) In more recent time, in several legislations new stipulations have been made concerning the letting of fields (*le bail a ferme; de landpacht*); and these must then be attended to and also of themselves have force in conscience. Thus the Belgian law of 7 March 1929.

4. Canon law also establishes many things concerning the letting of things:

Can. 1540: The immovable goods of a church are not to be sold or let to their own administrators or to those joined to them in the first or second degree of consanguinity or affinity without the special permission of the local Ordinary.

Can. 1541: Let contracts of letting of some ecclesiastical fund not be made except according to the norm of can. 1531, § 2 (that is, by public bidding or at least when the letting has been made known); and in them let there always be added conditions concerning boundaries to be guarded, concerning good cultivation, concerning the canon to be duly paid, and concerning opportune security for fulfilling the conditions.

Can. 1542: 1. In the emphyteusis of ecclesiastical goods, the emphyteuta cannot redeem the canon without the permission of the legitimate ecclesiastical superior mentioned in can. 1532; but if he has redeemed it, he must give to the church at least that amount of money which corresponds to the canon.

2. From the emphyteuta let suitable security be required for payment of the canon and fulfillment of the conditions; in the instrument itself of the emphyteutic pact let the ecclesiastical forum be established as arbiter for settling controversies perhaps to arise between the parties, and let it be expressly declared that improvements accrue to the soil.

Article II: On the Letting or Undertaking of Making a Work

545. The letting of a work (*contrat d'entreprise; aanneming*) is a contract by which an architect or artisan or contractor is hired by the owner to produce a certain work by industry or labor for a determined price, for example, to build a house, make a garment, construct a railway (a. 1710). This can be done in a twofold way: namely, so that the artisan furnishes only his work by which he may complete the whole work; or both work and material at the same time (a. 1711 and 1787).

In this contract: 1. the owner who grants the work to be constructed is the lessor, the artisan the lessee; on the contrary, in the letting of services the worker is the lessor, the owner the lessee;

2. the price is established for the completed work, so that it is not owed unless after the lessee has completed the work, unless it has been otherwise agreed; nevertheless in great works the price is usually paid by parts, after the completion of the diverse parts of the work (a. 1791);

3. hence the risk of the work remains with the lessee until it has been completed and handed over (a. 1788), unless it perishes without his fault and from a defect of the material, if this pertains to the owner (a. 1789-1790);

4. the work to be completed is often publicly announced, by setting forth what is to be made, in what manner, from what material, within what time, etc., so that various lessees may be invited to compete, and the work to be made may be committed by adjudication to him who, all things considered, has promised to complete it better and for a lower price (*adjudication; aanbesteding*), or at least with greater security. For this, good faith is altogether required on both sides: in the lessee, that he sincerely intend to complete the work under the determined conditions for the price indicated; in the lessor, that he commit the work to him who asks the lesser price, provided however that he is suitable for completing the thing well.

546. The obligations of the lessee are:

1. By justice he is obliged to complete the work in that manner which was agreed upon, for example, by preserving the quality of the material, the prescribed form, due solidity, the

established time, due diligence, etc.

2. By justice he is obliged to pay a sufficient wage to the workers hired by him, and he cannot diminish it so that he may complete the work at a lower price.

3. He must be content with the established price, for on account of this he obtained the work, by excluding others by the price.

If the lessee complains that he cannot complete the work at the established price, it must be seen from what cause that increase of expenses has arisen. According to common custom, which must be attended to very much, the lessee takes upon himself ordinary risks, but not wholly extraordinary ones, for example, from a wholly unforeseen event, as shifting soil, an inundation of waters bursting forth with extraordinary force among the foundations. In such a case compensation is owed from justice, but not if, for example, the prices of things are changed or the wages of workers are increased: then nothing is owed from strict justice, since the contract is always in some measure aleatory (a. 1793). Nevertheless sometimes something can be owed from equity, for example, if the owner has a great profit from it and the lessee undergoes grave damage; moreover, the owner is not bound easily to believe the complaints of the lessee, but can require certain proof of the damage.

Finally, if in computing expenses the lessee has erred, as from forgetfulness of something, for example, a wall, a gate, etc., the owner more probably must add nothing from strict justice, because it is a contract in some measure aleatory and entered into for a price which was established in a lump as one whole: forgetfulness indeed can happen, but there is also the presumption that there was negligence on the part of the lessee.

It is a sin against justice and of itself induces an obligation of restitution:

a) if the lessee uses notably cheaper material or less diligence, especially when from this the solidity of the work is diminished: for then the part of the wage unduly gained must be restored and the damage repaired;

b) if the lessee by his own fault has completed the work later than was stipulated: he is held to compensate the damage inflicted from this;

c) if inspectors or those watching over the work are negligent: for thus they can cooperate negatively in the injustice of the lessee, and then they are held to restore for it in the second place; but in their own name they must restore that part of their wage which they received undeservedly for vigilance not applied.

547. The obligations of the lessor, or owner, are:

1. He must pay the established price at the prefixed time.

2. If he demands that the thing be made in another manner than had been agreed, or that certain things be added to the work, he must compensate the greater expenses arising from this.

3. If through culpable delay he neglects to accept the finished work, he is held to repair the damage thereby inflicted upon the lessee.

548. Observations. 1. Among lessees sometimes this practice exists: those competing for the public letting of constructing a building agree among themselves that each should increase his estimate by a certain sum of money, which, when the work has been adjudicated, is divided by the undertaker among the other competitors. Or in another way, by common counsel they pre-establish the price of the work to be undertaken, and then by lot or otherwise designate the undertaker who, when the work has been adjudicated, divides a certain determined sum among the remaining competitors.

Concerning this practice Aertnijs notes, *Th. M.* I, n. 964: "It can seem unjust; for in the mind of the competitors the sum mentioned does not have the character of the price of the work to be undertaken, but of a stipend for compensating the travel expenses of the other competitors; moreover, the lessor is compelled to pay that stipend, who is in no way held to this. Besides, in the latter mode, by an inequitable means they impede the lessor from being able to let at a lower price." Nevertheless he himself does not hold the said practice to be unjust, provided the price is just, namely, that it does not exceed the highest price. "For the use which the competing undertakers predefine for the said sum does not pertain to the matter... Then, concerning the stated manner of acting, it seems the same must be said as... concerning monopoly of sale,... and concerning a pact among bidders at auction, since the cases are similar... It is added that they seem to have a just title for increasing the price, which also excuses them from sin against charity, namely, so that in this way they may keep themselves unharmed for the expenses of journeys, loss of time, and labor, to which undertakers of works are bound, that they may compete in various places, and which they often perform in vain. Finally, that lessors are not too greatly burdened from this is evident from the fact that the public letting of constructing a work is commonly esteemed as a more economical mode of building."

2. Lessees, by giving some sum of money to inspectors to capture their goodwill, sin against justice if they do this to corrupt them, so that they may approve or not reject cheaper material or defective work; but they do not sin if they act thus to redeem themselves from unjust vexation, namely, when they foresee that otherwise the inspectors will unjustly harass them.

3. It is expedient to note several dispositions of civil law. According to several codes:

a) By the death of the lessee the contract is dissolved, so that the lessor must pay only proportionately for that which is useful to him in the work begun. Thus, for example, French, Belgian, Italian, Dutch, Swiss, and Portuguese law.

b) The lessor can renounce the work, provided he refunds the expenses and pays the lessee as much as is of interest to him for the labor furnished and the profit ceasing: thus, for example, French, Belgian, Italian, Spanish, Dutch, and German law.

c) Builders of a building must furnish security of quality for several years, which are ten in French, Belgian, Italian, Spanish, and Dutch law.

d) To the undertaking of a work is also referred the hiring of carriers, concerning which the Civil Code treats expressly, a. 1782-1786.

Article III: On the Letting of Services, or On the Contract of Labor

549. The letting of services and the hiring of workers, or the contract of labor (*louage de services et de travail, contrat de travail; dienstverhuring, arbeidsovereenkomst, loonverdrag*) is a contract in which for a certain labor a just price is paid, or a contract by which workers oblige themselves to furnish a certain labor in favor of another for a time, for a determined price (a. 1710; 1779-1780). This contract differs essentially from the letting of a work:

1. by reason of the object, which is not the thing produced but the personal labor itself to be furnished, or rather the operative power and activity which one lets to another for a determined time; while in the letting of a work the object is the work itself to be produced, which is the effect of labor;

2. by reason of the letting itself, which is made from the worker to the owner, since the worker offers and lets his labor, which the owner hires; while on the contrary, in the undertaking of a work, the letting is made from the owner to the worker, since the owner offers and lets the work to be made, which the worker undertakes and hires.[1]

[1] On the contract of labor, among others, there can be consulted economists such as Liberatore, Perin, Brants, Cauwes, Antoine, Falon; philosophers and cultivators of natural law such as Meyer, Cathrein, Castelein, Rothe, Schwalm; sociologists such as Weiss, *Soziale Frage und Soziale Ordnung*, and Biederlack, *Die Soziale Frage*; theologians, such as de Gryse, *De contractu conductionis*; Lehmkuhl, *Le Contrat entre patrons et ouvriers et les greves*; Vermeersch, in *Quaestiones de Iustitia*, q. 10; Msgr. Doutreloux, *Lettre Pastorale sur la Question ouvriere*; Card. Zigliara, *Epist. ad Card. Goossens* 1891; Pottier, *De Iure et Iustitia*, and *La morale catholique et les questions sociales d'aujourd'hui*; Waffelaert, in *Coll. Brug.*, Jan. 1901; also dissertations or special works, such as Bruin, *Het Arbeidsloon*, in *Studien*, 1892; Pesch, *Lohnvertrag und gerechte Lohn*, in *Stimmen*, 1897; Perin, *Etude sur le juste salaire*; Beauregard, *Essai sur la theorie des Salaires*; Garriguet, *Le Contrat de Travail*; *Le Salaire*; A. Verhaegen, *Le minimum de salaire*, 1892; Vliebergh, in *Belfort*, 1913; Bus, *Relatief Gezinsloon*, with annotations by Aangenent in *De Katholiek*, 1922; Gougnard, *Le probleme du juste salaire*, 1923 [printed: 1293]; Koenraadt, *Rechtvaardig sociales Arbeidsloon*, 1929; Rutten, *La Doctrine sociale de l'Eglise*; and also laws passed among diverse peoples, as the Belgian law of 10 March 1900 *de contractu laboris*, and 7 Aug. 1922 *de contractu famulatus et ministerii professionalis*.

Concerning the nature of the contract of labor there has sometimes been doubt:

A. Certain economists have held it as a purchase-sale, by which the worker sells his services, or the exercise of his own activity, for some time.

Nevertheless this cannot be admitted; for 1. the object of sale is merchandise, but human labor in the proper sense is not merchandise; 2. by sale a thing and the dominion of the thing are transferred, but by the contract of labor there is not transferred the power of operating or dominion over it, but only the use of it is promised. Therefore it is not a sale, but a letting. Nor should you say that the fruit of labor can be sold, or that part which the worker has in the effect produced; for this is the proper object of the letting of a work, by which it differs precisely from the letting of services.

B. Others wish, or rather would wish, that it be a contract of partnership, by force of which the owner contributes his capital and the workers their services for completing a common work, and for dividing among themselves the gain received therefrom; which, they say, agrees better with the dignity of workers and with a more equitable division of gains.

A contract of partnership entered into between owners and workers could be conceived, and it would be desirable that such a contract be more widely diffused in the future; nevertheless, as regards fact,

the matter does not so stand in the present state of affairs; indeed such a contract generally is impossible. For a) on the one hand, owners contend that the successful outcome of industry depends especially upon the wise management of one supreme director, and therefore they are unwilling to have workers as partners, lest they be forced to adopt their counsels; b) on the other hand, workers cannot take upon themselves the risks of industry, as is essential to the contract of partnership: for, needing a daily and certain wage for sustenance, they cannot wait until the amount of gain and loss is determined and equally divided. Therefore owners take upon themselves a twofold risk; and against that twofold risk workers are made secure: 1. the price is paid to them at once, before the things made are sold; 2. a determined price is paid, whether the outcome of the sale is happy or unhappy. Hence it is just that not the whole of what they have produced be paid to them, but that the price be proportionately diminished: namely, workers renounce a greater benefit so that they may be preserved from damage.[2] c) Besides, in certain circumstances a contract of partnership is impossible, and only a contract of letting is possible, namely in the case in which it is not entered into for profitable business, as in domestic service or in constructing a work, for example, a house.

[2] Prummer well notes, *Th. M.* II, n. 306: "Owners contribute not only money, but also intelligence (at least commonly superior) and many services. Besides, they are compelled to expose their own fortune to very great dangers and often labor for a rather long time without any profit, indeed with damage. On the contrary, workers incur no risk and must receive a daily wage. Therefore it would be inequitable if in prosperous affairs they had a proportionate part of the profit, but in adverse affairs the owner alone had to furnish the whole damage."

C. A few others think that the contract of labor is unnamed: on the part of the worker, *I do that you may give*; on the part of the master, *I give that you may do*, insofar as workers oblige themselves to do something for a certain price.

This has a certain appearance of truth, because of the special nature and dignity of human labor. Nevertheless Roman law and modern codes, as also theologians and jurists, hold the contract as a true letting, because, namely, in it the use of a certain thing is promised and conceded for a certain price; which is the very definition of letting.

Therefore the contract of labor is a true letting. For man has full dominion of his labor, or of the exercise and use of his faculties (n. 167). Therefore he can concede that use to another, or let it for a price, indeed also alienate it, and of itself in perpetuity, as in servitude; although this today has no force, as being positively prohibited in all present-day law (a. 1780).

It is indeed, by reason of the object, a letting of a special character, since human services are not common merchandise, but carry something human before them, and therefore must be ruled by other laws than merely commercial things. But, although human labor far surpasses the economic order, and is not simply to be held as merchandise if it is considered as a human action, nevertheless it can be considered as causing economic utility, and under this respect one can make agreement concerning it for a wage (I-II, q. 114, a. 1). And although the worker himself can dispose of labor, as it is a human action, altogether freely, nevertheless not always if in it there is considered the economic utility, which could be necessary to him for sustenance. These aspects are not to be separated, as Leo XIII well notes in the encyclical *Rerum novarum*.

"And so labor has, as it were, two notes implanted by nature in man, namely that it is personal, because the acting force inheres in the person, and is altogether proper to him by whom it is exercised, and for whose utility it is born; then, that it is necessary, for this reason, that the fruit of

labors is needed by man for sustaining life: but the nature of things itself, to which above all one must obey, commands that life be sustained.

"Now, if it is considered only from that part according to which it is personal, there is no doubt that it is within the worker's full right to define more narrowly the measure of the agreed wage: for just as he gives his services by will, so by will he can be content with a slight wage for his services, or with plainly none. But one must judge far otherwise if, with the notion of personality, the notion of necessity is joined, separable from it indeed in thought, but not in reality. In reality, to remain in life is the common duty of each one, to which it is a crime to be wanting. Hence there necessarily arises the right of finding those things by which life is sustained; and for the lowest person the faculty of these things is supplied by no means except a wage sought by labor. Let it be granted, therefore, that worker and master freely consent to the same agreement, and expressly to the measure of the wage; nevertheless there is always underlying something from natural justice, and this greater and older than the free will of those making agreement, namely, that the wage ought not be inadequate for sustaining the worker, frugal indeed and of good morals."

Therefore it is clear that labor is not to be held merely as merchandise without any relation to the person and his conditions, but as a legitimate, and often the only, means by which the worker can sustain life for himself, or also for his own.

550. The duties of justice of workers are indicated by Leo XIII:

"1. What has been freely and equitably agreed concerning work, that they should render wholly and faithfully; 2. not to harm the property in any way; 3. not to violate the person of the owners; 4. in defending their own interests, to abstain from force, nor ever to stir up sedition, nor to mingle with wicked men"; 5. by which words an unjust strike also is prohibited.

Therefore workers must:

1. Furnish wholly and faithfully that amount of work which has been freely and equitably agreed; and therefore a) perform the determined work at the prefixed time; b) complete it with due diligence, which is required by pact, law, or custom; this generally is sufficient when common and ordinary, yet sometimes from the nature of the thing, or by reason of the pact and a greater stipend, special care is owed; c) accordingly obey the commands of the owner given concerning labor in order to the execution of the contract.[3]

[3] Cf. Belgian law of 10 March 1900 concerning the contract of labor, a. 7-10.

The obligations are of justice, as flowing from the bilateral onerous contract itself: for the worker does not make his own the wage, if he does not wholly, faithfully, and fittingly fulfill the work which he promised to furnish. Hence he sins against justice if from carelessness or culpable negligence he spends time uselessly, or furnishes his work defectively; the gravity of this sin depends upon the gravity of the damage inflicted.

2. Not to harm the property in any way, that is, to inflict no damage, whether by using materials prodigally, or by destroying machines, or by damaging or not returning instruments, or by producing defective wares, or by revealing the secret of manufacture; for by means of this sort injury is inflicted upon the owner or also upon buyers.

The gravity of the sin depends upon the gravity of the damage inflicted; this is also prohibited by civil law and sometimes punished by fines. But if damage arises from a fortuitous event, the worker is not held to compensate it, nor on that account does he lose the right to the agreed stipend.[4]

[4] Ibid., a. 9.

3. Not to violate the person of the owners, that is, to inflict no injury upon the owners themselves, whether by harming, or by calumniating, or by grieving them with insults or threats.

Concerning the gravity of the injury, judgment must be made from what has been said concerning injustice through involuntary commutations, also noting that there is present a special malice against the observance owed to owners by their workers.

4. In defending their rights, to abstain from force, sedition, and mingling with wicked men. It is indeed lawful for workers to pursue their rights by legitimate means, by entering associations, by setting forth their desires to the owners, by having recourse to magistrates and deputies in public assemblies; but they must abstain from sedition and violent or unjust means.[5]

[5] Ibid., a. 15.

Those acting thus commonly harm not only the owners but themselves, since the ruin of industry by its nature is apt to bring more detriments to these than to those. Hence the Pontiff admonishes them "not to mingle with wicked men, skillfully throwing out immoderate hopes and enormous promises, which generally has useless repentance and ruin of fortunes following."

5. To abstain from an unjust strike, namely, not to cease from labor before the prefixed time, unless there is a grave reason; and if it is indeterminate, to give warning at the due time; otherwise they are held concerning damages.[6] Concerning this argument, more will be said below.

[6] Ibid., a. 16 and following.

551. The duties of justice of owners were defined by the same Leo XIII:

"These things, however, pertain to the wealthy and to owners: 1. that workers are not to be held in the place of slaves; that it is equitable to revere in them the dignity of the person, everywhere ennobled by that which is called the Christian character... It is truly shameful and inhuman to abuse men as things for gain, and not to value them more than according as they are strong in sinews and powers. 2. Similarly it is prescribed that regard ought to be had for religion and the goods of the soul in proletarians. Wherefore it is the part of owners to bring it about that the worker be free for piety in a suitable space of time; not to expose the man to the allurements of corruptions and enticements of sinning; nor in any way to draw him away from domestic care and the study of thrift. 3. Likewise, not to impose more work than their powers can bear, nor that kind which is at variance with age and sex. 4. But among the greatest duties of owners this stands forth, to furnish to each one what is just... But to defraud anyone of the wage due is a great crime, which calls down avenging wrath from heaven. Behold, the wages of the laborers... which have been defrauded by you, cry out: and their cry has entered into the ears of the Lord of Sabaoth (Jas. V, 4). 5. Finally, the wealthy must religiously

take care that they harm the profits of proletarians in nothing, neither by force, nor by deceit, nor by usurious arts; and this all the more because they are not sufficiently fortified against injuries and impotence, and their goods, the smaller they are, the more sacred they must be held." Among these harms also must be considered unjust dismissal from work.

Therefore owners must:

1. Revere in workers the human, religious, Christian dignity of the person, and not hold them as slaves, or as mere instruments of production, in which there is no other value than what they produce.[7]

[7] Ibid., a. 15.

Hence a) workers must furnish obedience to owners only in those things which regard the agreed work, and indeed during the time of furnishing labor; b) when that time has passed, they remain free, nor do owners have the right of commanding anything against their conscience or liberty; c) indeed, in commanding those things which regard the work, they must abstain from those which are repugnant to human dignity or are altogether less fitting.

2. Have regard for the goods of the soul in proletarians, and concede to them a suitable space of time so that they may be able to live as men, that is, so that they may be able to attend to religious and moral and familial duties.

Care must be taken a) that rest be conceded on Sundays and feast days, unless true necessity stands in the way; and that to those workers who more often must labor on Sunday from necessity there be granted at least the time necessary for fulfilling religious duties;[8]

[8] Hence the Belgian law of 17 July 1905 concerning rest on Sunday.

b) that workers not be exposed to the allurements of corruptions and enticements of sinning; especially that occasions of sinning not arise from the promiscuity of the sexes, that scandal not be given by impious or lustful conversations, that superiors not abuse authority to extort something repugnant to good morals;

c) that the time necessary be conceded to men, and especially to women, for rightly arranging domestic life and well educating offspring.

3. Have regard for the powers of the body in imposing work, and for difference of age or sex; and, as much as possible, turn away from workers damages and dangers to life, integrity, and health.

Hence a) in dangerous works or industries, precautions must be applied by which danger is removed for life, security, or health;[9]

[9] Cf. Belgian law of 20 July 1899.

b) if it is impossible to avert the danger totally, the wage must be increased according to the probability of the danger, or the damage inflicted must be equitably compensated;

c) the owner must take upon himself the dangers arising from the labor itself, and insure the workers against them, except in the case of graver fault in the workers[10] or of an evil intention;

[10] Cf. Belgian law of 24 Dec. 1903. This law extends natural right, so that the owner is held even in the case of graver fault on the part of the worker, unless however the latter acted with the intention of provoking harm; but that disposition of the law obliges in conscience only after the sentence of the judge.

d) daily labor must not be prolonged excessively, lest the worker's powers be exhausted, "the mind grow dull by excessive labor, and at the same time the body succumb to weariness,... but intervals of rest ought to exist";[11]

[11] Hence the law concerning labor for 8 hours, 14 June 1921.

e) there should not be imposed upon women labor which exceeds their powers or is unbecoming to their sex, as are many things to be performed in workshops, while they are rather born for domestic works;[12]

[12] Cf. Belgian law of 13 Dec. 1889 and 10 Aug. 1911, 14 June 1921.

f) nor should works be committed to children for the performance of which they are not yet equal: thus especially in the weaker age, while lighter things rather should be assigned to those more grown.

4. Pay a just wage, and indeed at the established time.[13]

[13] Cf. Belgian law of 10 March 1900, a. 11 and following.

This is the chief duty, concerning which one must speak expressly.

5. Finally, beware of every unjust harm, especially of unjust dismissal from work.

The owner cannot cast out workers before the prefixed time without a grave reason; but if the time is indefinite, he must warn them at the due time. Otherwise he is held concerning damages.[14]

[14] Ibid., a. 16 and following.

552. On the just wage. To determine the norm of a just wage, a threefold system is chiefly distinguished: that of the liberal economists, that of the socialists, and that of Catholics.

A. The system of the liberal economists is ruled wholly by a twofold economic law: the law of what is offered and what is sought, and the law of free contest or, as they say, competition, by which the price of all merchandise is determined. They deny objective value, and say that the wage depends upon the sole and free subjective agreement between worker and master, and therefore that that must be held just which the master freely offers and the worker freely accepts.

Hence in practice it is regulated by the law of competition, by force of which wages are increased or diminished according as owners more or less need the labor of workers. On the one hand, the master estimates the utility which comes to him from the use of the operative faculty of the workers, and the rarity or frequency of this; on the other hand, the worker estimates those things which are required for his honorable sustenance, and if he is truly free, he does not promise his work except to him who pays what is necessary for honorable sustenance. And this is in fact verified almost everywhere, that the wage in use is that which suffices for restoring and recreating the powers of workers.

But now the outcome has proved that individual liberty, left to itself under the law of unlimited competition, is incapable of furnishing to workers the security of congruous sustenance, and that it,

even necessarily, cannot always define the just wage; therefore the question must be ruled by higher principles. In particular:

a) The foundation of the system of the liberals is false: that labor is nothing but merchandise.

b) The theory opens the door to tyranny, for it not rarely happens that workers in accepting a stipend are by no means truly free: for since they cannot labor fruitfully without machines or instruments which are in the possession of owners, and otherwise wholly need daily labor for daily sustenance, they are often compelled to accept the conditions imposed upon them, unless they wish to waste away with hunger. In these circumstances the price is not accepted freely, but is extorted from the worker; nor therefore can it be held as just.

c) Even granted that workers freely yielded from their right and accepted a wage insufficient for honorable sustenance, the contract would not be just, because in ordinary circumstances they cannot validly renounce those things which are necessary to them for living honorably.

Wherefore Leo XIII reproved economic liberalism: "Let it be granted, therefore, that worker and master freely consent to the same agreement, and expressly to the measure of the wage; nevertheless there is always underlying something from natural justice, and this greater and older than the free will of those making agreement, namely, that the wage ought not be inadequate for sustaining the worker, frugal indeed and of good morals. But if the worker, compelled by necessity, or moved by fear of a worse evil, accepts a harder condition, which, even unwillingly, must be accepted, because it is imposed by the owner or contractor of works, this indeed is to suffer force, against which justice cries out."

B. The system of the socialists arises from the absurd and unjust principles of Marxism according to which all capital is stolen, and therefore nothing is owed to it in the division of profit. Namely, the Socialists contend that to workers from justice there is owed the whole fruit of labor, with only those things taken away which are sufficient for restoring and recreating capital: namely, after deducting expenses made for the price of materials, the use of workshops and instruments, and their renewal. They cannot sanely deny some part to the intellectual labor of those who preside over the production of things and direct the works; nevertheless they judge that this should not be esteemed more than the work of hands.

But now, they say, it is manifest that the matter does not so stand. Owners retain for themselves the greater part of the profit under the pretext of interest to be received for money, of price for the utility procured from material and instruments, and of a premium for risk of capital; indeed capital is stolen riches reserved from thrift for producing new wealth. Thus workers are deprived of the greater part of the fruits, and, by force of the iron law of wages, they fall into misery, scarcely having the foods necessary for their own sustenance. Therefore workers must be cooperators with masters by a contract of partnership, and thus obtain a greater part of the profit, as is owed to labor, which is the sole cause of riches.

This system a) has a false foundation, namely, that capital of itself is stolen, and that labor is the only source of value (n. 401, 2).

b) Capital is not only a condition but a true cause of economic production. Namely, three causes concur in it: the principal efficient cause, which is labor, both the intellectual labor of those who

direct the works and the manual labor of those who execute them; the instrumental efficient cause is capital, or the complex of machines and instruments; the material cause is matter with its powers, from which things are made. To these three causes, taken singly, part of the profit is to be attributed from justice. But now those who hold capital and furnish instruments to workers also usually contribute materials; indeed they furnish a positive subsidy through their money, by which they pay wages to workers before the things produced are sold. Therefore it is not strange if, on account of the manifold utilities conferred, they obtain a rather large part of the profit.

c) Besides, capitalists take upon themselves the risk of capital. This risk, although in prosperous years it is not always very great, during an industrial crisis often happens to be enormous: in truth not a few obtain an unhappy outcome in business and not rarely lose a great part of the money committed to undertakings. Moreover, since no one exposes himself to danger unless he hopes for great profit from it, on account of the risk of capital which masters undertake, they can, when profit has been given, increase that part of it owed to themselves, while workers, instead of uncertain profit, receive less but receive what is certain.

d) Capitalists, in the present-day circumstances of industry, also usually furnish, by themselves or through mandataries, intellectual labor directive of industries. But intellectual labor surpasses manual labor, and has the first parts in economic production, as being the first cause moving all the others. Certainly the happy or unhappy outcome depends especially upon the skill and unwearied labor of those who preside over industrial affairs, and upon whom the whole solicitude rests. Therefore to these a part of the profit, proportioned to their labor, must be attributed.

These circumstances being supposed, such as now generally exist, the system of letting of services, as it prevails today, or the wage system, cannot of itself be accused of injustice, as Pius XI explicitly pronounced in the encyclical *Quadragesimo anno*; although it is permissible to desire and to strive that, when circumstances have already changed, another contract, namely of partnership, at least mitigated, could be entered into between workers and masters, as more fitting to the human dignity of workers.

C. Catholic doctrine. Between the extreme systems of liberalism and socialism proceeds the Catholic doctrine set forth by Leo XIII, according to which from justice there is owed to workers at least that wage which is necessary to an honorable worker for integral sustenance,[15] to which, namely, labor is first and principally ordered,[16] and this is owed even if such were not the common estimation.[17] Moreover, the practical norm of this wage is the common estimation of prudent men. It is said:

[15] Which seems to include insurance against the dangers of labor, ordinary illnesses, and old age.

[16] St. Thomas, II-II, q. 187, a. 3.

[17] Common estimation is the proximate criterion determining the price of labor; nevertheless, that it not be vitiated but right, it must be founded on other remote criteria, of which the ultimate is necessity, the right and duty of the worker to sustenance.

1. It is owed from justice, which by Leo XIII is called natural justice, that is, a right of nature founded in the very nature of things antecedently to private and free contract. For it is opposed to the justice which arises from the contract itself. Therefore it is a justice independent of the positive will of men, and is derived from the intrinsic constitution of things.

However, it is not expressly declared from what virtue that obligation arises, whether from commutative justice, or from legal justice, or from a virtue annexed to justice; yet of itself commutative justice is to be understood:

a) at least if workers are compelled from necessity to undergo a lesser wage, and cannot validly renounce a just wage, possessing nothing besides it; and thus it would be ordinarily and regularly if a lesser wage were paid;

b) indeed always and from the very nature of things: for labor has as its intrinsic value that which is necessary for repairing lost powers; hence he who gives whole labor must receive what is necessary for integral sustenance.

2. At least a wage sufficient for the worker himself is owed; wherefore, on the one hand, abstraction is made here from the disputed question whether from justice an individual or family wage is owed (which controversy is set forth in the following number); on the other hand, it is affirmed that that wage is owed, even if the worker has from nature or art no special skill worthy of a larger price. But if the worker furnishes something more, a greater wage is owed to him, namely, one equivalent to the economic price of the work furnished.

3. Of itself there is owed a wage necessary for the worker's sustenance, provided that, on the one hand, the worker can labor with common skill and activity, and, on the other hand, the normal state of industry and commerce is had.

For in time of a general crisis, exceptionally, with at least the consent of the workers, the wage could be less than just; and in that case it is not imposed unjustly by the owners, but rather results from extrinsic circumstances, which the owners do not impose but rather undergo, so, for example, that by giving a greater wage they would have to fall from their own state.

553. Disputation among Catholics concerning the family wage. They dispute whether an individual wage, or also a family wage, is owed from justice. Against the family wage as owed from justice, these arguments are proposed:

a) Commutative justice intends equality, here namely equality between the wage and the work furnished. But labor, or the work furnished, is the personal labor of one man, not of a family. Therefore from commutative justice the wage must suffice for the sustenance of the man, not of the family.

b) The duty of feeding oneself, to which corresponds the obligation of giving a sufficient individual wage, is a certain necessity intrinsic and essential to the labor itself, namely, the necessity of repairing the powers handed over to work and lost by labor, and therefore, in estimating the wage of labor, it must of itself be attended to; on the contrary, the duty of feeding wife and children is a certain necessity extrinsic to labor, and therefore in estimating labor it must not of itself be attended to.

c) The duty of feeding a family is hypothetical, namely, if the worker is a father of a family; it is a duty freely undertaken, since the law of entering matrimony obliges no determined man; finally, it is a duty varying according to various families: he must sustain offspring more or less numerous, and sometimes father, mother, brothers. But if such a duty had to be attended to in estimating the price

of labor, from justice there would be required a relative wage, varying according to the free choice of the worker and the number of persons whom he sustains.

The arguments for the family wage as owed from justice can be proposed thus:[18]

[18] It is not our mode of proposing the arguments, but we have taken them from an excellent and most learned man who, at the same time answering the sayings of the adversaries, defended the family wage with great dexterity in this way.

a) Commutative justice indeed intends equality between the wage and the work furnished, but with attention to the personality and necessity of the one working. But the work or labor furnished is not the labor of one man abstractly and strictly taken individually, but is the labor of man as he in fact exists in the concrete and as he ought to exist according to the general ordering of nature and the moral law; in one word, it is the labor of the worker who is father of a family. Therefore the wage must suffice for assisting the condition of a father of a family.

b) The obligation of giving a sufficient wage is founded not so much in the necessity of providing for the physical labor itself, as in the moral necessity and personal dignity of the agent, for whom the wage obtained by labor generally is the only means of sustaining a family. But this dignity of the person, this moral necessity, is not something extrinsic to the one working, but is intrinsic to the worker and to personal work. Therefore in estimating the price of a just wage it cannot be neglected. Besides, from the very necessity of providing for physical labor and for the physical powers of the one working there already arises the necessity of a family wage; for the procreation of children is necessary for pursuing industrial affairs, and the valid worker himself needed the sustenance and cares of a family for a long time. Hence, just as masters lay aside part of the profit for procuring new machines at an opportune time, so a fortiori they must furnish to workers some part of the profit under the name of wage, so that at an opportune time there may be arms and hands by which machines can be moved and directed.

c) The duty of feeding a family is indeed hypothetical, but that hypothesis is verified commonly and of itself according to the motion of nature and the moral law; but justice regards those things which happen of themselves commonly, not those which happen rarely and by accident, namely, that adult workers remain unmarried. Besides, the duty of feeding a family is indeed freely undertaken, yet according to the motion of nature itself and often according to a moral obligation; it also arises from the use of a primary natural right, which cannot legitimately be impeded by any human law or by any contract. But if workers have a right to matrimony and family, by that very fact they have a right to the only means of sustaining a family. Finally, the family wage must not therefore vary according to the various necessities of each family, just as neither is the individual wage varied according to the various necessities of each individual; but, as has already been said, the price of labor must be estimated according to those things which happen commonly; moreover, to provide for special necessities pertains to natural equity and charity.

Therefore the family wage is not understood as relative, which would have to be increased proportionately to the number of children: namely, that which is required for the sustenance of a family in extraordinary circumstances, for example, if the wife is sick and in no way can contribute to increasing the income of the family, if the offspring is very numerous or oppressed by illnesses, if extraordinary expenses are necessary. But it must be understood as absolute: namely, such a stipend is to be furnished to any worker, so that when he marries and thus constitutes a family, he can

sustain his family, provided however 1. that the wife undertakes that kind of work which can stand together with her duties; 2. and likewise that the children, at the opportune time, begin to labor in a way proportioned to their powers; 3. and that the number of children is not extraordinary. In those extraordinary cases, especially of very numerous offspring, the social good demands that societies of beneficence, or even the republic itself, furnish special assistance to such families.

554. Conclusion of the disputation. 1. It does not seem that it can be sufficiently proved that the immediate end of labor (to which it is first, of itself, and principally ordered), and its intrinsic value, or "its equivalent," is the family wage, and accordingly that this is always and of itself owed from justice; for the wage is not immediately founded on the necessities of the worker, but on the value of the labor.

2. Nevertheless the family wage is owed of itself not only from charity, but at least from natural equity or honesty, which demands both that workers be able to feed their family by their labor from the one means of labor which they have, and that the owner, if he receives a great benefit from the workers, compensate this by supererogations; indeed also from legal justice, because the common good requires it.

3. Also from commutative justice, in ordinary circumstances and in the normal condition of industry. For common estimation, in determining the price of labor, must attend to this: namely, that workers generally, in order to fulfill their duty toward their family, have no other means besides labor, which they do not intend to let except for a family wage; hence, in the normal state of the economic order, workers generally do not have the intention of renouncing this wage, indeed they cannot even renounce it, and owners cannot impede workers from using that sole means for fulfilling their duty toward their family.[19] And therefore common estimation will have the family wage as a minimum. But if owners by unjust means compel workers, or abuse their necessity or the abundance of workers, so that they impose a lesser wage, they sin against commutative justice, because they impede workers from exercising their right.

[19] Therefore there is a twofold different mode of establishing the family wage: 1. so that it rests immediately upon the intrinsic value of human labor; although we have heard this mode proposed by the most illustrious Pottier, it is not established for us that it has been sufficiently proved; 2. so that it rests immediately upon the general condition of workers, who, in the normal circumstances of industry, neither intend nor freely can intend to let their work except for a family wage; which mode seems to be proposed by the Illustrious Waffelaert, Em. Van Roey, and others.

We have said: a) in ordinary circumstances, because if in a certain region a sufficient number of workers had another means of sustenance, for example, from the cultivation of a small field or garden, or from some animals: hens, goats, a cow, etc., they could freely renounce a wage in part;

b) in the normal condition of industry, because if the general condition is unhappy, the owners would not impose it upon the workers, but equally with the workers would unwillingly suffer it. Therefore these could prefer an insufficient wage rather than have none.

4. Sometimes from commutative justice a wage greater than the family wage is owed, namely, when the labor furnished is commonly estimated as having greater value, and indeed from a

threefold cause, according as production will be more abundant or more perfect, the supply of workers smaller, or the prosperity of industry greater.

5. But if from the theoretical controversy of this question one comes to practice, Catholics now in practice all agree that the family wage is most greatly to be desired for the good of the whole society and to be procured in every honorable way, in which sense Pius XI himself also recently spoke; likewise, that in every Christian society obeying the laws of justice and not laboring under universal poverty, there in fact exists a family wage through common estimation by the spontaneous consent of masters and workers; and when this comes into common use, according to all, the family wage must also be attributed from commutative justice, unless someone is excused from this obligation for particular reasons.

Excuses can be: a) if he hires from mere charity or without proportionate utility: for then he does not hire for profit;

b) if the labor of the worker is not normal labor, but the labor of one younger, older, weaker, or more unfit: then less wage is owed, because he does not receive ordinary utility;

c) if in some region the general condition of affairs is such that industry itself produces smaller, scanty fruits, especially if owners with their own loss pursue industry for a sufficiently long time while awaiting better times; but this must not be taken too rigorously, for example, if they suffer loss for only some months, because sometimes they also have extraordinary profit, and thus compensation is present.[20]

[20] Carefully note that this rule is understood of the general norm of industry, so that it cannot be applied in the individual case, to one particular industry of one owner. It has force concerning industry in general, not concerning one. For if someone begins an industry, he himself undertakes the work (*entreprise*) and all expenses and dangers, among which are the just wages of workers, just as he also undertakes the probable profits, advantages, and benefits.

On the other hand, in a general way, owners satisfy if they pay the wages customary for such a region: common estimation can indeed be vain, but it is supposed to obey the laws of justice, unless the contrary is morally certain. It can indeed happen that by accident, because of special reasons, that wage is less than just, and of itself a greater wage would have to be given. But in truth, if excusing causes are had, as is supposed, it will rarely be in the power of individuals to remove those causes, for example, the price of labor, and consequently the price of merchandise, can scarcely be increased by one or another owner without his being deserted by his clients because of the competition of others. Yet it would be otherwise if someone had a special industry in the region, or if he were making great profit. But injustice would always be committed if, from some conspiracy of owners for making profit, a wage less than the customary or the just one were established, especially while workers cannot find other labor or change place without grave burden.

555. Means by which the regime of the wage contract can be improved have been devised in several ways, namely:

1. By premiums, conceded to those workers who labor better, or who diligently begin the work at the prefixed time, or remain longer in the same workshop, or within the same time make more things or make them more perfectly, or also use materials more sparingly: for in these cases greater profit accrues to the owner, who accordingly is able to pay a greater stipend without

detriment (*sursalaire*). Therefore this system is advantageous both to owners and to workers, provided it is prudently and equitably applied, so that it does not become a means by which labor too arduous or too intense is imposed upon workers.

2. Likewise, by an increase of wages conceded, or also a diminution, according to a sliding scale, affixed in workshops, and corresponding to the quantity and price of the thing sold.

3. By a certain participation in profits, by force of which workers, besides the usual stipend, each year or half-year receive a quota part of the profits which the owner has made.

The contract of letting of services being supposed, the strict rights of workers, once a just wage has been attributed, are extinguished, nor do they have any title from justice for participating in the profit to be made by the masters. Nevertheless, if the profits are enormous, it is fitting that workers not be wholly excluded from them, and it can be equitable that, after a part of the profit has been set aside for protecting oneself against adversities, the owner distribute the other part between himself and the workers. When this has been done, workers are more strictly bound to the industrial affair, and relations toward owners are rendered more amicable and peaceful.

Today participation can be made through distributions of shares of labor, to be possessed either individually or collectively (*actionnariat ouvrier ou de travail collectif*).

4. A certain participation in management seems to be the connatural corollary of participation in profits. For if workers hold portions of the capital, which are called shares by name, they can also be represented in the administrative council of the workshop, by which the industrial affair is to be managed and the profit received divided. Nevertheless this form has not been brought very much into practice up to now.

5. Pecuniary subsidies and supplements or allocations conceded to workers (*subventions patronales*), by which owners, under the form of a subsidy greater than what is owed, contribute something of the profits to various institutes erected for the benefit of workers, and to be managed by these or at least with their concurrence: against fortuitous events, involuntary cessation from work, illnesses, old age, or premature incapacity for working; for fostering professional formation, procuring healthy homes, conducting certain businesses cooperatively, assisting in a special way families burdened with numerous offspring, etc.

Especially as regards supplementary monies or allocations to be made to numerous families (*allocations familiales*), these could be granted by the republic itself; also, because of the public good, it could be established by law that from the sum of wages a portion be reserved to be attributed to numerous families; this law would not be unjust, especially if the celibacy of many or the violation of matrimonial laws were the occasion why the condition of large families became worse. But in defect of law, owners can from the profits received support funds by which family subsidies are distributed.

That the very opportune means described may be brought more into practice, there can be desired:

A. A moderate intervention of the republic, not indeed by authoritatively defining the wages to be paid universally, but 1. by furnishing an example, insofar as the government, the administration of the province, or the municipality, when they hire workers, furnish a wage fully sufficient for their

decent sustenance; 2. or by imposing upon executors of public works a minimum quota of wage to be paid to workers; and in a general way by taking care that wages be defined by mixed councils, in which delegates from owners and workers weigh the matter equitably by common vote.

Especially intervention by colleges of workers, by which the right formation of workers, both moral and professional in their art, is promoted, more equitable conditions are obtained for them from owners, and amicable relations between both are rendered easier. Delegates of these colleges opportunely meet with masters or delegates of the college of masters 1. to set forth their mutual desires and subject these to benevolent examination; 2. to establish a collective contract of labor, that is, an ideal contract to which, as to a norm, as far as possible all contracts which in fact are to be entered into in the region will have to be conformed; 3. to establish some permanent council of the workshop, in which delegates of masters and workers confer concerning everything which pertains to the industrial affair and its prosperity.

556. A strike (*greve; werkstaking, strijken*) is the common withdrawal of many workers by agreement for obtaining certain advantages from masters. Hence it is, as it were, an economic war; concerning its liceity or justice there can be a special difficulty.

When a contract of labor has been entered into, it is explicitly or implicitly defined how long it ought to last; and workers or owners act unjustly who without a grave reason withdraw from a legitimate agreement, and therefore they are held to compensate the damage inflicted from this.[21] But a) if the contract from the beginning was unjust, or afterward became unjust, as if it was entered into under compulsion, or then unjustly changed by the owner, or brings an imminent danger of temporal or spiritual damage, those who withdraw from the contract because of the harm which they suffer do not commit injustice: for this is legitimate defense.[22] Likewise b) when the time has elapsed, or warning has been given, workers can denounce the contract without injury toward the owner even without any reason: for they can justly let their work to others or even rest from work; although in doing so they can sin against charity, for example, toward their own, on account of which sometimes a lesser evil will have to be undergone to avoid a greater one. c) This also has force concerning owners toward workers, although they can sin against charity if they do this without sufficient reason, for example, because the workers are associated; on the contrary, it would be otherwise if it were done because the workers are a danger to others under the respect of religion or morality.

[21] Cf. Belgian law of 10 March 1900, a. 16 and following.

[22] Ibid., a. 20 and following.

But in the present matter it is asked whether workers can cease from work in bands by agreement, for this end indeed, that they may obtain or extort better conditions from masters.[23]

[23] On this argument, Kiselstein, *La legitimite de la greve*, in *Rev. Eccl. de Liege*, 1923, deserves to be read.

Moreover, a twofold strike is distinguished. One, defensive, is instituted by workers who are unjustly oppressed by masters, for example, when a truly insufficient wage is paid or the health or morality of workers is not sufficiently consulted; the other, ameliorative, is for obtaining a greater wage or shorter and easier labor, although the wage accepted up to now is not altogether insufficient nor the labor excessive. The first is not of itself illicit, provided that another means is not at hand for defending oneself licitly against the injustices of the owner: for it is licit to defend oneself with the moderation of blameless defense. The other has been held by some to be illicit, as seditious;

nevertheless it is rather commonly judged that sometimes it can be licit, provided a proportionately grave cause is present and unjust means are not employed. But in practice, considering concrete circumstances, a strike, even a defensive one, is not easily licit, because of the many and grave damages, both material and moral, which it is accustomed to imply, both for workers and for owners and for the community itself.

These evils are described by Tanquerey:[24] during the whole time of the strike "a) workers receive no wage, but b) spend money accumulated by long thrift for the sustenance of themselves and their family; c) owners, however, not only make no profit, but d) often incur burdensome expenses for protecting and repairing their buildings and instruments of labor, e) lose the opportunity of selling their wares not only for the present, but f) often also for the future time, since not a few buyers are accustomed to have recourse to other manufacturers, and often afterward retain this custom. Moreover, g) railways and also certain other workshops, which depend upon those from whom work has ceased, suffer not slight damages from this; h) sometimes the industry and commerce of the whole province are involved in entangled difficulties, and the number of the poor in the whole region is greatly increased; i) Nor must there be passed over in silence the evils of the moral order which arise from this: namely, hatreds which divide citizens, the corruption of morals which naturally flows from long idleness, blasphemies against religion, violent and unjust acts by which persons or things are attacked, and other things of this sort."

[24] *Th. M. De Virtute Iustitiae*, n. 845.

Deservedly, therefore, Leo XIII says: "That kind of cessation affects with damage not only the masters and the workers themselves (and their family), but harms commerce and the utilities of the republic; and since it is usually not far from force and disturbances, it very often brings public tranquillity into danger." But since it is not licit to posit the cause of evil effects, unless the conditions are given, among which especially is this one, that a compensating good arise from it, hence the following principles concerning a strike must be attended to.

I. Common cessation from work by agreement is not licit unless 1. for a legitimate end to be obtained with founded hope, 2. with a just cause existing and proportionately grave, 3. while another way is lacking, 4. and unjust means are not employed.

There is required 1. a legitimate end to be obtained with founded hope: if the legitimate end is lacking, because the conditions demanded are unjust, the strike is intrinsically evil; if founded hope is lacking, it is gravely rash because of the harmful consequences to which it exposes one without likely compensation;

2. a just cause proportionately grave: for since many evils are apt to arise from a strike, there is required a reason of great moment, which ought to be the graver in proportion as greater evils can also be feared. Ordinarily a political cause does not suffice, for example, obtaining the right of suffrage, nor a fortiori obtaining the exclusion of non-associated workers, because liberty of laboring is given to all;

3. absence of another milder or better way: persuasion, peaceful agreement, intercession of the government, appeal to arbiters, etc.; for otherwise the strike would not be necessary;

4. abstinence from unjust means, because evils cannot be done so that goods may come about.

Hence in practice one must not cease from work by agreement except after mature deliberation, when other means and peaceful efforts have been exhausted, and when all advantages and disadvantages have been carefully weighed: for if the aforesaid conditions, and therefore the liceity of the matter, are not established, one should rather abstain from it. But when the conditions are verified, the strike is licit, because it is an act indifferent of itself, from which, in the case, a twofold effect will follow, so that the intended good effect is foreseen as about to surpass the evil. But if, in these circumstances, such a right were denied to workers, they could scarcely protect their rights in another way; on the contrary, experience has proved that a strike begun with mature counsel is an efficacious means.

II. Especially in a strike, one must abstain from all unjust means, whether for inflicting damage upon masters, or for deterring others from laboring. For to use unjust means, whether violent or fraudulent, is illicit, even for pursuing a good end.

Hence they act unjustly a) who by an anticipated cessation violate the contract without a just reason, or inflict damage upon the things of the owners, for example, by burning or invading houses or wares, or harm the owners themselves, even if they are guilty: for it is not licit by private authority to take vengeance;

b) likewise those who by force or by another unjust means compel other workers to cease from work, by beating, persecuting, calumniating, and a fortiori by striking or wounding; but whether the same must be said of those who, because of manifest injustice redounding to the common damage of workers, compel others by merely moral means not to labor, for example, by expelling them from the association without damage, can perhaps be disputed;

c) likewise those who by counsel or common conspiracy cooperate in these injustices; but not those who are compelled against their will not to labor.

III. A strike in public services, for example, railways, is very rarely licit. For it is often prohibited by the government in the stipulations themselves of the contract; and the advantages to be hoped for very rarely compensate the damages which directly harm the public good.

Hence it does not seem to be licit unless it is truly defensive; nor always, but only for repelling an intolerable injustice, for otherwise, since the public good must prevail over private good, the workers must renounce this latter.

557. Observation. The same principles have force from the opposite side concerning the dismissal of workers made by agreement (*lock-out; uitsluiting*). For if workers can declare "economic war" against owners, these, in similar conditions, can wage war against workers. But a truly grave cause is required, such as grave fault of the workers; because otherwise culpable cruelty would be committed, since workers thus dismissed would now be admitted nowhere in such a region for laboring, and would be compelled either to emigrate, or to embrace another vocation, or to beg.[25]

[25] Prummer, *Th. M.* II, n. 309.

Question Three: On the Contract of Partnership

558. Partnership (*maatschap, vennootschap*) is a contract by which two or more agree concerning a thing to be placed in common for gain or common use, for example, of books, horses, grain, a machine for cultivating fields, etc. In present-day law, however, it is usually restricted to a merely

economic or gainful end,[1] and therefore it is defined: an agreement by which two or more contribute something in common for receiving profit therefrom and dividing it among themselves in an equitable proportion (a. 1832). It is said:

[1] In German and Swiss law the definition is broader, and includes any common end.

1. An agreement, because if someone without agreement contributed something, say labor, he would not have the right of participating in the profit, but at most a stipend of labor would be owed to him;

2. By which two or more contribute something in common which is estimable by price, and which can be diverse and unequal: either money, or a movable or immovable good, or instruments, or work or industry, or even commercial credit, whether individuals contribute something from all of these, or some contribute one thing and others another, and indeed equally or unequally (a. 1833);

3. For receiving profit therefrom and dividing it among themselves in an equitable proportion. Community in profit is an essential element; for if it is established that a determined sum is to be paid to someone, this person is not a partner, but one lending or letting his work, as administrators with a stipend are. For the intended end is that the gain be received in common and be divided proportionately among the partners; this can be either industry, or money, or the use of some thing, or credit, or an intellectual or moral benefit, for example, the name itself. Nor is it required that some profit in fact be received, but it suffices that it can be received with probable hope; but if there are losses, they likewise must equally be distributed proportionately among the partners (cf. a. 1855).

Partnership is a consensual, non-solemn contract, not requiring writing except for proof (a. 1834),[2] with the exception, however, of certain commercial partnerships which are solemn, for example, anonymous companies.[3]

[2] In Belgian law writing is required for proof if the object exceeds the value of 1,500 francs.

[3] Cf. Belgian law of 18 March 1873, a. 4, and 9 July 1935, a. 1.

This contract is licit and just, provided that 1. it has a licit object; 2. individuals contribute something estimable by price, which nevertheless can be diverse and unequal, as we have said; 3. profit and consequently loss are common; this is so essential that otherwise it would not be a contract of partnership but another contract; 4. profit and loss are divided proportionately to the part which each one contributed: for this is required by the equality of justice to be observed.

559. Diverse species of partnership. A. Partnership, by reason of extension, can be a) universal, whether of all present goods or of all gains afterward to be made (a. 1835 and following); or b) particular, for determined things or a determined undertaking of a work (a. 1841-1842).

B. By reason of end, partnerships are distinguished into a) civil partnerships, or partnerships of acquisition (*burgerlijke maatschap of tot burgerlijke aanroerving*), which indeed are constituted for making profit but in another way than by trading; for example, for buying and cultivating estates, building houses, instituting and administering colleges, etc. In our law these are not distinct juridical persons, so that the partnership itself could possess; but the partners possess the goods in common, and

therefore of themselves they are not solidary. And b) commercial or mercantile partnerships, which are occupied in trading (C. Com., tit. 9, a. 2 and 3): these in our law are distinct juridical persons, so that the partnership itself, or moral person before the law, possesses the goods placed in common or acquired from them; hence in them solidarity has force of itself.

C. By reason of diverse constitution and obligation, commercial partnerships in present-day law are distinguished as five diverse kinds.[4] For there can be constituted:

[4] Cf. Belgian Commercial Code, book 1, title IX.

a) A partnership of persons:

1. Either so that all are held personally and in solidum for all debts of the partnership, and then there is had a partnership by collective name, which is designated under a social name (*societe en nom collectif, sous raison sociale; onder gemeenschappelijken naam of onder firma*), for example, Desclee De Brouwer and partners;[5]

[5] In England partners are not accustomed to be obligated infinitely; nevertheless, in partnerships, general partners are obligated infinitely, limited partners according to their contribution.

2. Or so that some undertake the obligation in solidum, and others supply determined monies to the partnership and thus limit their obligations; and then it is a commandite partnership, which is also entered into under a social name (*societe en commandite - ou en delegation - simple; stille gezelschap bij wijze van enkele geldschieting of handelsvereeniging*);

b) Also a partnership of monies, so:

3. That the partners (at least 7) oblige themselves to contribute a determined sum, and are not held for debts beyond this sum, but nevertheless in solidum: this is an anonymous company, which is constituted by anonymous portions of capital, customarily called shares, and does not have a social name (*societe anonyme, par actions; naamlooze vennootschap, op aandeelen*), for example, Banque de France, Brouwerij de Palmboom;

4. Or also the partners, whether in solidum or separately, whether indefinitely or obligated to a certain sum, cannot cede to third parties their parts, which can vary: this is a cooperative society, whose capital is not anonymous but visible (*societe cooperative; samenwerkende maatschappij*), to which credit unions approach;

c) Or a mixed partnership, namely:

5. Partly of persons who oblige themselves in solidum, and partly of monies which are limited: this is a commandite partnership by shares (*societe en commandite par actions; bij wijze van geldschieting met aandeelen*).

To the contract of partnership as it has been defined, and to the partnerships described above, do not pertain other associations (C. Com., a. 3) for a useful end which is not profit, for example, professional unions, or associations without a lucrative end, or congregations which are constituted for games.

560. Obligations of partners toward the partnership and among themselves. Obligations generally must be defined from civil law and from the special statutes of each partnership; especially in a commercial matter one must attend 1. to the agreement of the parties and to the laws of commerce, 2. to commercial usages, constant and public, 3. in defect of these, to civil laws.[6] But that obligations can be present, the end of the partnership must be licit not only in conscience but also in the civil forum (a. 1833), unless civil law is opposed to natural, divine, or ecclesiastical law. If the end is illicit, for example, to sell depraved newspapers, no obligation exists from the contract; but those who fulfill the contract must be paid. If the end is unjust, the partners are held to repair the damage inflicted, and often in solidum.

[6] Cf. Belgian law of 18 May 1873, a. 1; which law was modified on 22 May 1886, 22 July 1913, and 30 Oct. 1919, and inserted into the Commercial Code.

But when a licit and just contract has been entered into, there arise:

A. Obligations of partners toward the partnership (a. 1845 and following):

1. Partners must honestly and integrally bring to the partnership all things which they have promised, whether it is money, or things, or industry or work; otherwise they commit injustice and must repair the damage inflicted from this. But if someone, having promised money, is in delay in paying, a legal increase is owed besides.

2. Partners cannot act in the name of the partnership itself and obligate it, except under the conditions determined by law, statute, or custom; nor can they use things proper to the partnership except in the predefined way (a. 1859). But if against the laws and statutes they involve themselves in the administration of the partnership, they act in their own name and obligate themselves, not the partnership.

3. Administrators must manage the affairs of the partnership as their own, with at least common diligence; hence they are held to compensate damage arising from culpable carelessness.

B. Obligations of partners among themselves:

1. Partners must establish the division of profits according to the laws of equity, that is, in geometric proportion to those things which each one contributed to the partnership, attention being paid, namely, both a) to monies and things contributed, b) to industry and works furnished, and c) to dangers to which one exposes oneself (a. 1853 and following).

Let it be noted a) that the proportion according to which the division is to be established generally is determined by law and particular statutes; this must be adhered to in conscience, unless it is manifestly unjust (a. 1854);

b) that profits are to be computed after expenses have been deducted; wherefore there must also be made among the partners a proportionate division of losses, even if these exceed profits. But in several partnerships, losses are limited to the part which has been contributed or promised in common, as in anonymous companies;

c) that a partnership is inequitable by which one of the partners is altogether excluded from profit, or also from loss. Nevertheless, with exclusion of loss, another contract of letting could be entered into,

even tempered with a certain aleatory part in profit (a. 1855).

2. Partners cannot convert common money to their own uses: for this pertains to the partnership itself or to all together, but not to individuals before division (a. 1859 and 1860).

Therefore a) profit taken from the common fund must be restored without delay with legal increase (a. 1846);

b) besides, damages inflicted from this upon the partnership or upon other fellow partners must be compensated (a. 1850).

561. Modes by which injustice is committed in partnerships. Today the contract of partnership is most frequent. Moreover, multiform injustice can be committed in it:

A. In instituting a partnership: 1. by not bringing the thing promised; 2. by exaggerating the part had in the foundation and thus attributing to oneself excessive profit, for example, by reserving to oneself titles, as they say, of founder beyond merit; 3. by constituting a partnership with capital insufficient for prosperous management; 4. by issuing and selling titles above real value, and cooperating in such an issue, whether by giving one's name, or by furnishing counsel or work, or by deceptive announcements.

B. In managing a partnership: 1. by obligating the partnership contrary to the mode determined in the statutes; 2. by managing the affairs of the partnership without diligence or by undertaking management with lack of skill; 3. by dividing profits and losses in a proportion not equitable; 4. by converting the thing or money of the partnership to private use; 5. by increasing capital so that they reserve to themselves part of the increase, or when the benefits cannot be increased proportionately;[7] 6. while they administer several partnerships, by unjustly favoring one partnership before others; 7. by a fictitious exposition of affairs conducted, diminishing the profit which is owed to partners, or unduly increasing it so that the partnership soon perishes.

[7] This in America is usually called: *watering the stock, mettre de l'eau dans le capital,* as if to dilute the capital.

C. In dissolving a partnership: 1. by dissolving the partnership without sufficient reason, with damage to the partners; 2. by selling titles in a greater number for a cheaper price, so that a new partnership constituted by oneself can buy them and thence gain prosperously, with the ruin of the prior partnership and the detriment of those who contributed monies to it.

Question Four: On Census and Exchange

Article I: On Census and the Censual Contract

562. Census (*rente; inkomst*) is said from *censere*, or estimating, because formerly the goods and incomes of citizens were estimated so that the taxes to be paid by each one might be determined; hence it signifies:

1. Annual revenue (thus someone is said to live from his censuses), especially a direct tax (Mt. XXII, 17); but most strictly revenue from the very powers of the earth, not improved by human industry, but native and intrinsic. Thus it is taken among economists who distinguish a threefold cause of riches: labor or industry which produces them and to which wage or salary is owed; capital, or the means and instruments by which they are produced (to this pertains

improvement of the land), and to this interest or usury is owed; the land from whose powers they are produced, and to this census is owed;

2. It signifies a right to annual revenue;

3. The contract by which that right is constituted (a. 1968-69: *constitution, etablissement de rente; vestiging van rente*); moreover, this can be done in a twofold way: a) by a gratuitous title through donation or testament; b) by an onerous title through purchase and sale, and then it is properly the censual contract.

563. The censual contract is a contract by which the right of receiving revenue is bought and sold, or a real contract by which someone (the creditor, censualist), after the price has been paid which he cannot demand back, acquires from another (the debtor, censuary) the right of receiving revenue from the fruitful thing or person of another (a. 1909). It is said:

1. A real contract, because it is not perfected by the consent alone of the parties, but by the payment itself of the price by which the right to the census is obtained;

2. By which, after the price has been paid which he cannot demand back, because it is a species of purchase-sale, in which the censualist is the buyer, the censuary is the seller: thus it is distinguished from mutuum and letting;

3. Someone acquires the right of receiving revenue or an annual pension: this is the specific difference by which it is distinguished from other sales, because, namely, the right to a pension is the merchandise. In Roman and canon law the revenue itself, or pension, is called the canon; this pension can be either pecuniary or fruit-bearing, according as it will have to be paid in money or in fruits; certain, if the pension is altogether determined, or uncertain, if only an aliquot part is to be paid. He who acquires the right to revenue is called the censualist (*rentier, credi-rentier; renteheffer*);

4. From a thing or person, because the thing or person itself is not bought and sold, nor the labor or industry of the person, but the right to the pension to be received from it;

5. Of another, because no one is said to have a census upon his own thing, although he receives a pension from it. The other, who must pay the pension, is called the censuary (*debiteur; rentschuldige*);

6. Fruitful: for if it itself were sterile, the census would be fictitious and null, since nothing can be received from a sterile thing or person, and the right of receiving revenue from a thing or person which could not produce and pay it would be bought in vain.

564. Diverse species of census. Census 1. is either reservative (*rente fonciere; grondrent*), which someone reserved to himself when he transferred his own thing into the dominion of another (direct and useful), whether by donating or by selling; for example, he sells a field under the condition that an annual pension, or ten measures of wheat yearly, be paid to him. Or it is consignative (*rente constituee; gevestigde rente*), which someone, retaining dominion over his own person or goods, has

assigned, conceded, or sold to another by means of money received from him; for example, after receiving 10,000 francs, he obliges himself to pay an annual revenue of 700 francs. In other words: census is reservative when someone hands over or sells the dominion of his own thing to another for revenue to be paid yearly to himself; consignative when someone hands over or sells to another the right of receiving revenue to be paid yearly by himself, for example, if someone for 1,000 fr. concedes the right of receiving 70 fr.

2. Census, especially consignative, is divided into a) real, which is constituted immediately upon a fruitful thing, for example, a house or estate, and in such a way that it inheres in the thing and follows it to whatever person it may come, and perishes or is extinguished if the thing itself perishes without the fault of the censuary;

b) personal, which is constituted immediately upon the person who obliges himself to furnish an annual pension from his art or labor: this obligation passes to the heirs like other debts;

c) mixed, which immediately affects the thing and person at the same time, so that both the person and the thing upon which it is constituted are immediately obligated, and therefore, when the thing perishes, the census must be paid from the profits of the person, and, when the person perishes, from the thing, into whosever hands it may have come. Such censuses are ordinarily created; indeed, for greater security, censualists are accustomed to demand that either the thing itself or another be handed over in mortgage, and censuses of this sort are called hypothecary.

N. B. Formerly real census was held as a fraction of dominion (*un demembrement du droit de propriete*) and therefore as an immovable good; but now any census is computed among movable goods (C. C., a. 529), and therefore the censualist is a mere creditor who has a right to a thing and not a right in a thing; and the censuary is a debtor who for the most part can free himself by redemption alone.

3. Census, both reservative and consignative, is redeemable (*rachetable; aflegbaar*) or irredeemable, according as it can or cannot be redeemed at the will of either one or of both; likewise it is perpetual, or temporal, or for life (*rente viagere; lijfrent*), according as it is constituted either in perpetuity, or for a determined time, for example, 20 years, or for the life of a man (a. 1910).

From our civil law, every perpetual census (from a gratuitous or onerous title) is essentially redeemable, so that the debtor, when he wishes, can free himself by returning the principal to the creditor. But it is permitted to the creditor to stipulate that the census is not to be redeemed except after 10 years, if a fungible thing is handed over (a. 1911), or except after 30 years, if an immovable thing is handed over (a. 530). Nevertheless he regularly cannot demand payment of the capital, and thus census differs from mutuum, since mutuum supposes that the thing is to be returned after a time and therefore can be demanded back after the time has elapsed. On the contrary, the creditor will not be able to demand repayment except in a threefold case: a) if for two years the debtor does not pay the pension; b) if he does not furnish the security promised in the contract; c) if he falls into a state of insolvency (*deconfiture*) (a. 1912 and 1913; 1188; 1183). But life census is irredeemable, both on the part of the creditor if the debtor has been in delay in paying, and on the part of the debtor, if perhaps he could be burdened by it more than is fair. But the creditor can seek rescission of the contract if the debtor does not furnish the promised security (a. 1977), and act so that the goods of the debtor are sold if he has omitted payment of the pension (a. 1978).

565. The censual contract of itself is licit and just, provided equality of price is observed. For it is nothing other than a contract of sale or commutation, by which one cedes a fund or money to someone and another concedes the right to an annual pension, which right in common estimation is equivalent to the thing handed over.[1]

[1] It does not matter that in the course of time the pensions to be received exceed the price paid: this also happens in the sale of a fruitful thing, which nevertheless no one would call illicit.

Nor can it be said to be a virtual mutuum which disguises usury, even if the census is redeemable by the buyer. For 1. while in mutuum nothing is bought, in census the right of receiving fruit is bought; 2. while in mutuum the principal obligation is to return the principal, so that the borrower is held to return the same principal, in census the principal obligation is to pay the pension, and there is of itself none to return the principal: for the capital becomes dead and can only be returned, at the will of the seller, or even of the buyer.

566. Observations. 1. Life census is not to be confused with the contract which they call the pact of alimentation (*contrat d'alimentation ou bail a nourriture*), by which someone, for a sum of money, acquires the right to habitation, food, and clothing until the end of life: for this is not a life census, nor is it ruled by its rules, because it does not give a right to a determined sum or quantity of fruits.

2. Life census by gratuitous title is not an onerous contract, but a solemn gratuitous one (a. 1969; cf. a. 1971-73), unless the donation is accessory or simulated. Hence a. 1912 C. C. is not applied to gratuitous census, but to censuses constituted before the Civil Code, because the execution of a contract is to be ordered according to the laws of the time in which the execution is made.

3. The annual pension is prescribed in our law by 5 years; and the title of census by 30 years, whence it is to be renewed.

Article II: On Exchange

567. Exchange (*change; wissel*) is a contract in which money is exchanged for money in some way diverse, with the profit of him (the exchanger, *changeur, wisselagent*) who exchanges in favor of another.

It is said: in some way diverse, because in this consists the essence and utility of exchange, and from this it comes that the exchanger justly receives profit. Moreover, that diversity can consist in quantity, as if smaller money (*divisionnaire*) is given for greater; in quality, as if new coins are given for old, current coins for obsolete ones (not reprobated); by reason of species, as if gold is given in place of silver money; by reason of place, as if money is given at Louvain and letters are returned by which other money is received at Rome. These letters are called letters of exchange (*lettre de change; wisselbrief, postwissel*).

Exchange differs:

1. From purchase-sale: in this latter, merchandise is exchanged for money; in exchange, money for other money;

2. From deposit, letting, and commodatum, in which dominion is not transferred, while in exchange it is transferred;

3. From mutuum: a) mutuum can be made in money and in other things; exchange in money alone;

b) mutuum is made for some time; exchange can be made in the present;

c) mutuum is perfected by the handing over of the principal alone with the obligation of returning; exchange by mutual handing over;

d) in mutuum a thing of the same value is returned; in exchange a thing of lesser value is returned, and therefore, that equality may be made, the exchanger must give utility.

568. Species of exchange. Exchange:

A. One kind is real or true, when in fact one money is exchanged for another as regards thing or place, and it is twofold:

1. Small or manual, when in the same place, as if from hand to hand, present money is exchanged with other present money of a diverse kind, for example, domestic with foreign, gold with silver. Those who exercise this office, offering diverse monies set forth, are properly called exchangers, *changeurs, wisselaars*;

2. Local, or by letters, or transmarine, when present money received in one place is exchanged with absent money, to be paid in another place, as if you give money here to someone and he gives you letters by means of which you (or another to whom you concede the right) receive the same sum at Rome (*a son ordre, par une banque*). Bankers exercise this office. Moreover, this can be done in a twofold way: either a) the money is to be paid by him who received it, and then it is called personal exchange, and the writing is called *billet a ordre, billet a domicile; betaal-orderbriefje*; or b) the money is to be paid by a third party, and the writing is called *traite, lettre de change*, or *mandat a ordre; wisselbrief* (cf. Belgian law of 20 May 1872, and 20 June 1873, and 31 May 1919).

B. Another kind is fictitious (*change sec; pret dissimule*), which has only the appearance of exchange, because no transfer of money is made, but in itself it is a mutuum with usury disguised; concerning this the things to be said about mutuum have force. Such is temporary exchange (*change a terme*), by which money is given to be returned after a certain time in the same place, with an increase greater or lesser according as the money meanwhile will have been worth more or less; for example, if someone receives from an exchanger one hundred gold pieces to be paid later in the same place with the price of exchange customarily given for distant places.

569. Real exchange is licit and just, provided that the just price determined by law or by the common estimation of places is observed; indeed it is very advantageous and useful, and almost necessary for commerce. Certainly the exchanger has a title of just profit, because he is not held gratis to procure monies, whether in the same place or in another, with labor, expenses, and danger, for all of which compensation is owed. This also has force concerning local exchange, in which there

is virtually made a transfer of money from one place to another, with security; this is estimable by price, and no less than real transfer demands industry, nor is it made without expenses and danger.

Nor is it an obstacle that money formally as such has a legal price. For here it is considered materially, according as it consists of diverse materials and coins, and one coin is more precious than another, more advantageous, more apt for several uses, received in several regions; and thus it is merchandise which has only a common price. That price is determined not only on the part of the exchanger, but from the abundance of money to be sent into some city, or to be withdrawn, from the ease of commerce with such a city, from dangers, from the diversity of monies in diverse kingdoms and their intrinsic value, from the riches and debts of diverse nations (*cours du change*), whence it is frequently changed according to various circumstances. From this theologians conclude:

1. That profit from common estimation can ordinarily be received by the exchanger, even if he himself had no expenses or damages, indeed if it is more useful to the exchanger to receive the money here, because otherwise he would have had to take care that it be transferred here: for this is by accident and to be attributed to good fortune;

2. That in the same way it can happen by accident in local exchange that the exchanger himself sometimes makes profit;

3. Indeed, that even a private man who does not exercise the office of exchanger and exchanges one money for another seems able to take profit from it, because he can sell money at the common price established by common estimation; for money is merchandise sellable by anyone at a just price.

570. Observations. 1. Exchange, as being a species of trading, is prohibited to clerics.

2. On re-exchange (*rechange; herwissel*) see art. 72-81 in the law of the Commercial Code. One who in fact has not borne expenses cannot demand them, since they are attributed to him only by title of indemnity.

3. A bank, or money-changer's table, is called that institution in which all operations of credit are disposed, duly ordered, and brought together. These operations are reduced to three principal categories:

a) Deposit, and the operations which are referred to it, namely, the transfer of accounts and computations to the creditor, transcription to another, recovery, compensation (*clearing*), mandated instruments of transfer (*checks*), current accounts or computations, and emissions of paper money.

b) Commerce of monies and their substitutes, which comprehends the trading of precious metal, the exchange of monies, exchange properly so called, namely of paper money, the purchase and sale of titles, and the discounting of capitals (*escompte, disconto*).

c) Emissions of loans, which consists in the emission of titles of credit.

Considered in themselves and merely according to principles, the aforesaid banking operations in no way seem illegitimate, since they are nothing but onerous services furnished and loans at interest under various forms, to which, today at least, just remuneration ordinarily is owed. But most

unhappily, bankers sometimes abandon the honorable practices of their office and not rarely give themselves to speculations more or less usurious, as often happens in issuing loans.

The procuring of large loans is entrusted to bankers, whether solitary or federated, which certainly has nothing illegitimate. Nevertheless, by these operations it can happen that the metallic reserves of banks are weakened, or even that the cash which circulates from them suffers an excessive contraction harmful to the market. But graver inconveniences more often accompany negotiations of loans or titles.

Loans or titles are put on the market below the indicated price, by reason of a certain fictitious interest. Certain titles or "shares" are ceded gratis or for a lesser price to some persons so that they may be willing to recommend the purchase publicly. When the titles have been issued, they are eagerly sought, for this reason, that the bankers studiously buy back their own shares. Hence the price of titles quickly grows and brings about an elevation of values; wherefore outside persons, seeing the great favor which the titles enjoy, themselves fervently buy. But when the last titles have been sold, depression begins, and just as quickly the price decreases, so that the later buyers perceive too late that they have been deceived and fraudulently despoiled.

The responsibility of bankers is of great moment:

a) A banker who has great deposits of enormous value is thereby easily inclined to use them in speculations of the stock exchange and dangerous aleatory operations, although his own shipwreck and the fall of the deposits is carried along with it.

b) If he grants many loans with insufficient security, the fall of some of his debtors can notably diminish or even overturn the condition of the bank itself.

c) Between the capitals entrusted to him in deposits, and the capitals lent to others with a certain discount, there is always this difference: that the former can be demanded back without delay, while the latter are not to be returned except after a determined time. This difference is sufficient to bring about ruin, if the pecuniary reserves are insufficient, or if many depositors, moved by some fear, withdraw their deposits at the same time.

These things being considered, the oversight of public power over banks must be said to be necessary; and, in present-day circumstances, it is often insufficient, so that security is lacking. And yet by the frequent fall of banks, much money carefully gathered by the labor or thrift of citizens is squandered, and is lost to them!

Chapter IV: On Gratuitous Bilateral Contracts

Question One: On the Contract of Credit

571. Credit (*credere alicui*, to trust someone, to have faith in someone; *handelsvertrouwen*) indicates faith given to someone, or confidence in his truth and honesty; hence it signifies a thing whose use is conceded and entrusted to another, or a thing exchanged against the promise of another to return it. Therefore the contract of credit (*toevertrouwing*) is a real contract by which a thing is handed over to someone under the obligation of returning it afterward, whether the same in individual, or an equivalent in species; or an agreement by which one entrusts the use of his own thing to another, who after some time is held to restore it.

By reason of foundation, one kind is real if the confidence is founded on the things of another, namely, of the debtor, which are brought in for the security of the thing handed over (*credit garanti; gewaarborgd vertrouwen of krediet*); another is personal if the confidence is founded only on the personal qualities of the debtor.

By reason of object, it is specified according to the diverse nature of the thing credited, which can be non-consumable by first use and non-fungible, whose use alone is conceded but dominion is reserved, and which must be returned in individual; and then it is called commodatum. Or it can be a fungible thing and consumable by first use, whose use is not without alienation of dominion, which therefore is conceded with it, whence it must be returned in species, and then it is mutuum (a. 1874).

Article I: On Commodatum

572. Commodatum (*pret a usage; bruikleening*) is the gratuitous concession of some thing as regards use alone for a certain time (a. 1875-1878). It is said:

1. Concession of a thing as regards use alone: thus it is distinguished from deposit, in which of itself not even the use of the thing is conceded, and from mutuum, in which use and dominion are conceded at the same time. Hence only a non-fungible thing and one not consumable by first use can be given in commodatum; but not a thing consumable by first use or fungible as such, although this can be given in commodatum for a certain secondary end and use according to which it is not consumed, for example, for display, as a pledge, etc.; but then under this respect it is no longer consumable by first use;

2. Gratuitous, because if anything were demanded for the use, it would be letting;

3. For a certain time, because if it is conceded not for a determined time but at the will of the one conceding, it is called a precarium (*precaire; leening tot wederopzeggen, of naar goeddunken*).

573. Obligations arising from commodatum are determined by natural and civil law together:

A. In the lender for use they are: 1. Not to demand the thing back before the time explicitly or implicitly prefixed, unless an urgent necessity not foreseen supervenes;

2. To undergo extraordinary expenses necessary for the conservation of the thing, for example, for caring for a horse injured without fault of the borrower for use;

3. To reveal defects harmful to the other; otherwise, if he knew them, he is held concerning the damages which would arise from them for the borrower for use (C. C., a. 1888-1891).

B. In the borrower for use they are: 1. To guard the thing with that diligence which a good father of a family applies in his own things; and therefore not to use it except for the use conceded to him or to which the owner would consent; otherwise he would be held to repair damages;

2. To bear ordinary expenses necessary for the conservation of the thing, for example, to feed a horse;

3. At the established time and at his own expense, to restore the same thing in individual, safe and whole (C. C., a. 1880-87).

The rights and obligations of the lender for use pass to his heirs; likewise for the heirs of the borrower for use, unless the thing was conceded, because of a peculiar reason, only to the person of the deceased, in which case they cannot retain it (a. 1879). Destruction of the thing or detriments arising from a fortuitous event fall upon the lender, as being the owner of the thing, with the delay or fault of the borrower for use excluded (for example, prohibited use, or if he could have withdrawn the thing even by substituting his own, from a. 1882), or a special pact by which he had obligated himself to this. But if theological fault is lacking, he is not held to repair except after the sentence of a judge.

Article II: On Mutuum

S. Th. II-II, q. 78; I-II, q. 105, a. 3, ad 3; III Sent., d. 37, a. 6; Q. D. de Malo 13, a. 4.

574. Mutuum[1] (*pret de consommation, simple pret; verbruikleening, leening tot verbruiking of in verbruiksartikelen*) is the concession for a time of a fungible thing or of a thing consumable by first use (a. 1892); whence three things are required for its essence:

[1] There is an immense literature on mutuum and usury among theologians, philosophers, jurists, and economists; among Catholics, Protestants, Jansenists, rationalists, socialists, etc. We indicate only certain special writings which can be more useful to priests: Alb. Weiss, *Soziale Frage und soziale Ordnung*; Pesch, *Zinsgrund und Zinsgrenze*; A. Vermeersch, in *Quaestiones de Iustitia*; E. Van Roey, *De iusto auctario ex contractu crediti*; A. Rijcken, *De Leer en de Praktijk der Kerk in zake leenrente*; J. De Wit, *Het Renteverbod in de middeleeuwsche economie*.

1. A fungible thing, consumable by first use, which someone cannot use except by consuming it, either naturally, namely, by destroying it, for example, food and drink; or morally, namely, by alienating it, for example, money, which, if you pay it, perishes for you;

2. The handing over of that thing: for it is a real contract;

3. The obligation of restoring it in the same species, quality, and quantity after some time.

Hence mutuum differs:

1. From commodatum, letting, and deposit: a) because in mutuum the thing must be fungible, otherwise in the others; b) because the thing is not to be returned in individual; c) because in mutuum the dominion of the thing is transferred, and not in the others; and therefore d) in mutuum the thing perishes for the one receiving, in the others for the one handing it over (a. 1893);

2. From donation, in which a thing is handed over to another without any obligation of restoring it;

3. From sale and exchange, in which the thing is to be returned not in the same but in another genus;

4. From exchange, in which one money is immediately given for another diverse money, for example, gold for silver.

575. Obligations arising from mutuum are:

A. For the lender:

1. To hand over a good and whole thing; but if the thing labors under a harmful defect, he must manifest it; otherwise, if he knew it, he is held concerning damages, for example, if he hands over wine which soon turns sour;

2. Not to demand the thing back before the established time, or the time defined by the judgment of prudent men;

3. In itself and with special circumstances excluded, not to demand more than the borrowed thing was worth (a. 1898-1901).

B. For the borrower:

1. To return the thing received in mutuum, at the established place and time or at the place and time defined by the judgment of prudent men, in the same species, quality, and quantity, whether the price has increased or decreased; and therefore, for money, it suffices to give the same numerical sum (a. 1895);

2. But if it is impossible to return in the same species, he must restore the value for the time and place in which the thing is to be returned;

3. If he does not return the thing or its value at the due time, he is held to pay the rate of legal interest from the day of summons or juridical demand (a. 1895-97; 1902-04).

576. Usury (*woeker*), from use, generally designates the use of any thing, good or bad; but in moral science and in law it is taken in a bad sense for the price of the use of a thing which has no use except its own consumption, and therefore whose use has no value distinct from the thing. It is therefore the price of the use of a thing lent in mutuum, or gain from mutuum as owed by force of the mutuum. It is said:

1. Gain, that is, something estimable by price beyond the principal, whether it is money or anything else, for example, gifts, burdens, protection, a civil obligation of doing something, such as frequenting a workshop, not raising a building, not opening a window, recommending, ceasing from a just lawsuit; but not ceasing from an unjust one;

2. From mutuum, because if it is from another contract, it is not injustice, or it is not usury;

3. As owed by force of the mutuum (*alleenlijk om het leenen*), because if gain in mutuum does not proceed immediately from the force and nature of mutuum, or from an intrinsic title, but on the occasion of the mutuum by reason of an extrinsic title acceding to it, for example, ceasing gain or emerging damage, it is not usury; and likewise if it is not received as owed, but is conceded wholly voluntarily, from mere gratitude, without any obligation.

Sometimes, however, the word usury is taken in a more general sense and designates any increase beyond the principal to be paid by the borrower, and thus it embraces every interest; and then it is distinguished into lucrative usury, which seeks gain from the force of the mutuum; compensatory usury, which is given for compensating damage; and punitive usury, which is the penalty of negligence in paying.

Today, since generally moderate interest is lawful on account of extrinsic titles, interest (*interet; kroos*) is customarily distinguished from usury (*usure; woeker*). Interest is named from offspring, in the manner of the Greeks, among whom *tokos*, birth, is so called because through use money brings forth its own fruits; but interest is now taken in a good sense for a lawful increase, while usury is now understood as exaggerated or unjust interest: for what is taken beyond that which an extrinsic title permits seems to be taken by force of the mutuum itself.

Now the question is whether, just as in lending a thing for use some gain can be received for the use of the thing, in which case it is no longer commodatum but letting, so also in lending a thing in mutuum something can be received, not sometimes and by accident, but per se, always, and by force of an intrinsic title, from the very force of mutuum. Concerning this there are the following three assertions.

577. Principle I. Every interest beyond the principal, or usury, even the least, received by force of the mutuum is per se prohibited by natural law, and unjust.

It is proved:

1. By a general argument. By natural law itself it is contrary to justice to sell the same thing twice, or to sell what is not, or what is not one's own: for thus there is manifestly constituted an inequality which is contrary to justice. But the usurer does one or the other. Therefore. The minor is proved: either he receives gain for the thing lent in mutuum itself, and then he sells the same thing twice, or receives a double price for the same thing, namely, the thing restored and an increase. Or he receives gain for the use of the thing lent in mutuum, and then he sells what is not, because if there is question of things consumable by their very use, the use is not counted separately from the thing, because it is the very consumption of the thing;[2] or he sells what is not his own, because he sells the use of a thing which is not his, since he has transferred its full dominion, both useful and direct, to the borrower.[3] Therefore he always commits injustice, if not only an equal thing is returned, but interest is added besides, because more is returned than he gave.

[2] Thus in II-II, q. 78, a. 1.

[3] Thus in III Sent., d. 37, a. 6.

"If someone," says St. Thomas, "wished to sell wine and the use of wine separately, he would sell the same thing twice, or would sell that which is not. Hence he would manifestly sin by injustice. And by a like reason he commits injustice who lends wine or wheat in mutuum, asking that two recompenses be given to him: one as regards the restoration of an equal thing, but the other the price of the use, which is called usury."

2. By a special argument concerning money. Money as money is nothing except the measure of the utility of other things, which are compared with one another according to value; and therefore its proper and principal use, for which it was made, is wholly in the exchange by which it is consumed and lost to him who exchanges it for a certain thing (*elle n'est rien qu'un instrument d'echange*). Hence money of itself is sterile and unfruitful, and has no utility except that of representing all things, no fruit or utility distinct from its consumption. And therefore by its own nature it is a thing consumable by first use; consequently the use of money as such is not distinguished from money itself; therefore the use of money cannot justly be sold or let separately.

Hence is understood the definition of the sin of usury alleged in the Fifth Lateran Council: "this is the proper interpretation of usuries, namely, when from the use of a thing which does not germinate, by no labor, no expense, and no risk, gain and offspring are sought." Cf. Benedict XIV, encyclical *Vix pervenit*;[4] likewise condemned prop. 42 by Alexander VII, and 41 and 42 by Innocent XI.[5]

[4] "That kind of sin which is called usury... consists in this, that someone, from the mutuum itself, which by its own nature demands only that as much be returned as was received, wishes more to be returned to himself than was received, and therefore contends that some gain beyond the principal is owed to him by reason of the mutuum itself...; which is illicit and usurious," prop. 1.

[5] "It is lawful for one lending in mutuum to demand something beyond the principal, if he obliges himself not to demand back the principal until a certain time," prop. 42 condemned by Alexander VII.

Therefore the specific malice of usury is not in the oppression of the poor, because usury can also be exercised against the rich;[6] nevertheless oppression of the poor often accedes, and then, besides the essential malice, there is a new malice either of injustice or of injured charity, according as the poor man is oppressed in those things to which he has a strict right or does not have one.

[6] Thus Benedict XIV: "Nor can any aid be summoned for purging that stain of usury from this, ... that he from whom that gain is demanded solely by reason of the mutuum is not poor but rich..." prop. 2.

"Since ready cash is more precious than money payable later, and there is no one who does not value present money more than future money, a creditor can demand something beyond the principal from the borrower, and by that title be excused from usury," prop. 41 condemned by Innocent XI.

"It is not usury when something beyond the principal is demanded as owed by benevolence and gratitude, but only if it is demanded as owed by justice," prop. 42.

578. Principle II. By accident it can be lawful and just to receive something beyond the principal on account of extraneous titles, which are not had by force of the mutuum itself, and therefore not necessarily and universally, but which can and do in fact accede to the contract of mutuum. Such titles for moderate interest were acknowledged by theologians and by the Church, for example, S. Cong. P. F. 1873: incurred loss (*damnum emergens*), after St. Raymond of Pennafort, already by St. Thomas, saying in a. 2, ad 1: "for this is not to sell the use of money but to avoid damage"; foregone profit (*lucrum cessans*), to which St. Thomas does not seem to be favorable (ibid.),[7] although from his principles it could legitimately be deduced (q. 62, a. 4), afterward, and other titles in the course of time were acknowledged by all and by the Church. They are five:

[7] Some, however, understand St. Thomas concerning gain that is not probable; or concerning gain to be compensated totally: for, treating of restitution in q. 62, a. 4, he admits that something must be restored for the hope of gain.

1. Incurred loss (*damnum emergens*), or a positive detriment which the creditor suffers in things already acquired, for example, if through the lack of money or wheat which he hands over in mutuum, he is forced to sell goods or rents at a lower price, or cannot repair a collapsing house, or afterward must buy a thing more dearly, for example, wheat.

2. Foregone profit (*lucrum cessans*), or the loss of the price which the lender would have gained if he had employed the thing in another contract or business; that is, the gain legitimately and probably hoped for, of which the creditor deprives himself by lending his money to another, such as the impossibility of carrying on a profitable business which otherwise he probably would have carried on.[8] This can be brought into a pact in two ways: a) only conditionally, namely, if afterward he finds that gain would otherwise have been made, and then it must be compensated in whole; b) absolutely, namely, if from the beginning there is hope of gain, which can equally be compensated, though less than the gain itself.

[8] Theologians of the eighteenth century seem to have applied right principles too rigorously, not being sufficiently ready to admit presumed foregone profit (*lucrum cessans*).

3. Special and extraordinary danger of the principal, that is, a serious danger of not recovering the principal, or not except with difficulty, labors, and expenses; namely, a danger distinct from the common danger which is incurred even with the owner. This is estimable by price and is equally compensated if the interest is proportioned to the danger, so that it is greater according as the danger is more imminent.

4. Conventional penalty, that is, a clause by which the borrower obliges himself to pay some increase by way of penalty, if he has not returned the principal at the prefixed time, as is equitable, provided the increase is proportioned to the delay and the delay is culpable; juridical fault suffices for this.

5. Title of the civil law, when the law permits moderate interest to be accepted in order to foster commerce and the common good. But this does not seem to be a title distinct per se, but rather is founded on the presumption of the first three.

579. Principle III. In present economic conditions, in which ordinarily there are extrinsic titles, it is always lawful to receive a moderate increase, even if in some particular case the aforesaid titles are not demonstrated to be present.

For the fluctuation and exchange of things, even fruitful things, has in our time become very easy and continual; industries, commercial undertakings, and industrial societies are almost innumerable, so that whoever wishes can always have a part, with probable hope of gain, in profitable businesses. Hence, if money is given in mutuum, a title of foregone profit (*lucrum cessans*) also arises. And looking to this condition of things, our law, after it has spoken of merely gratuitous mutuum, also permits the stipulation of interest to be added to the contract of mutuum, and indeed generally, whether for money or for other things, and without restriction, because it presumes that these conditions are always verified (a. 1905-1908).

And thus the contract of mutuum, per se gratuitous, now by accident, on account of special reasons commonly acceding in our days, becomes onerous; whence also the Church, after for many centuries

condemning every usury, as is clear from condemned prop. 42 of Alexander VII, and 41-42 of Innocent XI, and from the encyclical of Benedict XIV, from the nineteenth century onward has answered that "confessors are not to be disturbed, nor penitents who in the matter of mutuum conform themselves to civil law or to common practice."[9] This also the Code of Canon Law authentically published, because the presumption is present that the civil law is just (can. 1543). This practice will be lawful so long as economic conditions remain the same; the recent war demonstrated that this is not necessary.

[9] Thus various decrees: S. Off. 18 Aug. 1830, and 17 Jan. 1838; S. Poen. 16 Sept. 1830 and 11 Nov. 1831.

The whole doctrine, as to the principles together with the practical solution, is proposed summarily by the Code in the said can. 1543: "If a fungible thing is given to someone in such a way that it becomes his and afterward only the same amount in the same genus is restored, no gain can be received by reason of the contract itself (first principle); but in the furnishing of a fungible thing it is not per se illicit to contract concerning legal gain, unless it is clear that it is immoderate (third principle), or even concerning greater gain, if a just and proportionate title supports it (second principle)."

580. Observations. Although the Scholastics hold gain from money lent in mutuum, or from the proper and principal use of money lent in mutuum, as usurious, nevertheless they do not on that account hold every gain made from money as illegitimate.[10] And indeed some gain can be received from money:

[10] Thus Benedict XIV himself, prop. 3: "Nor is it denied that often one's own money can rightly be placed and expended by another in contracts of a nature altogether diverse from the nature of mutuum, whether for acquiring annual revenues for oneself, or also for exercising lawful commerce and business and receiving honest gains therefrom"; and prop. 4: "It is not to be doubted that in these same contracts there is a manifold lawful mode and reason for conserving and frequenting human commerce and fruitful business itself for the public advantage."

a) If someone were to concede coined money for display or for placing in the place of a pledge, and such a use of money a man can lawfully sell according to St. Thomas himself, q. 78, a. 1, ad 6. For then money is not destined for consumption, but for another use, from which gain is legitimately accepted. It is a secondary and proper use of money, but under this respect money is not a thing merely consumable by first use.

b) Money has a use common with other things, when it is considered not formally as money, but materially as a thing, by reason of the matter from which it is made, or of its figure, or of convenience or distance, etc.; and thus it is considered, not according to its legal and normal value, but according to its natural and real value, which is diverse from the former and varies in various regions. Thus money, like every other thing, can be merchandise which can be sold or exchanged, and especially compared with other money, as happens in the contract of exchange, which St. Thomas calls "a species of exchange of coins for coins" (q. 77, a. 4).

c) "He who commits his money to a merchant or craftsman by way of a certain partnership does not transfer the dominion of his money to him, but it remains his, so that the merchant trades with it, or the craftsman works with it, at his risk; and therefore thus he can lawfully seek a part of the gain proceeding from it as from his own thing," says St. Thomas, q. 78, a. 2, ad 5. In other words, he who enters into a contract of partnership with a merchant or craftsman, furnishing money so that this

man may trade or work with it, lawfully receives some gain, because he retains the dominion of the money and undergoes the danger of the principal.

d) Moreover, in the course of time, it was permitted that a moderate gain be received from the institutions of *montes pietatis*, and from a redeemable rent assigned upon money handed over; this brought about a change of discipline concerning usuries.

a) *Montes pietatis* are public treasuries in which money and other fungible things were collected, which were handed over in mutuum to the poor, in order to defend them against usurers, by means of a pledge, whose officials take the danger upon themselves, and with a moderate increase on account of expenses necessary for the wages of the officials and the administration of the house.[11] Now Leo X, in the Fifth Lateran Council (a. 1515), solemnly declared these mounts lawful and meritorious, "in which, for their expenses and indemnity, something moderate is received beyond the principal, without profit of these same Mounts, solely for the expenses of the officials and of other things pertaining, as stated, to their preservation, for their indemnity only." Therefore not by force of the mutuum, but by reason of labor which merits a wage; not for gain but for compensating work and other expenses; indeed perhaps for more easily collecting the necessary money, but this last thing was not affirmed as legitimate in the said Council.

[11] Some are Italian, collected from alms and pious legacies, which had their origin at Perugia in the middle of the fifteenth century; others, from money accepted for rent-charges, are Belgian, permitted by authority in the year 1618; others are mixed. There is customarily civil legislation concerning *montes pietatis*: thus Belgian law of 30 Apr. 1848.

From the approval of Leo X it happened that wealthy merchants, especially Lombards, obtained from princes the license of receiving moderate gain from mutuum, as was done in the *montes pietatis*: thus provision was made for the necessities of the poor.

b) The rent contract came more into use around the same time, by force of which the right was acquired of receiving an annual pension, not only from an alienated fruitful thing but also from money handed over to another. That contract indeed differs essentially from mutuum, because money is handed over to another in perpetuity under the condition that an annual rent be paid; but after it was stipulated that the rent could be made redeemable, practically it was no longer distinguished much from an onerous mutuum. For this reason it was prohibited by Pius V (a. 1569) by positive law, but nevertheless was not declared intrinsically unjust against the natural law; therefore the prohibition did not endure, and the redeemable rent was held legitimate by not a few theologians, but under certain conditions, as was noted in n. 565.

c) The triple contract likewise was acknowledged as probably lawful, which, as the name indicates, is a threefold joined contract: namely, of partnership, of insurance of the principal, and of insurance of the gain. Let there be an example: Peter and Andrew enter into a partnership of business, into which Peter contributes 10,000 fr. and Andrew his labor, from which Peter hopes to gain 2,000 fr.: behold the first contract, namely, of partnership. But Peter, who does not wish to risk the principal, offers Andrew 500 fr. that he may insure the principal: behold the second contract, of insurance of the principal. But because he prefers a smaller certain gain to a greater uncertain gain, afterward he sells to Andrew the hope of gaining 2,000 fr. for 1,000 fr.: behold the third contract, namely, of insurance of the gain. Therefore, when the business is finished, Peter will receive 500 fr. But by this manner of acting he in fact receives 5% interest for the money.

Now this contract, consisting of a threefold contract not unjust, is lawful of itself,[12] yet not always, but provided the gain to be made is truly probable: for then the interest is no longer usury, because foregone profit (*lucrum cessans*) is present, therefore a just extrinsic title.

[12] Sixtus V did not condemn the contract, but unjust modes and an unjust price.

By these and other circumstances it happened that cases in which extrinsic titles occurred became more frequent, and thus little by little they brought about mitigation, not indeed in the doctrine of the Church, but in the practical discipline concerning usuries.

581. Corollaries. To explain the apparent contradiction between the ancient doctrine of the Church rigorously condemning every usury, and the more recent practice or tolerance of moderate interest, others have entered upon a way different from ours, yet not a happier one.

1. Some have distinguished a mutuum of consumption and a mutuum of business, according as the money lent in mutuum ought to serve for buying food and drink, or for carrying on business; they said the former is gratuitous, the latter onerous.[13]

[13] Thus Le Correur, a Parisian priest of the eighteenth century; Ramboud; Card. de la Luzerne; Cl. Jannet.

But Benedict XIV condemned usury in both.[14] Moreover, the extrinsic end to which the contract is ordered does not change its nature, for money, insofar as it serves for exchange, is always handed over to another so that it may be consumed at his discretion.

[14] "The sin of usury does not cease from this, that he from whom that gain is demanded solely by reason of the mutuum is not poor but rich, nor that he is not going to leave idle the sum given to him in mutuum, but is going to spend it most usefully for enlarging his fortunes, or for buying new estates, or for carrying on profitable businesses," prop. 2.

2. Others have said that a double contract can be made concerning money, just as concerning things not consumable: one gratuitous, mutuum; the other onerous, the letting of money, in which a price is given for the use of the thing which the owner concedes and of which he deprives himself for a determined time, while nevertheless retaining the value of the money.[15] Now the present use of money is worth more than the future use. But:

[15] Thus among others in the nineteenth century Mastrofini and A. Ballerini.

a) In things consumable by first use, the use of the thing is not distinct from the thing, since we can use it only once; and therefore it is not estimable by price nor can it be let. Therefore the lack of unfruitful money per se, if it is without extrinsic detriment, is not worth more than the thing, and consequently is not separately estimable by price.

b) Use and dominion are conceded and are similarly returned, and thus there is equality (S. Th., q. 78, a. 1, ad 5; a. 2, ad 2 and 4).

c) Per se present money is not worth more than future money, if in the present there is no probable hope of gain; and besides, the small inconvenience consisting in deprivation of the faculty of using money is compensated by the greater security, since the danger of the principal is with the borrower.[16]

[16] St. Thomas denies that present money is worth more than future money, a. 2, ad 7. Hence delay of payment is equivalently usury, l. c. Likewise St. Antoninus, *Sum. Theol.*, p. 2, t. 1, c. 7, § 7. Therefore the mere possibility of gain does not suffice for demanding interest, because it is only a remote potency; but true probability is required. Moreover, the

obligation not to demand back is not a strict personal obligation, but is a mere observance of the real right conceded, just as the obligation not to demand back a thing donated or sold is not a special personal obligation but is the donation and sale itself. But no price can be demanded for satisfying an obligation of justice already undertaken. Therefore.

d) The value is not conserved but conceded to the borrower: for of what service would money without value be to him? Hence the lender has only a right to the thing.

e) The opinion is opposed to the encyclical of Benedict XIV.[17]

[17] "This must be diligently noted: someone will falsely, and only rashly, persuade himself that there are always and everywhere at hand, either together with mutuum, other legitimate titles, or even with mutuum excluded, other just contracts, by whose protection as titles or contracts, whenever money, wheat, or anything else of that kind is credited to another, it is always lawful to receive a moderate increase beyond the whole and safe principal. For at least this can be hidden from no one: that in many circumstances, besides the one mutuum, there can be place for no other true and just contract," prop. 5.

3. Others hold money as virtually fruitful and as an instrument of business or production, and indeed always in present economic conditions.[18] Hence he who gives money concedes to another a utility which can be estimated by price and compensated.

[18] Thus several economists, such as Maffei, P. Leroy-Beaulieu, Say, etc., and also certain theologians who thus seem to pursue the reputation of well understanding the circumstances of modern life, such as Lehmkuhl, Pesch, Antoine, etc.

Resp.: Money is not fruitful in itself by an internal fertility properly and immediately, but is called fruitful only improperly and mediately, insofar as someone, with the help of money, buys goods from whose sale or transformation he makes a gain. Hence money is not a real instrument of business or production, but, insofar as it is consumed and exchanged, it serves business and production, and thus is a medium of acquiring real instruments. Money, namely, is not a cause in the production of riches, but only a condition.[19] But the fruitful utility which arises for the borrower is not from the money itself, but from his labor and industry, and therefore it is not to be sold to him; the other utility, by which it is a medium of acquiring fruitful things, is returned by returning the money.

[19] Real capital, or instruments, are the real instrumental efficient cause, and therefore a fruitful thing; not so conventional capital, or money, which is consumable by first use.

But if they called money only virtually fruitful because, with the help of money in present circumstances, almost always someone can enter into a profitable partnership or institute a business for making gain, they would speak the truth: indeed the manner of speaking would not be proper, but in reality they would affirm only what we have said: that only the extrinsic title of foregone profit (*lucrum cessans*) is always present.

4. Finally, others flee to civil law as to a title per se sufficient, because the law, by force of the State's sovereign dominion, intends to transfer dominion in the same way as in prescription, and thus, for the utility of commerce, incites citizens to lend easily in mutuum.

But:

a) The opinion seems to extend the State's sovereign dominion too far; for it can be greatly doubted whether the State has such power and can require such a thing for the common good, except in economic conditions which already render usury legitimate.[20]

[20] St. Thomas seems to deny this power to civil authority, q. 78, a. 1, ad 3.

b) It is not sufficiently clear concerning the intention of the legislator that he wished to do this, especially in regions where the civil law establishes an increase for certain cases only, and leaves full liberty for most cases. Thus among us. Besides, our civil law supposes mutuum to be a gratuitous contract, and only permits that interest be established (a. 1905).

582. Evolution of moral doctrine concerning mutuum and usury. Since the question concerning the morality of mutuum and usury, especially with special circumstances considered, is rather intricate, it is not strange if Catholic doctrine in this matter was not always known to all and at all times with the same certitude and evidence.

A. **In Sacred Scripture:**

1. Among the Hebrews, usury was strictly prohibited toward fellow citizens (Ex. XXII, 25; Lev. XXV, 35-37; Deut. XXIII, 19-20; XV, 7-10). This law was not always accurately observed, so that the Prophets had to reprove usuries several times, and praised those who had not given their money at usury (Ps. XIV, 5; LXXI, 14; Ez. XVIII, 5-20; Neh. V, 7, 9). But usury was tolerated as regards strangers (Deut. XXIII, 19-20); from this, however, it does not follow that usury toward brothers was prohibited solely by positive law: for it can be said that toward foreigners only the tolerance of the law was affirmed, not positive lawfulness.

2. In the new law, Christ, expounding the precept of charity, with no distinction made between Jews and foreigners, demands gratuitous mutuum: "Love your enemies; do good, and lend, hoping for nothing thereby; and your reward will be great" (Lk. VI, 35); and he exhorts to the easy concession of mutuum: "Give to him who asks of you; and from him who wishes to borrow of you, do not turn away" (Mt. V, 42). From these, however, it cannot strictly be gathered that usury also is prohibited from justice; just as neither from the parable of the talents can it be inferred that it is lawful, where the Lord thus addresses the lazy servant who had hidden the talent he received: "Therefore you ought to have committed my money to the bankers, and at my coming I would surely have received what was mine with usury" (Mt. XXV, 27). For Christ merely explains what men were accustomed to do in his time, without wishing to approve or reprove the manner of acting, because this did not pertain to the end of the parable, which was to show that only those are to be rewarded who have fruitfully used the talents received from God.

B. **Among the nations,** namely, the Greeks and Romans, immoderate usury flourished. This was prohibited several times by laws, as among Solon; but the laws permitted moderate interest, for example, ten or twelve per cent; afterward, when Christian emperors reigned, six per cent prevailed. But the philosophers of greater name condemned every usury as alien to nature: thus Plato, as contrary to the equality of citizens (*de Leg.* V, 742); Aristotle, because money is sterile of itself (*Pol.* I, c. 3, n. 23), whom Cicero (*de Off.* II, at the end) and Seneca (*de Benef.* VII, 10) followed.

C. **At the beginning of the Church,** Christian moral science had not yet been perfectly formed. They insisted not upon all things, but upon principles and causes of greater moment. Besides, the Church did not have influence in the public and social life of the Empire. Hence it is not strange if the doctrine concerning the injustice of interest was not explicitly proposed, and, a fortiori, if laws were

not changed according to it; but we even find that Christians borrowed money from usurers, as Basil, Chrysostom, and Jerome testify.

1. In the first times, the Fathers urged the precept of charity concerning gratuitous mutuum: thus already Clement of Alexandria (*Strom.* II, 18), Cyprian (*de Lapsis*, 6), Tertullian (*adv. Marc.* IV, 17); afterward, in the fourth and fifth centuries, they not only act more vehemently against usurers, as Basil (P. G. XXIX, 263-280), but also say that usury is unjust, because it is unjust to become rich with detriment to one's neighbor: thus, for example, Chrysostom (*in Mt.* hom. 56) and Leo the Great (serm. 17, otherwise 16); or because money is sterile: thus Gregory of Nyssa (P. G. XLVI, 443-452), Ambrose (book *de Tobia*, P. L. XIV, 762-794), Augustine (*in Ps.* XXXVI, P. L. XXXVI, 386).

2. Hence among the Councils there was a tendency increasing from day to day of reprehending and prohibiting every usury, and indeed for all, so that they even demanded from civil legislators a change of the laws which permitted moderate usury.

First, indeed, they strictly prohibited clerics from receiving usuries: thus the canons of the apostles in the fourth century, can. 44; afterward they sometimes extended the prohibition to laymen, as the Council of Elvira (a. 305) and the Fifth Council of Carthage (around a. 419).

Nevertheless, with the legislation of the Empire standing, ecumenical councils did not prohibit usuries except to clerics: thus the First Council of Nicaea (a. 325), when Emperor Constantine shortly before had permitted twelve per cent interest, which afterward Theodosius confirmed (a. 506), and which was admitted by the western Goths in Spain (a. 693). And they allude to this fact who praise, as a work of mercy, those who condone usuries which they can demand, namely, according to law, or remit legitimate usuries, that is, legal ones: thus Sidonius Apollinaris (ep. 24) in the fifth century, Gregory the Great (ep. 38), Gregory of Tours (*Hist. Franc.* III, 4) in the sixth century.

Nonetheless, little by little the prohibition of usury became common even as regards laymen: thus the Council of Aachen (a. 787), Paris (a. 829), Meaux (a. 845); and indeed in such a way that they sometimes demand restitution of usuries; and the civil law in the time of Charlemagne brought the same prohibition for all.

D. **From the time of Gratian** (around 1150) usury was prohibited universally in the Church. For he himself inserted into his Decree (p. II, c. 14) those sentences of the Fathers and canons by which usuries are reproved generally. Gregory IX, however, in the Decretals promulgated the title *On Usuries* (l. V, tit. 18), in which suspension is decreed against usurious clerics, excommunication against laymen.

At the same time, the doctrine of St. Thomas concerning the essential gratuity of mutuum and the injustice of every usury became almost common among the Scholastics. The arguments on which it rests are already found proposed by William of Auxerre and St. Raymond of Pennafort.

But since in the Middle Ages enormous usury often raged, Councils and Pontiffs urge the prohibition more strictly, and indeed of usury of every kind: thus the Third Lateran (a. 1179), the Second Council of Lyons (a. 1274), Vienne (a. 1311), the Fifth Lateran (a. 1515), Sixtus V (a. 1586).

E. **In modern times,** because of the renaissance of pagan culture, the introduction of free examination by the Protestants, and the change in economic affairs, many tried to break the rigor of Catholic doctrine. Protestants, such as Calvin and Molinaeus, taught the lawfulness of usury, unless it be exercised against the poor or be immoderate; Grotius contended that moderate usury is permitted by natural law and prohibited by divine law, but Pufendorf that it is lawful even by divine law; finally Salmasius held that money can be let and that its use is saleable because it is rendered fertile by human industry. Many jurists and economists said it was necessary for commercial affairs and legitimate on account of the public good. Indeed, not only economists, but also some theologians began to seek out new forms of contracts in which some increase from money would be received justly.

Nevertheless the Catholic Church retained the received doctrine of the Scholastics, and Benedict XIV again proposed and confirmed it in the encyclical *Vix pervenit* (a. 1745).

Although afterward in practice a mitigation of discipline supervened, this is to be attributed to economic circumstances much changed and to extrinsic titles greatly multiplied, as was explained above. But the traditional doctrine was faithfully retained, as the Code of Law recently testified, which most accurately enunciated it and again proclaimed it in can. 1543.

583. Practical conclusions. A. Just as in the time of Christ (Mt. V, 42), so also in our days, charity can require that we succor a neighbor placed in grave necessity by gratuitous mutuum, namely, when he himself cannot pay an increase, and we can do this without grave inconvenience. Ordinarily, however, the rich are not held to hand over large sums of money in mutuum to the poor, namely, because of the danger of losing the principal; but often they do enough if they give to the poor, even those asking in mutuum, a small sum of money. But outside these cases, it is lawful to accept moderate interest from money lent; indeed anatocism is not prohibited per se, or the agreement by which interest owed and not yet paid produces a new increase (*capitalisation des interets*), unless this is prohibited somewhere by law. Interest is moderate, however, if it is proportioned to danger of the principal, foregone profit (*lucrum cessans*), incurred loss (*damnum emergens*), and other circumstances of places and times, according to the prudent estimation of upright men.

B. Concerning the just rate of interest we note:

1. In those regions in which civil law determines some rate of mutuum which it is not lawful to exceed, such a rate per se obliges in conscience, and the transgressor is held to restore unless he is excused by extraordinary reasons. In our country the faculty of establishing the rate of increase is conceded to the contracting parties themselves. The crime of usury among us is punished only when the usurer habitually proposes interest above the legal rate and at the same time has abused the weakness or passions of the borrower (C. Poen., a. 494). Therefore our legal increase (in civil matter 4½% and in commercial matter 5½%, from royal decree 18 Nov. 1935, and 6% for direct taxes not paid in time from the law of 2 July 1930, reduced to 4% from royal decree 22 Aug. 1934) is not a rate universally prescribed, but only indicates what must be paid when the law itself orders some interest, concerning which there had been no agreement, to be paid, for example, from a debtor in delay; moreover, for the forum of conscience it can be considered as a safe norm of acting.

2. It is not lawful for that reason to raise the interest because the borrower is placed in greater necessity, or because he is going to make greater gain from the money received in mutuum, of which money is the condition, not the cause: for these things contribute nothing to the equality of what is given or received.

3. In ordinary circumstances it is lawful to demand that rate which is established from common practice in a determined place and time, even if someone otherwise would have kept the money wholly idle: for within these limits there always arises the title of foregone profit (*lucrum cessans*), which he probably would have obtained, if he had wished.

4. In extraordinary circumstances the aforesaid rate can be increased somewhat on account of special titles, for example, great danger or extraordinary foregone profit (*lucrum cessans*).

5. It cannot be denied that in our days, under various forms, contracts of mutuum with immoderate interest are sometimes entered into; and the encyclical *Rerum Novarum* enumerates this among the causes of the social crisis: "voracious usury has increased the evil, which, although more than once condemned by the judgment of the Church, nevertheless is exercised by greedy and profit-seeking men under another species." Now he who demands immoderate interest sins against commutative justice and is held to restore the excess.

In practice it is often most difficult to determine the measure of just interest. Thus the Sacred Penitentiary, 18 Apr. 1889, warned that it is dangerous to fix interest by a general rule, and referred the matter to common practice, observed by persons of conscientious judgment in their respective places and times. Likewise the S. C. de Prop. F. once responded, a. 1873, that those are not to be disturbed who receive very great interest, provided account is taken of the quality of the danger and its probability. On the contrary, today, where generally there is greater security of the principal, a truly modest increase is rightly established: 3, 4, 5% before the war, afterward 5 and 6 or even up to 7 or sometimes 8%; but now again less.

Question Two: On Deposit and Sequestration

584. Deposit in general (*depot; bewaargeving*, a. 1915) is the act by which someone receives another's thing to be guarded and to be returned in kind; but deposit properly so called is the contract by which a thing to be guarded is handed over to another, so that the same thing may be returned gratuitously and whole at the will of the depositor. Hence:

1. It is an essentially gratuitous contract (a. 1917): for if something must be paid for the custody, it does not remain a mere deposit but is as it were a letting;

2. As object it can have only movables (a. 1918);

3. It is a real contract which is not perfected except either by real delivery, or by supposed delivery of a thing which was already possessed by another title (a. 1919).

One deposit is voluntary, which is perfected by the mutual and express consent of the depositor and depositary (a. 1921); another is necessary, when the depositary is not chosen altogether freely, as happens in two cases: a) in case of fire, ruin, or shipwreck (a. 1949), and hence it is called a

miserable deposit; b) when certain objects are entrusted by travelers to innkeepers or their servants, stable-keepers, sailors, and the like, all of whom are held concerning theft or any other detriment of things pertaining to travelers (a. 1953), unless armed force or another greater force intervened (a. 1954).

585. The obligations of the depositary are:

1. To preserve and guard the deposited thing diligently, with that fidelity and care with which he is accustomed to preserve his own things (a. 1927); whence, if it perishes or becomes worse from malice or other grave theological fault, he is held to compensate it.

This rule, according to a. 1928, is to be applied more strictly, so that then the diligence which a good father of a family applies in guarding his own things is required: a) if the depositary offered himself to receive the deposit; b) if an agreement intervened that he be held concerning any fault whatever; c) if he stipulated a wage for the custody of the thing; d) if the deposit was made for the advantage of the depositary alone. Nevertheless the depositary is never held if something happens by a superior greater force, unless he had already previously delayed returning the thing demanded by the depositor (a. 1929).

2. Not to use the deposited thing without the express, or at least reasonably presumed, permission of the owner; otherwise he will be held concerning the damage that followed (a. 1930).

3. To return without delay the identically same thing, as soon as it is demanded back by the depositor (a. 1932), unless by accident the latter demands it back in order to harm himself or others, or the thing is stolen and its owner demands it back (a. 1938), or unless the depositary has a just cause of retention, for example, if expenses made for conservation have not yet been restored (a. 1948).

4. To return the deposited thing only in that state in which it is found at the time of restitution (a. 1933). Hence if it was taken away by force, he is held to return what he received in its place; if it produced fruits, he must restore these also; but he owes no interest of the deposited money to the depositor, except from the day on which he was in delay in restoring (a. 1933 sq.).

586. The obligations of the depositor are:

1. To disclose a defect of the thing from which damage can come to the depositary, for example, a contagious disease of a horse.

2. To pay expenses if any must be made, or to repair damages if they followed in preserving or returning the deposit, for example, to pay for the nourishment of a horse (a. 1947).

3. To receive the deposited thing after the lapse of the established time, or even sooner, if the depositary can no longer retain the thing.

587. Sequestration (*sequestratie*) is a species of deposit. It is the contract by which a thing disputed among several persons, or judicially seized, is deposited with a third person, who is called a sequestrator, for the end that after the sentence of the judge or arbiter it may be handed over to him who has won the case (a. 1956); it should be noted, however, that not only movable things but also immovable things can be subjected to sequestration (a. 1959).

One sequestration is conventional, which is made by mutual agreement or the mere will of the parties; another is judicial, which is decreed by the sentence of a judge (a. 1955 sq.). The first, if it is gratuitous, is subject to the same rules as deposit properly so called (a. 1958); if it is not gratuitous, it is held as a hiring of work and is ruled by its rules. The other, which is left to the judgment of the judge to be prescribed, is not gratuitous by its nature, but the salary to be paid is determined by the law itself of sequestration (a. 1962).

But the depositary to whom the thing to be guarded has been handed over cannot be freed from the custody of the thing before the lawsuit has been settled, unless all whose interest it is have consented, or another legitimate reason is given (a. 1960).

Question Three: On Mandate and Management of Affairs

588. Mandate (*mandat, procuration; lastgeving*) is the act by which some business is committed to someone to be managed gratuitously; but if it is undertaken by him, the contract is perfected (a. 1984). Hence it is a contract by which one commits something to another, to be done in his name, and the other undertakes to manage it gratuitously. Hence mandate by its nature is a gratuitous contract, because it is connatural to mandate that the business be undertaken and managed gratuitously; unless, however, the contrary is stipulated (a. 1986), in which case it is a letting of work.

One mandate is special, by which the mandator commits one only or several designated businesses; another is general, by which he commits all his affairs to the mandatary (a. 1987). Yet this, conceived in general words, pertains only to acts of administration; wherefore for alienation, or for conceding a mortgage, or for any other acts of dominion, an express or special mandate is required (a. 1988).

589. The obligations of the mandatary are (a. 1991 sq.):

1. To manage the affairs committed to him diligently and usefully, and as if they were his own; whence he is held concerning defects committed in the management and damages following from them.

2. To complete the business begun, even when the mandator has died, if there is danger in delay.

3. Not to exceed the limits of the mandate, for example, to spend a greater sum than the mandator prescribed.

4. To render an account of the execution of the mandate committed to him, and to restore the gain which he received from the mandate, unless by accident gain follows from special industry or undue labor.

5. Not to demand a wage, unless it was promised.

590. The obligations of the mandator are (a. 1998 sq.):

1. To fulfill obligations contracted in his name by the mandatary and consonant with the mandate; but not what has been done beyond the mandate, unless that has been expressly or tacitly ratified (a. 1998).

2. To refund to the mandatary expenses made for the execution of the mandate, and to pay the stipend if it was promised, even if the matter did not have a prosperous success (a. 1999).

3. To indemnify the mandatary concerning damages which, culpable imprudence being set aside, he suffered on the occasion of the mandate (a. 2000).

591. Mandate is dissolved:

1. By revocation of the mandatary made by the mandator: for the latter can revoke the mandate at any time;

2. By renunciation of the mandatary: for the latter cannot be forced to continue unwillingly to bear a burden gratuitously undertaken;

3. By natural death, interdiction, and insolvency (*deconfiture*) of either the mandator or the mandatary (a. 2003 sq.).

592. Management of affairs. Affine to mandate is *negotiorum gestio* (*zaakwaarneming*), by which someone undertakes to manage usefully the affairs of an absent person, even one who is ignorant of it, as if from his reasonably presumed commission. Hence it is a quasi-contract arising from the act of him who spontaneously manages the affairs of another, whether the latter knows it or not (a. 1372).

The manager of the affair is held (a. 1372-74): 1. to administer it diligently; 2. once begun, to complete it; 3. to render an account of the things which he has managed.

He whose affair is well managed is held: 1. to observe agreements entered into in his name by the manager; 2. to keep him indemnified for all personal obligations which he undertook; 3. to refund to him all useful or necessary expenses which he made, even if the matter had a bad result (a. 1375).

Chapter V: On Aleatory Contracts

593. Essentially aleatory contracts, so called from *alea*, that is, an uncertain event, on which they essentially depend, for in other contracts also there can be an alea, are those by which uncertain gain is sought or uncertain damage is averted by a certain price given (a. 1964). This uncertainty of gain or damage must not only be on the part of both contracting parties, but also must be almost equal; otherwise injustice is committed. Hence, that they may be lawful, it is required: 1. that the alea be morally equal; 2. that no fraud be present; 3. nor any scandal or prohibition of positive law.

An aleatory contract can be diverse:

A. On the part of the uncertainty of the thing to be furnished; according as a) it is uncertain from one part only, as in insurance, in which one pays a certain thing while the other is obliged to repair an uncertain damage; or b) it is uncertain from each part, as in play and wagering.

From this it is understood that an aleatory contract differs much from a conditioned contract entered into under a suspensive condition: for the latter does not exist unless the condition has been fulfilled; the former is firm and absolute, but it remains uncertain only whether or which of the contracting parties ought to furnish something.

B. On the part of the object; which can be 1. uncertain damage to be guarded against, as in insurance; or 2. uncertain gain to be obtained, as in lottery and gratuitous play; or 3. gain or damage, whether a) determined by an unknown event, as in wagering, or by a future event, as in onerous play; or b) indeterminate, as in Stock Exchange speculations.

We shall speak:

1. Of insurance.

2. Of play, wagering, and lottery.

3. Of Stock Exchange speculations.

Question One: On Insurance

594. Insurance (*assurance; verzekering*) is the taking upon oneself of another's danger; whence the contract of insurance is that by which someone takes upon himself the danger of another's thing or person, obliging himself, for a determined price, to compensate it if by chance it should perish. Hence it can be defined: a real aleatory contract by which one, for a certain price paid, obliges himself to compensate damages which another can suffer on account of a fortuitous event or a superior force.[1]

[1] Cf. Belgian law 11 June 1874 in the Commercial Code, l. 1, tit. X.

Hence: a) the object of this contract is the danger of damage, taken upon oneself and estimable by price; whence b) the matter about which it turns is whatever, whether a thing or a person, is subject to danger and at the same time is estimable by price. Thus ships and goods are customarily insured against the danger of the sea, buildings and movables against the danger of fire, crops against the danger of hail, fragile things against the danger of breakage, precious things against robbers, even persons against death, military service, infirmity, etc., either singly or collectively, either as they come under such a name, or insofar as they pertain to this or that social order. c) But the danger is estimated by a determined price: for although insurance can be made gratuitously, nevertheless someone is not accustomed to take upon himself the danger and compensation of a thing, and thus to furnish to another something estimable by price, except for an equivalent price. Hence the contract is of itself onerous, and is reduced to sale.

In antiquity almost unknown, in modern times this contract has widely prevailed among all nations. It is related that in the fourteenth century it was first introduced as regards goods to be carried over the sea; in the seventeenth century the first society of insurance against fires was founded at London; in the nineteenth century innumerable societies of this kind already appeared as regards things of every kind, whence it is a contract of great moment. It certainly is not lacking in social utility: for it pertains to the public and private good that damages arising from fortuitous event and the ruin of men of moderate fortune be foreseen and guarded against; otherwise a) industry and commerce would often be retarded; b) owners and workmen also would often be brought to the extreme of

want and poverty; c) but now the providence and thrift of individuals is promoted for their greater security.

The contract is lawful, provided:

1. Each of the contracting parties is uncertain concerning the danger of the thing; otherwise there would be malice. Hence the contract would be null if someone wished to insure a ship which he certainly knows already to have perished or already to be in port;

2. The price is just according to the value of the things and the gravity of the danger: for there must be equality of price and danger;

3. The insurer is capable of paying what he promised, and the insured observes all the conditions and does nothing by which the danger is greater or the hope less than the insurer ought to have expected, considering the agreement, custom, or circumstances.

595. Moral principles which rule insurance and the obligations arising from it. The obligations pertaining to the contract of insurance are customarily determined by laws and by the special statutes of societies; these must be stood by, unless they are manifestly unjust. Now some obligations are common to each contracting party, namely, as regards the just price; but others are special to the insured or to the insurer.

I. **Common obligations concerning the just price.** The price of insurance ought to correspond to the service furnished, and therefore to be proportioned to the gravity and probability of the danger or hope, account being taken of expenses; this is to be determined not from the event, but from the danger at the time the contract was entered into, by the judgment of prudent men. In this, namely, is situated the equality of justice in this contract: that, all things having been carefully weighed, there be an equal proportion between the probability and extension of the danger and the price which is to be paid by the insured, so that, from those things which commonly happen, the insuring society, after all damages have been compensated, may receive some moderate gain for its labor and expenses and for the utility procured.

The proportion today is customarily determined according to statistical computations, which now are made sufficiently accurately; whence the contract is now less aleatory. But since there are many competing societies, even international ones, generally the current price is legitimate: for if it were immoderate, soon other societies would arise, or would be instituted by the insured themselves, which would furnish insurance of the same danger at a lower price; unless, however, almost all societies were to constitute a monopoly and agree not to diminish the price.

Nevertheless gain, from the fact that it is rather great, must not immediately be held as unjust: for it must first be examined whether it does not proceed from a great number of insured persons, or from the skill of administrators who prudently employed the money received for fruitful uses, and whether there is not danger of losing all gains if a common calamity occurs.

II. **Special obligations of the insured.** He is held from justice:

1. To declare sincerely the true value of the thing and the gravity of the danger;

2. Not to neglect the conservation of the insured thing;

3. To manifest defects of the thing or person, if he is questioned, and not to conceal them deceitfully.

Hence:

a) The contract is invalid if, in declaring the danger of the insured thing, a notable circumstance is kept silent, which, if known, the contract would not have been entered into: for the danger is the very object of the contract; whence a notable error in it is substantial. But if the circumstance is not notable, so that the contract would nevertheless have been entered into, but at another price, it is valid, but the insured is held to increase the price by reason of the danger; likewise, if, when insurance has already been entered into, the danger is increased, this certainly must be declared.

Thus Belgian law, in art. 9, invalidates the contract whenever something is kept silent or falsely declared, even without bad faith, which diminishes the estimation of the danger or changes its object, so that the insurer, if he had known these things, would not have contracted in the same circumstances.

But by civil law or by special stipulations of the pact itself, sometimes because of a rather non-notable circumstance kept silent the contract is declared void, or at least rescindable at the will of the insurer; or it is even further added that the insurer can retain the price already paid, although he is not held to compensate the damage. Yet these things which are added to natural law do not oblige except after the sentence of a judge. But if the insurer does not rescind the contract but demands a greater price, then equality will have to be restored and the greater price paid.

b) When the error turns upon the value of the thing, one must distinguish: if the value of the thing was exaggerated, the contract is indeed invalid as regards the excess of value, but remains valid for the true value of the thing, which therefore must be compensated: for then the error is not substantial and therefore does not void the whole contract. On the contrary, if the value of the thing was too much diminished, the insurer must compensate only according to the proportionate part of the price paid, for in this case the insured himself is held as insurer for the remaining part. But if the value of the thing was diminished at the time when the thing perished, the insurer is held only to compensate the damage truly suffered (a. 20, Belgian law).

Yet it could happen that each contracting party knowingly and willingly agreed concerning the excess of value: then, however, the contract assumes another nature, namely, that of wagering, concerning which it will be said below, n. 601.

c) Fraud is committed: 1. if the thing to be insured is not declared as it is; 2. if from grave negligence or direct purpose it is guarded badly so that it perishes; 3. if changes are made in it which increase the danger of damage. This per se obliges to restitution, and indeed under grave obligation if grave damage was caused.

Hence he commits open injustice: a) who burns his own thing or certainly exposes it to destruction, in order that he may receive compensation for the thing; b) who asks and receives compensation for damage which he did not undergo, or for greater damage than he underwent, or for that whose compensation is excluded in the contract; c) who demands compensation which surpasses the price

of the thing or the insured value. But not if he asks greater compensation with this intention alone, that by settlement he may obtain repair of the true damage; or if, having used no fraud, he accepts an excessive compensation spontaneously offered or established by arbiters.

d) He must restore: 1. who voluntarily destroyed the insured thing, and moreover repair all damages unjustly inflicted; 2. who by frauds obtained compensation to which he has no right; 3. who, in the fortuitous event of a fire, deliberately does not try to restrain the conflagration or rescue the things, for by ordinary diligence he ought to protect his own things, and this also from positive law (a. 17); 4. a fortiori, who prohibits others from extinguishing the fire.

III. **Special obligations of the insurer.** He ought from justice:

1. To be capable of compensating all damages concerning which he is held, or for whose compensation he obligated himself. For this it is by no means necessary that he possess money equal to all the goods whose danger he has taken upon himself, but only that he have as much as is probably required for compensating the damages which are accustomed to happen from those things which commonly occur: for it is improbable that all goods whose danger he has undertaken will perish at the same time. But those societies act unjustly which take upon themselves more dangers than they can probably compensate, unless they reduce the danger to just limits by reinsurance, or a second insurance, by which, through a federation entered into among themselves or through a new society, they divide greater dangers among themselves.

In the case in which the insurer is unequal to repairing the whole damage:

1. The insured can rescind the contract and demand back the price paid, because he had not consented to the contract except for obtaining perfect security;

2. If the insured does not demand back the price, the insurer must restore the price at least partially, retaining the part corresponding to the value for which he truly furnished security;

3. If after the price has been paid the insured thing perishes, the insured has the right of pursuing by all legitimate means the complete repair of the damage: for the insurer is held partly from the contract, partly from fraud.

2. He is held to repair the whole damage truly inflicted on the insured thing, and indeed: a) according to the conditions explicitly or implicitly stipulated in the contract itself; b) as soon as morally possible after the thing has perished by fortuitous event or has become worse, and this is sufficiently established; otherwise he is held concerning damages; c) according to the value of the consumed thing at the time at which it perished (a. 20, Belgian law).

For repairing the damage, both civil law and the very tenor of the contract must be observed (a. 2). According to our civil law, the insurer is not held to compensate damage caused by grave fault of the insured, or of his relatives (a. 16); and, unless an express contrary agreement is made, he is not held to compensate damages arising from war or popular tumult (a. 19), indeed from an intrinsic defect of the thing (a. 18); yet for fire it must be clear that the defect was known at the moment the contract was entered into (a. 35).

If grave moral fault was present, the insured can in conscience demand back or accept nothing; on the contrary, if there was only juridical fault, not except after the sentence of a judge.

596. Insurance of workers merits special attention.[2] This tends to this: that workers be insured both against accidents which cause bodily injury, and against any cases whatever in which their powers for working are rendered invalid, as in sickness or old age; so that then the workers, or the wife or surviving children, may receive a certain subsidy or periodical revenues.

[2] Cf. Lehmkuhl, Th. M. I, n. 1365-66; Noldin-Schmitt, Th. M. II, n. 631.

As regards accidents caused on the occasion of labor and damages arising therefrom, insurance is to be furnished by employers; this will be done more conveniently if, united in associations, with an annual contribution made by each, they have money sufficient for the cases which occur. This also could be prescribed by civil law, and sometimes is prescribed. As regards other cases, various associations have been instituted, whose money is collected partly from a tax imposed on workers, partly from a tax to be paid by employers, or even from a contribution of the public treasury; once their tax has been paid, the workers acquire a right to the insured sum. Concerning these things it is to be noted:

1. An annual pension is paid only to those to whom an accident happens in the exercise of work; yet this seems able to be understood broadly, so that what happens in an action which in some way is connected with the exercise of work is judged to have happened thus, as in access to the place of labor, or during a meal which is taken in the place of labor, or during leisure which is taken there, unless, however, the law or statute positively excludes this.

2. Workers ought not to receive compensation if the accident happens by their fault; this fault is to be understood as grave, so that the accident was caused deliberately or from great negligence. Indeed, in certain regions, as in Belgium and in France, only an accident deliberately and deceitfully caused is excluded by law.

3. He who unjustly received compensation or an annual subsidy, for example, by falsely narrating the cause of the accident or by bringing in false witnesses, is held to restore the sum received, nor can he receive further payment. But if he cannot restore to the society or revoke the matter without graver danger, let him restore to the poor.

597. Life insurance can present special difficulties.[3] Invented in the seventeenth century by the Italian banker Tonti, it properly tends to this: that the insurer, for certain annual payments or premiums, obliges himself, upon the death of someone occurring, to pay a determined sum of money to heirs or to a third person. But now it is also entered into in the contrary way, so that the insurer must pay the sum to the insured himself or to a third person, if he reaches a certain age, for example, 20 years or 65; indeed each way can be mixed, in which case there is mixed insurance.

[3] Cf. Huppert, *Der Lebensversicherungsvertrag*; Lehmkuhl, Th. M. I, n. 1360 sq.; Genicot-Salsmans, Th. M. I, 658, VIII; Noldin, Th. M. II, n. 630-631.

In this contract the danger for the insurers is that they must pay back a sum which exceeds the premiums received; to guard against this, they are accustomed to take precautions by questions or examinations. There are, however, societies which, with the price increased, demand no declaration

or medical examination; but ordinarily many questions are customarily proposed by insurers to clients, in order to discern with probability how much duration of life the insured can hope for. If these are answered incorrectly from error, fraud, or malice, or by a too favorable declaration of the physician, doubt sometimes arises concerning the value of the contract.

1. The contract is invalid, even before the sentence of a judge, if a circumstance is denied or kept silent by which the probability of life to be prolonged by the person to be insured is so notably diminished that, if it were known, the insurer would by no means wish to contract, such as an indication of premature death or vomiting of blood; for then there is substantial error concerning the object of the contract.

Hence: a) if the insured acted in good faith, he keeps the right to recover the premiums paid, but those in whose favor the insurance was made acquire no right to the insured sum;

b) But if the client acted in bad faith, he must besides repair the damages which the society suffered because of expenses;

c) Yet there are societies which in their statutes declare a void contract, after a certain time, for example, five years, to be held as valid;[4] this is valid even if it was entered into in bad faith;

[4] Thus for the most part in Germany and in certain other regions, but not French societies.

d) Likewise after time it can appear that the circumstance kept silent is not notable, for example, when the health of the insured recovers beyond hope, in which case the contract becomes valid because of the persisting will of the insurer;

e) The contract can also be judged valid if a notable defect of health lay so hidden that morally it could not become known either to the person to be insured or to the physician.

2. The contract is valid but to be reduced to equality if a circumstance is denied or kept silent, which, if known, the insurer would nevertheless have entered into the contract, but would have demanded a greater premium, as a disease by which the hope of life being prolonged is diminished not altogether slightly, or a more advanced age.

Hence: 1) In the case, the price must be increased, so that the insured sum may be lawfully received;[5]

[5] Some societies permit the insured to make a new declaration and increase the price; but according to the statutes of others, he loses all rights as soon as fraud has been recognized.

2. If this has not been done, a smaller compensation is to be accepted, proportionately to the premium defrauded; and in the case in which the whole insured sum has been paid, a proportionate part of it will have to be restored;

3. Moreover, if the client acted in bad faith, expenses which perhaps the insurer made will have to be compensated by him.

3. The contract is valid and simply to be observed by each party if a circumstance of entirely slight moment is denied or kept silent, which, if known, the insurer would have contracted under the same conditions, as an excised carbuncle or a homeopathic remedy used.

Hence: a) if the statutes of the society declare that the contract is voided by any error in the responses, this can be considered as a penal disposition, and the contract can be held as valid before the sentence of a judge: for the insured cannot be deprived of every right on account of a slight error which in no way harms the society;

b) After the sentence of the judge, one must stand by this, unless the contract would be invalid on the part of the insurer.

A physician who by a false or too favorable declaration cooperated in an unjust contract and thus inflicted damage is held to restitution in solidum after the principal damager.

598. Case. Robert, about to insure his life, was questioned by the physician concerning the disease from which his grandparents had died. He indeed said the other things truly, but in good faith declared that his paternal grandfather had been seized by a sudden fever, while in reality he had perished from phthisis. After Robert died seven years later, the heirs, who detected the truth of the matter, remain anxious whether they can with a safe conscience accept the money established by the insurance society.

Resp.[6] 1. First of all the very tenor of the contract must be considered.

[6] Solution proposed in *Revue Eccl. de Liege*, March 1910.

Now some societies clearly distinguish between errors which render the contract null, and others on account of which, if they are notable, the society can seek only indemnity for the damage which it has undergone. Others establish the nullity of the contract on account of false declarations knowingly made; if these were made in good faith, they induce not nullity but only the reduction of the stipulated sum. Others establish that the contract can be impugned on account only of errors committed from grave negligence or fraud. Others, that on account of any notable errors whatever, culpably or inculpably committed, the society is held to nothing.

From these things, namely, from an inspection of the clauses of the contract, perhaps already there is a solution favorable to the heirs, for example, if the nullity of the contract is established only for the case of culpable error: for then the insurance society itself bears the danger of inculpable error, and the heirs are held to nothing.

Besides, not a few societies declare that a contract invalid or rescindable on account of false declarations, after it has lasted for five years, is to be held as healed and valid. But if the society with which Robert contracted no longer impugns contracts after five years, his heirs, after seven years have elapsed, can accept the stipulated sum entire.

2. But what if on account of error the contract is declared null by the statutes of the society?

Then it remains to be further inquired whether the contract must be held as fully null in conscience, or only then when its nullity is invoked by the society. Or whether it is null by full right, or only rescindable.

Many societies establish that, in the case of an erroneous declaration, they are not obligated. This, taken exactly, signifies that the insurer is not held to pay; this can be had, although the insured is not held to refuse the payment offered.

Other societies, as also sometimes civil law, decree that the contract is null. But this, from the usage admitted in law, signifies that contracts, unless they are already invalid by natural law, are fully null only when their nullity is requested by the deceived contracting party and declared by the judge (n. 454). And in this sense the contract would seem to be understood all the more if, as a penalty of the deceiver, it established the loss of all premiums paid yearly; or even nullity in the case of inculpable error.

Finally, there could be other societies which declare the contract null by the fact itself; in which case it would also be null in conscience before the sentence of a judge.

From these things it follows: a) If the society impugns the contract after Robert's death, the heirs are held from justice to stand by the sentence of the judge; indeed, to avoid expenses, if the nullity is certain and open, they are held from charity to acquiesce in the request of the society, even before the sentence of the judge.

b) If the matter has not come to the knowledge of the society, the heirs can accept the offered money, unless the statutes of the society decree the contract null by the fact itself, or unless there is substantial error.

3. Is there not substantial error, so that the contract is null by natural law?

Thus it has seemed to some, who therefore hold the contract invalid; but this can be denied, at least taken universally.

The contract of life insurance substantially concerns the danger of death and is restricted, by the intention of the contracting parties, to the common danger; but the origin of this danger is something accessory and rather indifferent. Now we are taught by the most recent statistics that phthisis contracted from parents no longer induces a plainly extraordinary danger for children, since it is scientifically clear that the germ of that disease is not transmitted to children by a hereditary path, but only some disposition or weakness of the organism. Further, once the nature of the disease is recognized, by suitable precautions the disease can generally be guarded against.

Since these things are so, setting aside the case of a person to be insured who is already infected with the disease, concerning which it is easy for the physician of the society to establish, a doubt can deservedly be raised whether the phthisis of parents induces so great a danger as substantially to change the object of the contract. But since a certain obligation is not to be imposed on account of an uncertain reason, the heirs are not to be barred from accepting the money offered.

Yet must the damage which the insurance society underwent from a danger somewhat greater than it consented to be repaired? For, if the phthisis of the parent had been known, it would have demanded a greater premium. Let a distinction be made: if it is clear concerning damage effectively inflicted, it must be repaired, for example, if after seven years Robert truly is seized by phthisis, according to a prudent estimation the sum of the annual premiums which Robert paid below the just amount must be increased; and the heirs can do this by occult restitution. But if the deceased died from another disease or by chance, from the circumstances kept silent no effective damage came to the society, and therefore there does not fall upon the heirs any burden of restoring anything from the title of unjust damaging.

599. Observation. A species of insurance is nautical interest (*pret a la grosse aventure; bodemerij*), concerning which see art. 156-167 of the Belgian law of 21 Aug. 1879. It is an agreement by which someone hands over money or other fungible things to another in mutuum, upon things which are exposed to maritime dangers, with this pact: that if the things perish, no restitution is owed to the lender, except from what perhaps has survived; but otherwise the things lent are restored with a certain gain, on account of the dangers which the lender had taken upon himself.

Question Two: On Play, Wagering, and Lottery

600. Play (*jeu; spel*) in the moral sense and according to itself is artificial speech or action for the recreation of the soul; thus it is a remedy against weariness of the soul, giving it rest or delight, and therefore it pertains to the virtue of temperance, as will be explained afterward, n. 1060. But in the juridical sense it is a real contract, entered into on the occasion of this, by which those playing agree concerning a certain gain or price to be handed over to the victor as a prize. Sometimes it is proposed to the victor as a prize properly so called, by way of gratuitous donation, and then equality among those playing is not required; at other times by a bilateral and onerous contract, as it were for buying the hope of gain by the danger of loss, and then equality among them is required.

One play is aleatory, or of fortune, which is ruled by fortune alone, so that the outcome depends almost wholly on chance, as in dice; another is of skill, which is ruled by talent alone or by expertise, so that the event depends chiefly on the skill and dexterity of those playing, for example, ball play, chess, skittles, marbles; another is mixed, whose outcome depends partly and almost equally on chance and partly on expertise, as many games of playing cards are.

Play, with evil circumstances excluded, is according to itself honorable, as ordered to the necessary relaxation of the soul. But if gain is principally intended or too eagerly sought, it becomes disordered; likewise also when it is exercised immoderately, in which case it easily excites vain hope and a disordered appetite of making money without proportionate labor. In these circumstances it is frequently an occasion of other sins: prodigality, idleness, drunkenness, quarrels, and others by which a man can offend against charity and piety toward himself and his own.

But that the contract of play may be just, immune from every injustice, which in the present matter is especially to be considered, it is required:

A. **That those playing can and wish freely to dispose of the goods which they expose:** for by play there is a transfer of dominion; therefore those who do not have perfect dominion cannot play. Therefore they cannot expose to the danger of the lot things belonging to another, or those whose administration they do not have, or money necessary for paying debts. Hence:

1. He who exposes another's money by playing: a) if he gains, per se can keep the gain, as the fruit of mere skill; b) by accident, however, if in his own goods he has nothing at all from which he can indemnify the other party in the case of adverse fortune, he can demand or accept nothing from him, for he injured equality, when he wished to oblige the other to give something, while he himself obligated himself to nothing; the same must likewise be said if, having goods, he was unwilling to oblige himself; c) but if he loses another's thing, neither can the other, by winning, retain it when he certainly knows this, but he must restore it to the

owner; but then he can seek compensation from him who was defeated, provided the latter is not unequal to paying.

2. Minors, wives, and others constituted under a tutor or curator, cannot expose in play except money whose free administration they have. Hence he who has gained from them a great sum of money which they could not alienate cannot retain it, but is held to restore it. Nevertheless sons of a family can expose a moderate part of those things which they receive from their parents, because this pertains to honorable recreations; moreover, those things which they obtained by playing.

3. Religious cannot play without at least the presumed consent of the superior; otherwise they sin not only against justice but also against religion by violating the vow of poverty; indeed they play invalidly, at least if they have emitted a solemn vow, or if they dispose of the goods of the monastery against the will of the superior.

B. **That play be entered into freely;** otherwise true consent is not present, and therefore neither is a true contract of play. Hence:

1. He who plays with one half-drunk, half-witted, or another who is incapable of full consent, must restore the gain received from him.

2. He who was brought to play by another through grave fear, fraud, or another unjust means: a) is not held to pay the money which he lost, because he did not furnish consent altogether free and can rescind the contract; b) but if he came out the victor, he is not held to restitution, because he inflicted no injury on the other; c) but he who used fear or fraud is held to restore what he gained, at least after the other has sought rescission: for he inflicted injury on the defeated party.

C. **That the laws of play be observed honorably and that all unjust means be avoided,** such as frauds and illicit arts; otherwise damage is inflicted by an unjust means, and he who used it is held not only to restore the gain unjustly obtained, but moreover to repair the detriment which he inflicted on the other by depriving him of the hope of gaining.

Yet there are tricks and stratagems permitted in play as in war, or at least tolerated by rules or custom, such as feigning fear or confidence so that the other may become bolder or more timid, seeing cards visible from the negligence of the other alone, not warning him about an error, and recognizing cards from a mark which they already bear, but not from one which he himself placed while looking.

D. **That moral equality be preserved among those playing in the hope of gaining and the danger of losing;** otherwise there will be injustice, especially if one well skilled deceitfully hides his skill in order to draw the other to playing, or if he abuses the simplicity of another in order to draw large sums of money from him.

Equality per se is required: 1. on the part of the conditions, unless, however, one or the other freely yields in some things; 2. on the part of the price, unless again he spontaneously exposes or remits

more; 3. on the part of skill, unless the more skilled person in some way compensates the inequality. Nevertheless:

a) He who, being of mature judgment, knowingly and freely willing, plays with another more skilled person cannot complain, because injury is not done to one who knows and consents.

b) If both players, with the greater skill or lack of skill of themselves unknown, wished to try fortune, the contract will have been entered into by way of wagering and is just, because on each side there is equal danger; nor is injury committed, because each in good faith consents to the damage which he can suffer from it.

It should be noted that in most regions the civil law neither approves nor acknowledges the contract of play, except perhaps for certain games which exercise the body and for moderate gain (a. 1965-67).

In other places aleatory games indeed are prohibited as dangerous or as preparing the way for frauds; or even pacts concerning them are declared void. These dispositions oblige in conscience at least after the sentence of a judge, even if the laws were merely penal. But if the law especially prohibits the organized industry of aleatory play, even without the intervention of a judge it obliges in conscience, because it represses something vicious of itself which is harmful to many, indeed to the public good.[1]

[1] Cf. Belgian Penal Code, a. 305, 557, 558, and the law of 24 Oct. 1902.

601. Wagering (*pari, gageure; wedding*) is an aleatory consensual contract by which two or more, contending concerning the truth of an unknown matter or of an uncertain event, pledge gain to him who will have attained the truth, or promise a prize which will fall to the victor.

That contract can be lawful and just under the same conditions as play, because, just as in play, the parties are exposed to an equal hope of gain and danger of loss. Hence:

A. The immoderate custom of wagering is to be avoided, especially for a notable price, because it turns one away from labor and generates an appetite of gaining unduly without a proportionate effort, and is an occasion of manifold prodigality, disorder, and fraudulence, especially in public races. Hence St. Antoninus, *Sum. Th.*, p. 2, tit. 1, c. 23, § 9, concerning such a custom of gaining from wagering, says: shameful gain, as serving no utility, but vanity and prodigality.

B. But that wagering may be just and immune from every injustice, setting aside that it cannot be about an illicit thing, for example, concerning him who may drink more, or may dare to fight in a duel, in which case the contract is illicit and invalid in the sense in which it was said concerning a contract under a base condition, the following conditions are required:

1. That the thing or fact be understood in the same sense by the contenders; otherwise there would not be consent to the same thing.

2. That the thing about which there is contention be uncertain with respect to the contenders, or that the event be doubtful to each; otherwise there would not be equality of hope and danger.

Hence: a) if one is truly certain concerning the event, per se he cannot lawfully wager; indeed, neither validly, because the gain is not uncertain and the danger is null; b) by accident he can, if he openly says that he is altogether certain, but the other nevertheless persists in wagering: for then the latter is judged to yield his right or to bestow something gratuitously.

3. That the prize on each side be equal, namely, proportionately to the probability of the event and to the objective means by which they can conjecture it; unless, however, one of the contracting parties spontaneously and freely offers a greater price.

In Belgium, the civil law does not vindicate the obligations and effects either of play or of wagering; it denies civil action to them, except only for moderate gains which arise from games pertaining to skill and exercise of the body. On the other hand, no one also can by civil action seek back what he spontaneously paid after play, unless fraud or malice intervened (a. 1965-67). In other words, the civil law leaves those obligations as they are from natural law; whence the obligation of paying is present unless fraud intervened, or unless someone cannot pay except by sinning.

But what if someone were to play or wager with the purpose of not fulfilling the obligations arising from it, but of using the benefit of the law if necessary? Resp.: he would injure justice in affection, but the contract would be valid, because for the value of the contract the intention of fulfilling the obligation is not required, but the intention of assuming the obligations of the contract suffices. Yet he who would be unwilling to oblige himself in any way would enter into no contract, and would also be held to restore the gain perhaps obtained.

602. Drawing lots or lottery (*uitloting*) is an aleatory contract by which, after a certain price has been paid, a right is acquired of obtaining some prize, if the lot favors, whether concerning one object or several; or a real contract by which, with several persons paying a price for a certain thing placed in the middle, the right to the prize is acquired if the drawing of lots falls to someone.

It is not per se illicit, in the same way as we have said concerning play and wagering, although it can offer occasion to manifold abuse; whence in several regions it is prohibited by law, or at least is permitted only with special license on account of a grave motive.[2]

[2] Cf. Belgian law of 19 Dec. 1851 and Penal Code, a. 301-304.

But that it may be immune from every injustice, it is required:

1. That in drawing the tickets or in assigning the prize to the victors, every fraud be carefully avoided: for if equality among the competitors is removed, or the proposed prizes are diminished, manifestly injustice is committed.

2. That the laws and burdens of the contract be published beforehand.

3. That there be an equal proportion between the price paid and the hope of obtaining the prize, with attention to the value of the prize and the number of competitors, so that the gain of the one instituting the lottery does not exceed the just price of an honorable business; otherwise he is held to restore the excess in the price. Unless, however, it is known to all that the lottery was instituted to promote a good work, or for the benefit of the State; in which case the lottery is nothing except an occasion of bestowing alms or of providing for the common good.

Question Three: On Stock Exchange Speculations

603. Notions. Exchanges are called both qualified fairs or markets where goods are present only by samples or titles, and the place where they are sold.[1] Hence there is distinguished the monetary Exchange, where securities or titles of public debt, shares, and obligations are sold, and the

commercial or mercantile Exchange, where goods are sold, such as wheat, oil, coffee, wool, metals, etc.

[1] In antiquity there already existed at Athens an *Emporium*, and at Rome a college of merchants. Modern Exchanges were founded in the Middle Ages, in Belgium in the thirteenth century: they are named from the sign of a Bruges inn in which negotiators were accustomed to gather; and from there they were instituted in all regions.

Contracts entered into on the Exchange are of two kinds:

A. A market for the present, if titles or goods are here and now bought and sold for counted money to be paid here and now; concerning this nothing special is to be said, because it is simple buying and selling, not an essentially aleatory contract.

B. A market for a day, that is, on credit, or a contract for a term, when goods or titles are bought and sold, afterward to be paid for and handed over against determined money after a certain time, for example, after three months, or, as is the custom, on the first or fifteenth of the month, but at the price established on the day of purchase, so that the buyer or seller makes gain or suffers damage according as the price on the day of payment has increased or decreased. Hence it is a special aleatory contract of speculation, because it includes wagering. This gave origin to several variations, among which the more customary are:

1. A differential contract, if the preceding contract is made fictitiously, so that the goods or securities are not in reality handed over, indeed so that they are not even present, but the contracting parties only intend that the difference between the foreseen price and the actual price be paid to the other by him whom the change of price disfavors. Then the contract passes into play: thus, if the price has increased, the seller must pay the difference to the buyer, who is said to play "for the rise"; if the price has diminished, the buyer pays the difference to the seller, who plays "for the fall."

2. A contract of relation, if an accessory contract of resale accedes, which virtually contains a mutuum of money or a letting of goods, of which interest is the price, and it is called report or deport, according as the prorogation of payment, for example, for 15 days, is respectively sought by the buyer or by the seller.

3. Finally, a premium market or contract for a premium, if an accessory pact of reservation is attached to the contract, so that one or the other, buyer or seller, reserves to himself the faculty, on a certain day before the time of payment, say the day before, of rescinding the contract after a certain premium has been paid.[2]

[2] For the sake of clarity let there be an example: A sells B 100 3% titles for the price 70 fr., that is, 7,000 fr. This can be the matter of diverse operations.

1. If the money is paid immediately, it is a market for the present (*au comptant*); if this is done by selling a title in order to buy a different one, it is called in French *arbitrage*.

2. If the price is paid on the fifteenth of the month, and on this day the titles are worth 69.50, B, by paying, loses 50 fr.; if the titles are worth 70.50 fr., A loses 50 fr.: a contract for a day or for a term (*marche a terme ou a credit; op termijn of op uitstel*).

3. If the titles are lacking (*a decouvert*), on the fifteenth B, or A, pays the difference, namely, 50 fr.: a differential contract (*op verschil van koers of prijs*).

4. If on the fifteenth of the month the titles are worth 69.50 and B foresees a rise for the end of the month, he asks X to be willing to take the titles on this condition, that he return them at the end of the month at the same price; for which service furnished he will receive 20 fr. If at the end of the month the titles are worth 7,100 fr., B gains 100 - 20 = 80 fr.: a contract of relation or report (*report; verlenging geven*).

Or, on the contrary, if on the fifteenth of the month the titles are worth 70.50 and A foresees a fall for the end of the month, he asks titles from X, if he does not have them, but under the condition of returning them at the end of the month at the same price, for which service 30 fr. will be paid to X. If at the end of the month the titles are worth 69.50, A gains 100 - 30 = 70 fr.: deport (*deport, verlenging nemen*).

But when titles are lacking, these operations can also be made without the intervention of a third party between A and B: A concedes report and takes deport; B concedes deport and seeks report.

5. If the contract is entered into with the reservation of rescinding it against a premium of 0.25 fr. to be paid for each title, and on the fourteenth of the month the titles are worth 69.50, B, by withdrawing from the contract, loses 25 in place of 50 fr.: a premium market (*marche a prime; handeling op premie*).

All these contracts can be made, with several varieties, in every kind of titles and goods, and indeed for the greatest quantities and enormous sums of money.

Now the Exchange, and the monetary or commercial operations which are carried on there, are not lacking in utility; indeed they are necessary to modern society and the common good. For:

1. They bring about the gathering of merchants, and thus the multiplication of transactions; whence today great businesses are handled on the Exchange.

2. They render easier the determination of price, which proceeds from the true common estimation of experts, and which, easily known by all, contributes to public utility, insofar as it procures security of transactions and turns away the occasion of fraud, provided it is not falsified.

3. Indeed, the very operations for a term are not always mere wagers and speculations, but are as it were necessary, because:

a) Buyers do not always find here and now titles and goods in sufficient quantity, nor do sellers here and now always find good buyers ready to pay the best price immediately; whence there is security for them, because they certainly know that after a time these can be had.

b) Likewise, an anticipated estimation of prices is very useful, for it is most opportune to know the probable price fifteen days before the event;[3] for thus insolvencies are guarded against, and negotiators can establish their prices in advance and protect themselves against variations of prices.

[3] Thus fictitious sales, made when goods are lacking, indicate abundance of things; on the contrary, purchases indicate scarcity. And report is an indication that titles are present in excessive quantity comparatively to money; deport, on the contrary, an indication that titles are sought and money is offered.

c) Hence from that anticipated foresight, it is prevented that prices increase or decrease too suddenly; thus they become more stable and are reduced to a certain tempered equilibrium, and economic crises can be attenuated.

Yet for this it is required that those operations be made by experts, and without frauds. For merely aleatory speculations, on the contrary:

a) Disturb the law of real offerings and demands and impede the determination of the just price;

b) Do not correspond to necessity, and thus provoke fictitious and unreal determinations of the possibilities and necessities of commerce;

c) Multiply and increase variations, and thus harm the stability and regularity of prices;

d) Moreover, although they are not necessarily unjust, they nevertheless easily provide occasion for manifold injustice, such as is had in spreading false news, vehemently recommending works which are near ruin, erecting unjust monopolies, immoderately increasing or depressing the price beyond the real value, etc.[4]

[4] Concerning the Exchange market, besides the most recent theologians, the following can be consulted: Brants, *Les grandes lignes de l'economie politique*; Ch. Gide, *Cours d'Economie politique*, I; Nell-Breuning, *Grundzuge der Borsenmoral*; E. Janssens, *La Bourse et la Conscience* in coll. *Etudes sociales*, I, (1929), n. 3; P. Janssens, *Beursspeculatie*, in *Geestelijke Voordrachten: Moderne Kwalen*, 1929.

604. Moral principles. I. Operations of the Exchange are not per se unjust, provided there is no excess of prices, malice, abuse of another's necessity, or other unjust means.

For they are wagers and aleatory games, and therefore they are just, provided: 1. the price or increase is proportioned to the hope of increase or diminution of securities or goods; 2. the contracting parties have ordinary knowledge and one does not abuse the ignorance of the other; 3. he who performs the office of relation does not abuse the impossibility of paying on the part of the debtor, by imposing on him an excessively great increase not proportioned to probable hope; 4. in these things no one uses malice or unjust means, so that the price of the thing sold be increased or diminished with his own gain and the damage of the other contracting party, for example, by false rumors and reports, by contrived evaluations of newspapers, by fictitious statistical computations or telegrams, by fictitious purchases and sales made at a greater or lesser price, by buying together the greatest number of titles so that their price, and therefore the price of deport or report, be increased or diminished as if by monopoly, beyond or short of the real value; etc.

II. They are per se guilty of injustice who by malice, fear, or fraud directly procure that the prices of securities be artificially increased or diminished, with their own gain and the damage of others.

Thus they act: a) who spread false rumors concerning the prosperous or calamitous state of a kingdom or society, in order to deceive others and induce them to sell securities for a lower price or buy them for a higher price;

b) Who make coalitions so that by any means, even fraudulent or violent, they may oppress societies hateful to them;

c) Who by buying together procure a monopoly, by which afterward abuse is made for changing prices more than is fitting, for example, in deport or report.

III. They are guilty of injustice by accident who indirectly expose themselves unduly to the danger of injustice afterward to be inflicted.

1. Thus those who take upon themselves so many and such great businesses that they foresee that they will probably be incapable of satisfying all obligations at the due time: they expose themselves to the danger of inflicting damage, and they make the contract void, unless the other party was conscious of this;

2. A fortiori, those who expose to the danger of the lot not only their own money, but also money committed to them, if this is done against the will of those committing it;

3. Likewise those who thus render themselves unequal to paying other debts of justice; but if they expend their resources necessary for the family, they do not indeed sin by prodigality alone, but gravely offend against charity owed to their own and against piety, although not against justice;

4. Finally, those who, habitually devoting themselves to speculations without necessity, thus expose themselves to the proximate danger of using even frauds and other unjust means, to which such a custom easily impels for obtaining gain more certainly.

IV. Outside these cases, speculations are not unjust, but they are not morally commendable if they are not demanded by the necessity of commerce.

For the speculators themselves expend an economic good ordered to production solely in transfers from one to another, and thus they turn it away from truly useful operations; whence they hold capital immobile in intermediate operations without true utility. And they intend to acquire riches without proportionate labor and without subordination to the common good, indeed with the damage of others, even of those who do not freely expose themselves to fortune, but must conduct business. Hence the custom of devoting oneself to Stock Exchange speculations fosters a predominant cupidity of gain, to which they subordinate all things and their whole activity; it carries with it continual anxieties, and exposes to great danger of prodigality, idleness, and temporal ruin of businesses and families.

605. Observations. 1. To avoid the inconveniences of speculation and to ward off injustices, civil legislation ought to intervene; this for the most part is insufficient in this matter. In Belgium, the law of 18 July 1924 is in force.

2. The faithful are to be turned away from mere speculations, especially the simple and inexperienced, indeed generally all.

3. Clerics and religious are forbidden speculations of this kind, as is clear from the response of the Holy Office, 15 Apr. 1885, and from the Code of Law, can. 142 and 592.

4. Civil law often equates Stock Exchange speculations with games, to which it denies forensic action. Thus in Germany and Switzerland for the market for a day; also in Belgium and France

from received jurisprudence. Nevertheless the French law of 28 March 1885 pronounced markets for a day legitimate, even if they ended in the mere payment of a premium; but this is not understood concerning those markets which from the beginning, from the will of the parties, tended to this.[5] In Italy also they are held as games; yet markets for a day concerning public titles, with a certain form observed, are protected.

[5] Vermeersch, Th. M. II, n. 498.

Chapter VI: On Subsidiary or Accessory Contracts

Only Question: On Suretyship, Pledge, and Mortgage

606. Accessory or subsidiary contracts are those which essentially suppose a principal contract, to which they accede for its security and execution, and on which they depend in some way according to the axiom: the accessory follows the principal.

There are three principal ones: suretyship, by which an obligation is undertaken by one in place of another; pledge and hypothec, by which an obligation is undertaken in place of another obligation.

607. Suretyship (*fidem iubere*, to give one's word; *cautionnement; borgstelling, borgtocht*, a. 2011) is a contract by which one or more take upon themselves another's obligation, if the principal debtor does not pay. It can be undertaken gratuitously; something can also be accepted for it, so much the more as the danger that the debtor will not pay is greater; indeed, even if there is no danger or trouble, because to take such an obligation upon oneself is estimable by price.

It is a contract which essentially depends altogether on another; whence the surety (*la caution*) obliges himself only subsidiarily, indeed conditionally, for the case in which the debtor does not satisfy.

Hence:

1. The obligation of the surety depends on the obligation of the principal debtor, and therefore does not exist unless this itself is valid (a. 2012);

2. He is not obligated to more than the principal; and therefore, if the latter's obligation ceases, the surety is freed (a. 2013);

3. He is not held to pay the debt unless the principal debtor has first been exhausted before a judge; except if he himself has renounced the benefit of excussion, or constituted himself an equally principal debtor (a. 2021).

No one can be a surety except one who has the free administration of goods sufficient for this; such as a ward, a minor, a religious, and in many regions a wife do not have, at least without the consent of tutor, curator, superior, or husband. Moreover, from our civil law it is required that he dwell in the territory of the royal court (*cour d'appel*) where the suretyship is to be paid (a. 2018).

He is held toward creditors concerning all obligations of the debtor (a. 2016), but only in his default or inability, and indeed juridically proved (a. 2021), that is, not except after the sentence of a judge. The obligation is real, and therefore passes to heirs (a. 2017).

If the surety pays for the debtor, he by that very fact becomes a creditor and has recourse against him in order to demand back those things which he was forced to pay in his place (a. 2028-2030). The principal debtor is held to keep the surety indemnified, unless the latter paid without forewarning the debtor, and thus was the cause why the debtor either paid a second time, or could not pursue the extinction of the debt (a. 2031); but then the surety has action against the creditor.

The surety can act against the debtor: 1. when he himself is summoned before a judge to pay; 2. when the debtor yields into insolvency or is unequal to paying; 3. when the debtor has bound himself to free him at a certain time; 4. when the time of payment has elapsed; 5. after ten years, if the time of payment was not determined, unless there is question of guardianship and other obligations which cannot be extinguished by lapse of time (a. 2032).

608. Pledge or pawning (*nantissement; pandgeving*, a. 2071) is a real contract by which the debtor, or another, hands over some thing to the creditor, or to a third party, for the security of the debt; so that payment can be sought from it before other creditors, if the debtor does not pay. If this thing is movable, it is called a pledge (*gage; onderpand*); if immovable, antichresis[1], which is given in writing (*verpanding*).

[1] German Code a. 1213: for antichresis, no distinction is made between a movable and an immovable thing.

The debtor is held toward the creditor to hand over a suitable pledge, to refund necessary expenses which were made for the conservation of the thing, and not to demand it back before he has paid the whole debt, unless the creditor abuses it.

The creditor must guard the pledge diligently, otherwise he is held to repair damage; he must count fruits received from it toward diminution of the debt; nor can he, except with the consent of the debtor or judge, use the pledged thing, nor sell it to obtain payment, unless the debtor is in culpable delay and has first been warned (a. 2073-2091).

609. Hypothec (*grondpand, kusting*) is a contract by which an immovable thing,[2] remaining with the debtor, is obligated to the creditor for the security of the debt. Consequently the word also designates the immovable thing obligated, and the right of demanding the debt from it; it is a real right, in the thing, and indivisible, so that if the debtor has neglected to pay, the creditor can satisfy himself from all the obligated things and from each part of them, by whomever they may be held (Belgian law 16 Dec. 1851, a. 41).

[2] An exception is made for maritime hypothec, by which ships with their instruments and goods can be hypothecated (Commercial Code and Maritime Insurance, a. 37); by Italian law (a. 1967), titles of obligations of the State are also subjected to hypothec.

It differs from pledge in this: that the pledge is handed over, but the hypothec is secured only by bare agreement. It is threefold (a. 43-44; C. C., a. 2116):

1. Legal or implicit, which is induced by force of law in favor of communities, wife, son, and minor upon the goods of administrators, husband, father, and tutor (a. 45 and 47);

2. Judicial, which proceeds from the decree of a judge in favor of him who has obtained a sentence against another;[3]

[3] This no longer subsists in Belgium.

3. Conventional, which depends on the mutual will of the contracting parties; to this accedes testamentary hypothec (a. 44), which is established by a testator upon immovable goods specially designated in the testament, for the insurance of legacies which he prescribed to be made (a. 44).

It can be special, namely, when someone obligates a determined thing, for example, such a piece of land; or general, by which someone obligates all goods. Legal and judicial hypothec can embrace all present and future goods, but conventional and testamentary hypothec only present goods.

Hypothec in Belgium is ruled by the law of 16 Dec. 1851, according to which only those are capable of conventional hypothec who are capable of alienating the goods which are subjected to hypothec (a. 73). It cannot be conceded except by an authentic act entered into before a notary, or by a private act acknowledged before a judge or notary (a. 76). Nor is it valid unless in the act constituting it, or in another authentic act, the nature and location of each good subjected to hypothec is specially declared (a. 78), and in the act itself a certain and determined sum is expressed. But if the debt is conditioned, mention of the condition must be made in the inscription (a. 80): for, that a hypothec may have its full force, it must be inscribed in the register with the conservator of hypothecs of the region in which the goods subjected to hypothec are situated (a. 81).

There are two principal effects or privileges of hypothec:

1. The right of preference, by which the creditor has the right of obtaining payment from the goods before merely chirographic creditors, and even before those who took care to have hypothecs inscribed only on the following day;[4]

[4] Thus by French, Belgian, and other law they take order from the day of inscription; elsewhere from the inscription itself, but Italian law (a. 2008) provides that those who present a document at the same time are placed under one number of inscription.

2. The right of pursuit, by which the creditor can pursue the hypothecated good, into whosever hands it has come (a. 96). Except for legal hypothec, which always endures without being renewed, the inscription of the hypothec must be renewed from civil law before a certain term has elapsed; otherwise the aforesaid privileges would be lost (a. 81-90).

In France the inscription must be renewed within 10 years; in Belgium within 15; in Italy within 30; in Spain within 20; in Germany it does not have to be renewed.

Hypothec is extinguished: 1. by the extinction of the principal debt; 2. by renunciation of the creditor; 3. by prescription; 4. by observation of the formalities and conditions which are prescribed so that goods may be freed from hypothec (*purge des hypotheques*).

For the holder of a hypothecated good who is not personally obligated can free himself: a) either by paying all inscribed debts; b) or by abandoning the good without any reservation; c) but if he does neither, any creditor can obtain that the good be sold after 30 days from the demand which he must make both to the primitive debtor and to the present holder. Then, however, one means remains, namely, recourse to what they call *la purge des hypotheques*, by force of which the holder can obtain that he be freed by paying the price of the hypothecated good (a. 97-107; 109 sq.).

610. Transaction (*compromis; dading, schikking in der minne, overeenkomst*) can be reduced to subsidiary contracts. It is an onerous contract by which a doubtful and uncertain matter is composed between parties, or by which two or more compose a doubtful contestation that has arisen among them, or prevent one about to arise. Thus C. C., art. 2044, according to which it must be made in writing; this, however, is not required for solemnity or validity, but for mere proof.

That someone may enter into this contract, it is necessary that he be able to dispose of the thing about which the contestation turns. But this must be doubtful, because if the right of the other party were certain, it would be unjust to propose to him a transaction by which he would have to renounce that right. Nevertheless it is not required that the contestation has already arisen, but it suffices that it be foreseen; in which case it can be made on account of fear, provided the fear is founded and renders the rights uncertain. Transaction puts an end to contestation, and has no less authority than a definitive sentence of a judge (a. 2052), unless it is discovered that the things alleged were false (a. 2055-2056).

Fourth Part: On Distributive Justice

611. Distributive justice is that by which society, or its presidents, distributes advantages and burdens among members, according to the merit, suitability, or necessity of each. It differs from commutative justice:

1. Essentially, it is in society as in its subject; on the contrary, commutative justice is in a private man;

2. It necessarily regards several, whose merits or necessities are compared, even if an office is conferred or a burden imposed on one; on the contrary, commutative justice does not compare or distribute among several, but gives to one or to several, to each a rigorous right;

3. It distributes things of the community which are not actually, but only in potency and by destination, things of the members, and therefore it does not render a strict right nor per se oblige to restitution. On the contrary, commutative justice renders a strict right which each one has to a determined thing which is already at least in some way his; whence it obliges to restitution. Therefore commutative justice per se regards equality of thing to thing; not so distributive justice: the latter per se regards geometric proportion, because it distributes goods and burdens among members proportionately to the dignity which they have toward them.

One must speak of distributive justice after the others, because it frequently happens that, together with it, commutative and legal justice must be observed or are violated.

We shall speak:

1. Of judgment in general, which is primarily an act of distributive justice, and of the opposite sin, namely, acceptance of persons; then specifically:

2. Of justice and injustice in distributing goods;

3. In distributing burdens, for example, taxes and military service;

4. In public trials, namely, a) of judges; b) of the accuser, defendant, and witnesses; c) of advocates.

Question One: On Judgment, Which Formally and Primarily Is an Act of Distributive Justice

S. Th. II-II, q. 60; and 63, a. 1.

612. Judgment is the act of a judge, or of a superior judging, insofar as he is judge; this act pertains formally and more than the others to distributive justice. For distribution includes and supposes a judgment of authority concerning the goods of the community, with the common good nevertheless preserved, to be divided among members proportionately to their dignity, or concerning guardianship or protection to be conceded to them proportionately to the quantity of their goods and rights.

A judge, etymologically, is as it were one speaking right (*ius dicens*), whence he is a public person instituted for this: that he may speak right to those subject to him according to the prescription of law. Hence judgment:

1. In its primary signification and most properly imports the right definition or determination of right or of the just, which is the object of justice; and therefore judgment is an act of justice. But judgment is understood according to excellence: exercised publicly with solemnity, which is done authentically by the superior of society, or in his name by him who exercises judicial power in society: "judgment is in princes and judges";

2. Secondarily, it signifies such a judgment rendered internally or privately, even by private persons, in a matter of justice, namely, concerning the life, things, rights, or morals of others;

3. The name was broadened to signify a sentence or determination of the right in any matter whatever, whether speculative or practical: for in every assent or true determination of the mind there is equality or conformity of the intellect either to the thing or to right appetite. And thus, less properly, judgment belongs to any virtue: for it pertains to any virtue to judge in its own matter, but in this way judgment is rather the determination of the right than of the just.

613. Judgment is an act of justice. Billuart proves this thus:[1]

[1] Diss. VII, a. 1.

1. "It belongs to justice to define and determine that which is just or equal to another: for this is its object. But judgment in the proper sense is nothing other than the definition and determination of the just. Therefore.

2. To define rightly in the matter of some virtue proceeds from the habit of such a virtue (q. 60, a. 1), insofar as the virtue inclines the affection to its object and the intellect judges conformably to the affection, because the affection makes the thing seem suitable to the intellect; whence it is commonly said, as someone is affected, so he judges concerning things: thus the chaste man rightly judges those things which pertain to chastity. Therefore to define rightly in the matter of justice, which is to judge, proceeds from the habit of justice."

Nor should it be said that judgment belongs to reason, not to the will, and therefore pertains not to a moral virtue but to prudence. For two things are required for right judgment: "One is the very virtue pronouncing the judgment, and thus judgment is an act of reason: for to speak or define something belongs to reason. The other is the disposition of the one judging, from which he has suitability for judging rightly; and thus in those things which pertain to just judgment it proceeds from justice, as in those things which pertain to fortitude, from fortitude. Thus, therefore, judgment is an act of justice as inclining to judging rightly, but of prudence as pronouncing the judgment; whence also *synesis*, pertaining to prudence, is called well-judging" (q. 60, a. 1, ad 1).

Therefore judgment, insofar as it regards the just according to all circumstances, is an act of prudence; but insofar as it formally regards right as an equal due to another, which is the proper object of justice, it is an act of justice, and indeed elicited by it, because it is immediately regulated by it, no other virtue mediating.

614. Judgment is lawful (Deut. XVI, 18-20; I, 16-17; Jn. VII, 24; Rom. XIII, 4; Acts V; I Cor. V, 3 sq.), provided it is clothed with due circumstances,[2] which are three: 1. that it proceed from the inclination of justice; 2. from the authority of the one presiding over a subject; 3. and that it be pronounced according to the reason of right prudence. When these are lacking, judgment is called either unjust or perverse, or usurped, or rash; and therefore in the Scriptures it is sometimes prohibited (Mt. VII, 1-2; Rom. II, 1; XIV, 3 sq.; Jas. IV, 11-13).

[2] Thus against the Waldenses and Anabaptists, saying that it is not lawful for Christians to exercise judgment.

Judgment is validly exercised even if the judge were to condemn concerning a sin of which he himself is guilty, because sin does not take away the authority of jurisdiction (Council of Constance, sess. 8, c. Wicleff); although he can sin by graver scandal if, being a public sinner, he judges thus.

615. Observations. 1. In judgments concerning persons, doubtful things are to be interpreted in the better part, not only negatively, insofar as the worse is not to be judged but one must at least abstain from judgment, and this must always be observed, as we already said where treating rash judgment; but also sometimes positively, namely, when a positive act of judgment is prescribed to be elicited concerning the goodness or malice of one's neighbor. For each one has the right to be esteemed good, so long as his malice does not sufficiently appear.

2. Judgment ordinarily must be exercised according to written laws. For "judgment is nothing other than a certain definition or determination of that which is just. But something becomes just in two ways: in one way from the very nature of the thing, which is called natural right; in another way from a certain agreement among men, which is called positive right. But laws are written for the determination of each right, yet in different ways; for the writing of the law contains natural right, indeed, but does not institute it: for it does not have force from the law but from nature; but the writing of the law both contains and institutes positive right, giving it the strength of authority. And therefore it is necessary that judgment be made according to the writing of the law; otherwise judgment would be deficient either from the natural just or from the positive just," q. 60, a. 5.

It is said: ordinarily; it would not have to be done thus if human law manifestly contradicted the natural law, or if in the case it tended to the detriment of the common good.

616. The sin which is opposed to distributive justice and to just judgment is acceptance of persons. This name is taken from the Scriptures (Deut. I, 17; XVI, 19; Lev. XIX, 15; Eph. VI, 9). To accept a person is to look at the face (Mk. XII, 14 and Mt. XXII, 16; Ps. LXXXI, 2); whence it is so called because, with the proper motives omitted which ought to be attended to for just distribution, namely, merits, necessities, dignity, capacity, it regards other impertinent personal circumstances. Therefore persons are said to be accepted, not merits. Hence acceptance of persons (*aanzien van personen*) is defined: an injustice by which, in common things to be distributed from justice, attention is not given to the proportion of merits or suitability of those to whom they are given, but to some cause impertinent to this matter. It is said:

1. In things, whether good things, such as benefices, public offices, honors, judgments, etc., or bad or burdensome things, such as taxes and tolls, contributions of works, penalties, etc.

2. In common things to be distributed from justice, because in the distribution of one's own things which one is not held to give, or not held except perhaps from liberality or from charity, there is no acceptance of persons, even if one does not attend to the merits or suitability of those to whom he distributes; for example, to give alms to someone because he is a friend: for anyone without injustice can give from his own as much as he wishes and to whom he wishes. Hence there is no acceptance of persons if God distributes graces unequally (Mt. XX, 14-15; Rom. IX, 14 sq.).

3. Attention is not given to the proportion of merits or suitability: for if someone considers that property of the person on account of which that which is conferred upon him is due and proportioned to him, there is not acceptance of person but of cause; for example, to promote someone on account of knowledge. But if someone considers in him to whom he confers something, not that on account of which what is given is proportioned or due, but only this, that he is this man, there is acceptance of person, because it is not given on account of the cause, but is simply attributed to the person.

Therefore to the person is referred whatever condition does not make for the cause on account of which someone is worthy of this gift; for example, if someone promotes another because he is rich or related by blood.

617. Acceptance of persons is opposed directly and per se to distributive justice, because distributive justice consists in this, that diverse things are given to diverse persons according to proportion to the dignities of the persons; but in acceptance of persons action is taken apart from proportion. Nevertheless it can also be opposed not only to legal justice, insofar as it harms the common good, but sometimes by accident to commutative justice, insofar as it injures the strict right either of society, for example, by naming incapable ministers, or of private persons, for example, in the distribution of goods which are primarily destined to certain determinate persons, such as the poor, who then have a right to the thing.

Moreover, from its genus it is a mortal sin, both because every injustice from its genus is grave, and because distributive justice is more excellent than commutative justice, as being nearer to the common good and to legal justice, and because no less damage follows from unjust distribution than from commutation. Nevertheless it can be venial from lightness of matter, as if in a small matter, for

example, in a place for sitting, one less worthy is preferred to one more worthy, or if there is a small discrepancy between the less and the more worthy, or among the goods distributed.

Question Two: On Justice and Injustice in Distributing Goods

S. Th. II-II, q. 63, a. 1, 2, 3.

618. Distributive justice directly and per se regards the distribution of goods. It belongs to distributive justice to bestow upon another, not to demand for oneself. But only in the distribution of goods is something bestowed upon another. Hence distributive justice first and directly regards the distribution not of burdens but of the goods of the community.

A. Generally and principally: the goods of the community are good social conditions. Distributive justice does not always principally treat the quality of goods to be subjected to distribution, for example, money, things, services to be divided; but especially the distribution of the goods themselves of the community, or of the social conditions required for perfect human life, by conceding security of order, rights, economic conditions, etc. It must bestow good conditions upon all, but diverse ones according to their principality in society, so that they may be able to attain development, but each one in his own diverse sphere.

To this end let there be a more equitable division of goods (n. 269, 5).

B. Specifically: the goods of the community are also particular goods, and indeed of diverse kinds:

1. Various duties or public offices, which, at least primarily, are instituted for the common good of the republic, and only secondarily can be for the private good of the members;

2. Other goods can also be primarily prizes for members, such as rewards for merit, helps and subsidies for need;

3. Honors which, according to the custom of the republic, are given to those obtaining such or such a state or grade: for thus morally there is a certain common good which is also exhibited by private persons as members of one republic, so that in this they act in the place of the republic;

4. Finally, efficacious protection or guardianship of liberty, rights, and goods; but concerning this something special will be said in q. 4, where public judgments are treated.

619. Distribution of duties or offices. In choosing for public offices, per se he must be chosen who is positively known to be worthy and to have the qualities required for the office both by the nature of the thing and by civil law, namely, knowledge, probity, industry; unless by accident no worthy person is present and nevertheless it is necessary to have someone, in which case it suffices to choose the less unworthy. And indeed:

1. Toward the republic, there is also an obligation of commutative justice to choose one truly worthy, if someone chooses; moreover, the superior choosing for offices by office is obligated to choose from commutative justice, but others choosing from privilege only from legal justice;

2. Toward the candidates themselves, there is also from commutative justice an obligation of choosing the more worthy, if they have been called by a competition properly so called, namely, one announced not only for knowing the worthy but with the obligation precisely to confer the benefice on the more worthy from among the competitors: for then he acquires a strict right, to be observed in every case. Otherwise, from distributive justice alone the more worthy must be chosen, not absolutely, but among those who can be had.

For offices carry with them several goods, gains, advantages, and utilities which can be taken by officials without detriment to the common good; and since they are goods of the community, in some way they belong to the parts, and therefore they are goods to be distributed equally among citizens. And therefore they have the nature of rewards which can be given only to a few, and are to be given to the more worthy; otherwise there is acceptance of persons. Except:

a) If the more worthy is reserved for a more excellent office soon to be vacant;

b) If the more worthy is occupied elsewhere with greater good of the community;

c) If the vote certainly will not profit the more worthy: for then the less worthy can be chosen in order to avoid the election of one more unworthy.

620. Distribution of other goods. Other goods of the community, which primarily regard the utility of members, are both rewards properly so called for merits, and subsidies for need or necessity, such as monies by which institutions are erected, for example, public schools, arts and sciences are fostered, or various needs of citizens are relieved. In distributing these, a threefold rule must be observed:

1. Goods are primarily and before all things to be distributed according to the demand of the common good: for distributive justice divides common goods among the various parts and members of the community; but the good of the parts as such yields to the common good of the whole. Therefore.

2. Rewards by which citizens, or institutions, are incited to virtue, sobriety, thrift, piety toward the fatherland, are to be distributed proportionately to merits properly so called.

3. Subsidies strictly so called for the relief of the needy are to be paid proportionately to their necessity.

But if distribution is made for another reason, besides the sin which is committed toward the republic, distributive justice also is injured by acceptance of persons.

It should be noted, moreover, that in distributing these goods, besides distributive justice, commutative justice can also be injured; not indeed by superiors if they themselves distribute, but if in their name lower officials, as mere ministers and stewards, do nothing except execute the distribution. For they are held to execute the will of the superiors, who intend to confer goods according to the merits of citizens; and therefore each citizen has a strict right that they not act against this mandate.

621. Distribution of honors. In distributing honors, let the words of St. Thomas be as a rule (a. 3): "If someone is honored on account of other causes which do not make him worthy of honor... it

pertains to acceptance of persons... Now honor is a certain testimony concerning the virtue of him who is honored; and therefore virtue alone is the due cause of honor. Yet it must be known:

1. That someone can be honored not only on account of his own virtue, but also on account of the virtue of another; just as princes and prelates are honored even if they are evil, insofar as they bear the person of God and of the community over which they are placed...; thus also the foolish man is honored, who is placed in the place of God and in the place of the whole community.

2. And by the same reason parents and masters are to be honored, on account of their participation in the divine dignity, who is the Father and Lord of all....

3. But the aged are to be honored on account of the sign of virtue, which is old age, although this sign sometimes fails....

4. But the rich are to be honored on account of this, that they obtain a greater place in communities. But if they are honored solely with regard to riches, it will be the sin of acceptance of persons" (cf. Jas. II, 1-3).

622. Observations. A. What we have said concerning the distribution of offices and goods of the republic is per se valid concerning spiritual goods and ecclesiastical benefices; indeed, in these the sin is greater because it is committed in greater things: thus there is grave sin in election to an episcopal benefice or to others having care of souls, and to simple ones of greater moment. Nevertheless:

1. St. Thomas, a. 2, places a certain restriction: "For it sometimes happens that he who is less holy and less knowing can contribute more to the common good, on account of power or secular industry, or on account of something of this kind. And because distributions of spiritual things are principally ordered to the common utility... therefore sometimes, without acceptance of persons in the distribution of spiritual things, those who are simply less good are preferred to those who are better; just as God also sometimes grants graces gratuitously given to the less good."

2. Indeed, some, progressing further, say that ecclesiastical benefices were instituted solely on account of the common good, and therefore that there is no obligation toward candidates, nor from distributive justice of naming the more worthy, except in the case of competition strictly so called. Yet this is not conformable to the mind of St. Thomas, who says, ad 3: "As regards the conscience of the one choosing, it is necessary to choose the better, either simply or in comparison with the common good. But if someone more suitable can be had for some dignity and another is preferred, this must be on account of some cause. And if this indeed pertains to the business, as regards this he who is chosen will be more suitable. But if what is considered as cause does not pertain to the business, there will manifestly be acceptance of person." These words should be subjected to meditation by all those who must distribute ecclesiastical benefices, since in these distributive justice is often in no way attended to.

3. Consequently, concerning nepotism St. Thomas says, ad 1: "Concerning relatives of the prelate, a distinction must be made. For sometimes they are less worthy, both simply and with respect

to the common good. And thus, if they are preferred to the more worthy, it is the sin of acceptance of persons in the distribution of spiritual things; of which the ecclesiastical prelate is not master so that he can give them at will, but dispenser.... But sometimes the relatives of an ecclesiastical prelate are as worthy as others. And thus he can lawfully prefer his relatives without acceptance of persons, because at least they are more eminent in this, that he can have more confidence in them, so that they may treat the affairs of the Church unanimously with him. Yet this would have to be omitted on account of scandal, if from this some would take an example of giving the goods of the Church to relatives even apart from dignity."

B. Insofar as some knowingly and willingly sin against commutative justice in distributing goods, to that extent they are held to restore to those whose strict right they injured; but he who was unjustly elected is not held to restitution unless: 1. he is incapable, in which case let him restore to the community on account of the various damages which it suffered from his election, and renounce the office, or, if possible, render himself suitable as soon as possible; 2. or unless by unjust means he impeded the election of the more worthy.

C. The distribution of particular goods, for example, of an inheritance, is not distribution properly so called or formal, but only material division; nor does it properly pertain to distributive justice, because a strict right is had to these things, and there is not question of the goods of the community itself.

Question Three: On Justice and Injustice in Distributing Burdens

623. Burdens pertain indirectly to distributive justice, insofar as immunity from burdens is a certain good to be distributed proportionately among citizens. Hence the equal or unequal distribution of burdens is reduced to the equal or unequal partition of goods.

Now burdens are understood as any useful prestations, estimable by a price, imposed by the community itself upon its members; and these can be various: labors and contributions of works, goods to be handed over (wheat, fruits, beasts), monies to be paid, penalties to be undergone for offenses. In these, per se, not only distributive justice can be injured, but also commutative justice; the latter indeed does not regard the proportions by which burdens must be compared: distributive justice does this; but, the proportions having been supposed, it forbids that more be exacted from this or that person, lest there be taken from him what is his without title for exacting it. And similarly it must be said of justice insofar as it is vindicative through penalties: the proportion of penalty with offense being supposed, which distributive justice regards, commutative justice forbids imposing a greater one, lest someone be injured in life, members, or goods without just cause.

Today the principal burdens are taxes and tolls to be paid, and military service to be undergone.

Article I: On Taxes and Tolls to Be Paid

624. Taxes or tolls, in a broad and general sense, are called whatever citizens are bound to pay for relieving the common burdens of the republic; strictly, however, these two are distinguished. Taxes, namely, in the proper sense are monies which citizens must pay by civil law precisely for this end, that satisfaction may be made for the public expenses of the republic; a toll is rather money to be paid on account of the conveyance of merchandise, whether into another city or kingdom (*droits de*

douane et de transit), or to another person (*droits de succession et de mutation*), or into another form or use (*droits d'accise*).

In modern law, however, another distinction is usually in use, namely, into direct and indirect taxes. Direct taxes are those which immediately and primarily affect persons on account of the goods which they possess, immovable or movable, or the arts or businesses which they exercise. But indirect taxes are reckoned to be those which immediately and primarily affect things and mediately persons, such as those which are collected on occasion of succession, conveyance, manufacture, etc.

625. The conditions required for the justice of a tax are numbered as three:

1. That it be imposed by legitimate and competent authority, national, provincial, municipal, as commutative justice prescribes;

2. For a just cause, namely, the utility or necessity of the republic, so that immediately or mediately it yields to the common good, proportionately to the necessity occurring, as legal justice demands; otherwise public authority does not have the right to dispose of the goods of subjects; hence under this heading there are per se excluded taxes imposed for useless expenses, or a fortiori for harmful ones;

3. With due proportion to the faculties of each one having been preserved, as distributive justice dictates: so that the burden does not exceed the faculties and is compensated by the advantage which comes to the people from the tax, and consequently so that those who are richer and perceive more of the benefits of civil administration bear greater burdens. For the State does not have the right to dispose of the goods of subjects except in this way.

1. In Belgium, for the various earlier direct taxes there was substituted a general tax upon income (law of October 29, 1919, arts. 1, 7, and 90).

Hence they sin not only against legal or distributive justice, but also against commutative justice:

a) Those who knowingly impose taxes (legislators, ministers, the king sanctioning them) without probable necessity or utility, because they unjustly deprive citizens;

b) Those who squander public monies without utility, with danger of burdening the peoples in the future;

c) Those who divide burdens among subjects without proportion to their faculties, and exceed these.

626. Thesis I. Taxes de iure and per se oblige in conscience, at least after the quota part has been legitimately determined according to justice.

It is explained. It is said: a) de iure and per se, insofar as the legislator has the power of obliging subjects in conscience, and is judged to intend this unless the contrary is clear from the circumstances. For legislators can also establish a merely penal law and oblige under the penalty alone; hence, if from the circumstances it is evident that such was the mind of the legislator, or that the law is understood by the greater part of the people as merely penal, and the legislator does not contradict, by accident the law does not bind in conscience except to the penalty;

b) At least after the quota part has been legitimately determined: for in present-day law the law does not oblige subjects, unless after legitimate authority has defined the quota to be paid and imposed it upon the citizen; for then the general obligation of paying taxes passes into a strict obligation, which can be sought by civil action. The determination of the quota to be paid is usually made by taxation by officials; but that it may be made more easily, sometimes a declaration to be made by citizens is prescribed by public power; in which case, even if there is an obligation of conscience of declaring, nevertheless, before the quota has definitively been imposed, there is not yet an obligation of paying, especially from commutative justice;

c) According to justice: for insofar as taxes are not unjust, so far they per se oblige.

It is proved: 1. From the Scriptures: a) implicitly, from the example and words of Christ, who commanded Peter to pay the tax (Mt. XVII, 23-26), and, being asked by the Pharisees and Herodians whether it was lawful to give tribute to Caesar, answered: "Render therefore the things that are Caesar's to Caesar, and the things that are God's to God" (Mt. XXII, 21); b) explicitly, from the doctrine of the Apostle Paul, Rom. XIII, 5-7: to rulers "be subject of necessity, not only because of wrath, but also because of conscience. For therefore also you pay tribute: for they are the ministers of God, serving unto this very thing. Render therefore to all their dues: to whom tribute, tribute: to whom toll, toll." Hence taxes and tolls must be paid in conscience, because they are ministers of God.

2. From the common doctrine of theologians of all times.

By reason: Citizens are bound in conscience to furnish those things which are necessary for administering and protecting society. But society generally cannot be administered and preserved without expenses necessary for preserving good order, protecting the fatherland against enemies, and promoting the common good; and these expenses cannot be paid unless taxes are imposed. Therefore citizens are bound to pay them in conscience; but if they could not be held in conscience, the end intended and necessary to the common good would not easily be obtained.

627. Thesis II. Even de facto, in present-day times and in many regions, taxes, at least direct taxes, oblige in conscience. We say: in many regions, because we would not dare to pronounce a firm judgment for England and English-speaking America.

Some have attempted to deny the thesis or call it into doubt, saying:

a) Present-day legislators care nothing about obligation in conscience;

b) The common persuasion of the people is inclined to considering tax laws as merely penal, whence also many of timid conscience defraud taxes;

c) Given an obligation of conscience, timid men would be in a much worse condition than the impious who do not care about such an obligation.

But, says Prummer, "everyone easily understands that these reasons are not convincing." For the response is:

To the first, that a true obligation may be present, it suffices that the legislator truly intend to impose the law and wish to command: for by that very fact an obligation of conscience naturally follows, and he implicitly intends it; otherwise almost no civil law could now oblige in conscience (I, n. 284).

To the second, the persuasion of the people rather regards the prior declaration to be made by citizens for certain taxes, but not the payment itself of taxes already defined, since citizens rarely are able to evade payment in such a case; moreover, in present-day law the estimation and custom of the people obtains no power of authentically interpreting or abrogating laws.

1. Thus Angelus Carletus (d. 1495), against whom Sylvester Prierias, O.P. (d. 1523) vehemently fought. In more recent time Biederlack, Crolly, Genicot-Salsmans, Frassinetti, Bucceroni favor this opinion; Vermeersch inclines to it; St. Alphonsus does not dare to call it probable.

2. Yet this is not universally true, nor in all regions.

To the third: it proves too much, because, if it had force, it could almost always be applied, and there would now be no obligation of human law in conscience.

The aforesaid opinion, therefore, is neither solidly nor sufficiently probable, if the reasons adduced are considered, and a fortiori if the opposing reasons are considered.

It is proved: 1. From the intention of the legislator and the end of the law: the legislator is judged to oblige in conscience when the law immediately contributes to the common good and is very necessary for the public good, such as a law imposing taxes is: for then he is presumed to oblige in the more efficacious manner, insofar as he can.

2. From the penalties and sanctions of the law: the obligation of paying direct taxes already defined is usually urged not only under penalty of a fine, but also by coercive penalties, for example, prison, indeed also by civil action, so also that sometimes it is a privileged debt fortified by legal mortgage: then the fiscal laws themselves grant the State a strict personal right, even before other debts, of pursuing payment from the goods of citizens by coercive force (for example, by compulsory sale), and indeed without judicial sentence, because from the law itself immediately the title is executory in the same degree as a judicial sentence.

Thus also in Belgium: formerly the law of August 22, 1822, now the law succeeding it, of October 29, 1919, arts. 70-73. The same is valid concerning duties imposed on occasion of succession (law of December 27, 1817, art. 3). But if sometimes recourse is given to a tribunal, either it is against the mode of proceeding alone, or for fines to be imposed besides upon defrauders, but not for founding the right of the State and the obligation of citizens, which the judge only recognizes.[1]

[1] Nor does the objection of Fr. Vermeersch have force: sometimes someone has a civil action before a judge, and yet does not have a strict right, for example, to some reparation to be made to him (on account of damage inflicted in goods of soul or body or external goods), before the sentence of a judge has intervened. We concede this concerning those cases in which the sentence itself of the judge is the immediate title of the said right. But the public treasury (the fisc) has the right immediately from the law itself and independently of the intervention of a judge. Thus Kiselstein, in *Revue Eccl. de Liege*, March 1922. The whole article deserves to be read.

3. From the very words of the law. Even the law of taxes often employs imperative words, which ordinarily are accustomed to found the presumption of obligation.

Thus also the new Belgian tax law (arts. 11, 20, 21, 28, 32, 38, 70); moreover, in the discussions preceding the acceptance of the law, the strict natural office by which citizens are bound to pay taxes

was mentioned several times.[2]

[2] *Ann. Parl.*, October 10, 1919, p. 1985.

4. Finally there is added that a merely penal law, in so great a universality of all taxes, would necessarily open the way to innumerable frauds, lies, and perjuries, from which inequality and injustice would prevail with great detriment to the whole of society and of morals.

Hence tax laws, provided they are just and are applied in practice according to the rules of justice, oblige in conscience, from justice and obedience, unless the contrary appears from special circumstances. But the contrary does not appear except probably a) for laws merely prohibiting certain merchandise to be imported (*droits de douane*), unless it concerns merchandise prohibited because dangerous to public security: for grave fines and the multitude of watchful officials seem to indicate that nothing is left to the consciences of subjects. Likewise b) for taxes imposed on occasion of the manufacture or cultivation of certain things (*droits d'accises ou de culture*). Likewise c) for certain laws in postal matters, for example, that monies not be inserted in ordinary letters, or letters be inserted among other things to be conveyed; and similar things which seem merely to be referred to external order and can be assimilated to laws about preserving public order, which are merely penal (*lois de police*).

628. There is a dispute concerning the nature of the obligation, and concerning its proximate foundation, and concerning the virtue by whose force it binds. On this there are three opinions:

The first is of those who hold the laws to be merely penal, which oblige only to the penalty, and then only from obedience and legal justice. This we have already refuted;

The second holds that the obligation arises from commutative justice, so that for those defrauding there is an obligation of restoring. Thus St. Antoninus, the Roman Catechism, Billuart, and many others, so that St. Alphonsus calls the opinion most common and more probable. The principal reason is the implicit contract which intervenes between the prince and the people. The prince promises to procure the common good; citizens promise to pay the taxes necessary for sustenance and for taking care of the common affair.[3]

[3] There is a manifold way of defending this opinion: 1. the right of occupying taxes by force of a pact or implicit contract, because social life is impossible without goods; 2. the contract is one of insurance, and the tax is the premium of insurance: thus Thiers and Mirabeau; 3. the contract is an exchange of offices, and the tax is the price by which utilities are bought, a recompense for an emolument received: thus Hugo Grotius, Bastiat, Ad. Smith; 4. the tax is a real burden in goods established for cooperation: thus Genouillac, Monier, De Broglie, Yves Guyot. But the State is not a society of monies but of persons; otherwise, how in that case could indirect taxes be justified? Cf. Janssen, *Le fondement philosophique du devoir fiscal*, in *Eph. Theol. Lov.*, July 1925; and *De Zedenleer en het belastingswezen*.

The third opinion says that the obligation per se arises from legal justice and obedience. For the obligation of paying taxes is not real, but personal, by which citizens are bound to contribute to the common good of the republic. This, however, they explain in two ways: some say that there is an obligation from legal justice of declaring goods to be taxed,[4] but after taxation there is also present an obligation of commutative justice;[5] others, on the contrary, even after taxation, acknowledge only an obligation of legal justice,[6] as before, or also hold the obligation of declaring, provided the law does not openly exact it in conscience or under oath, probably as merely penal,[7] unless it concerns goods which in some case would be necessary for the very sustenance or conservation of civil society.

[4] Thus Bouquillon, Marres, Lehmkuhl, Noldin, Keuller.

[5] Waffelaert, Lehmkuhl, Th. Mechliniensis, Kiselstein; Aertnijs-Damen.

[6] Vermeersch, Noldin, Cornelisse, Keuller, Ballerini-Palmieri, Marc.

[7] Waffelaert, Th. Mechliniensis, Vermeersch, Kiselstein.

In practice this depends on the law. In Belgium it seems more conformable to the law to assert an obligation from commutative justice for taxes already legally defined, to which the State also has a civil action; but for the declaration, it does not seem improbable that the obligation is merely penal, considering both the grave penalties and the fact that the Belgian minister himself who composed the law and declared that citizens are held in conscience to pay taxes sincerely, nevertheless added that his mind was not to urge so strictly the necessity of declaration.[8]

[8] *Ann. Parl.*, October 9, 10, and 13, 1919; pp. 1960, 1985, and 2020.

629. The modes of imposing or taxing and exacting taxes are various:

1. Either taxation is made from presumption, with the right of protest and complaint; in which case declaration is not obligatory, and consequently it is lawful to withdraw goods. Thus immovable goods can be taxed according to value or presumption, with the right of complaining, as happens in Italy; but for revenues and successions of movable things, taxation can be made according to presumption or declaration, yet in Italy successions of movables are not subject to tax except for goods openly possessed.

2. Or declaration is principal, and taxation with the right of complaint is secondary. In this case the obligation of declaring can probably be judged to have been prescribed by a merely penal law, as in France and in Belgium; and then a false declaration does not constitute injustice, but is a lie, unless it is made with a real restriction which is sufficiently indicated by circumstances, as if the tax is very great and partly unjust, or unjust vexation is exercised, or it is universally customary for it to be defrauded in part by subjects.

3. Or a declaration is to be made in conscience: "on honor," as in Germany, or "under oath," as in the Netherlands for successions. In this case the law of declaring obliges in conscience, at least from legal justice; and the transgression of the law is a grave sin in notable matter. Yet if the tax is certainly and truly unjust,[9] at least in part, or by general custom is usually defrauded partially, a restrictive declaration which conceals this part perhaps even then could be held as not mendacious (unless, however, one uses false bonds), because this is sufficiently indicated by the circumstances, and because civil power cannot justly exact that someone pay proportionately more than is usually done in the same circumstances. Hence probably it could be concealed up to a fourth part, or perhaps up to a third part, according to circumstances.

[9] We say certainly and truly unjust, because many easily imagine it to be unjust, just as they easily affirm that there is a general custom of defrauding.

630. Conclusions. A. According to all, officials exacting taxes are held to restitution when they knowingly and willingly favor those defrauding taxes: for they are held from office, or quasi-contract, to prohibit this; and if they are sworn, they also sin against religion.

But they must restore their salary according to the proportionate part of their negligence (for example, of one day, one week, etc.), and besides the tax, at least direct, not received; but not the fines, because these are not owed before they have been inflicted. But for those tolls which oblige only to the penalty, they are not held to restore unless from the defrauding the State has undergone great detriment, so that its revenues are notably diminished, especially if it is in greatest need of them.

B. Those also injure commutative justice who not only intend to capture benevolence by words or even by small gifts, but corrupt the exactors of taxes by an express or tacit pact, or prohibit them by force or threats from exacting the taxes which are justly owed: for such persons cooperate in the injustice of the exactors, and by unjust means violate the right of the public treasury (the fisc) to receive just taxes.

By reason of cooperation, they must repair the damage caused by the officials, in solidum with them but in the second place, namely, if those fail; by reason of the thing accepted, if they themselves retain a direct tax already imposed which was defrauded, they must restore in the first place, and the officials if they fail; but if both have divided it, each is held for the part which he retains, in solidum and in the first place. Thus Ill. Waffelaert.

C. A fortiori those who attempt by force to snatch away taxes or fines justly received and to compensate themselves secretly, because the goods have already been justly acquired by the State and have been made its own.

D. Those who apply their work to defrauding tolls from habit and as if by art sin gravely at least under a double title, because they expose themselves to graver danger (lies, perjuries, penalties), and because they generally are prepared even for bloody defense against public guardians of tolls.

E. Everywhere citizens are to be exhorted to pay taxes according to the custom received in the region. But one who, before taxation has been made, defrauds the public treasury (the fisc) only in those parts of taxes in which even timid persons are accustomed to do so, is not to be accused of sin on this account. I say: on this account, because it is not lawful to use evil means, for example, lies, false written instruments, nor a fortiori perjuries.

F. Everywhere it can probably be held that a strict right arises for the public treasury (the fisc) only after the royal commissioner has defined the quota and imposed it upon the citizen as to be paid. Thus say also those who defend the stricter opinion in this matter.

G. But what if a citizen has concealed goods or deceived officials by lies, frauds, or what is worse, perjuries? It is disputed. Lehmkuhl, at least as regards direct taxes, teaches that he who does not declare the value of goods which upright men are accustomed to declare sins against commutative justice: for he is an unjust cause why others must pay more. Marres, Waffelaert, and Tanquerey deny this. Nor does the reason adduced have force, for a) he is not a cause but an occasion, because citizens must not positively favor the right of the State to occupy part of goods, but only must not impede the State in the exercise of its right: thus they use their own right and are not obligated from justice to impede the damage of others; b) certainly they are not an efficacious cause. For the physical cause is the official, the moral cause is the necessity of the State; he who omits the declaration, using his own right and not being bound to impede the damages of others, by accident burdens them.

H. Given the variety of opinions, let the confessor, with respect to defrauding taxes, note these general principles:

a) The burden of paying or restoring is not to be imposed unless the obligation is certain, with all things diligently inspected;

b) Where penitents are in good faith, it is often expedient that they be left in it;

c) If penitents ask, they are to be exhorted to pay taxes as upright men are accustomed to pay and as legitimate custom interprets the laws.

631. Observations. 1. In a positive doubt concerning the justice of a tax, it seems that it must be paid, because the presumption stands for the legislator, who possesses the right of commanding; although some have said that many taxes are unjust and therefore that the presumption is against the legislator, at least in part, and consequently that upon him lies the burden of proving the justice of the tax. But this is against the general principles set forth in the treatise on conscience; nor is it verified in present-day times, when taxes are established by deputies of the people. Thus perhaps there has never been a law more conformable to distributive justice than our recent Belgian one, immediately founding the direct tax upon real income. Hence theoretically there can be no doubt about its justice; nor practically, if in taxing individuals it is applied according to the norms of justice.

2. If a tax is certainly unjust in part, it will be lawful and just to defraud this part. Hence some plausibly hold that, in so great a multitude of taxes, there are often some unjust ones, because many useless expenses are made; and consequently taxes can be partially defrauded. Yet this does not always have force, because in these matters the common good is the supreme law; hence if it is morally impossible for it to be done otherwise, or if the common good requires this, the tax will now be just by accident.

3. From distributive justice taxes must be immediately proportioned to the strength of citizens, not to goods or revenues. Hence they must not necessarily be proportional to revenues, nor must they be simply progressive; but it is better if the proportion is tempered by some progression, with attention to the various destinations of proceeds and the other obligations of citizens.

4. Other monies to be paid to the State on account of certain works which it undertakes to furnish in favor of individuals are not to be confused with taxes properly so called, for example, for carrying persons, things, and letters by railway or postal way. Since in this case a contract intervenes between the State and the private persons who request its work, there is no doubt that the charges must be paid from commutative justice. Hence those sin against strict justice who, by deceiving the officials, defraud the State (by using a false ticket, or false money, or by not paying if they must ask for a ticket), and a fortiori those who corrupt them. Namely, the intention of the contracting State is that it does not wish to transfer things or persons on such conditions.

5. The question concerning the obligation of taxes is not of such great weight in practice as it seems at first glance. For after taxes have been definitively imposed upon individual citizens, it now becomes almost impossible not to pay them, unless perhaps by corrupting officials, which

certainly is against commutative justice. But before they are imposed upon individuals, to defraud them is not established as being against commutative justice and therefore does not oblige to restitution.

But in declarations a sin can be committed, especially if the law urges it in conscience; yet even then there can be an exception, as we have said, and the sin, if there is one, is at most against legal justice.

Article II: On the Obligation of Performing Military Service

632. The burden of undergoing military service is a special personal tax. They are bound to undergo it from obedience owed to law and from legal justice, on account of necessity, namely, the defense and conservation of the republic; unless someone is exempt by natural law, for example, on account of illness, or by ecclesiastical law, or by a just privilege of civil law, or is compelled to fight in a manifestly unjust war. Hence they sin against legal justice:

1. Who exempt themselves from the burden of military service by illegitimate means, for example, by mutilation of themselves, lies, corruption of a physician or magistrate;

2. Those designated for military service who desert it, unless they have a just cause for deserting, for example, grave danger to health; hence per se they would be held to return to military service, but often they are excused on account of the great penalties which await them;

3. But if they have freely enrolled themselves in military service by contract, those deserting or exempting themselves also sin against commutative justice.

633. A special question can be posed: whether, by those who in this way liberate themselves from military service, injustice is committed toward others to be substituted in their place? This has force in the case in which not all are called to military service, or de facto are not bound to it.

Response: a) They certainly violate commutative justice and are obligated to restitution who, by unjust means, for example, by corrupting physicians, directly act against a third person, namely, so that one apt may be declared who otherwise would be exempted. For anyone has a strict right not to be deprived of the good of liberty by an unjust action.

b) According to almost the common doctrine, those likewise are held to restitution who corrupt publicly hired physicians or magistrates by gifts, so that they themselves may be exempted without true causes and others consequently enrolled in military service: for thus they cooperate in the injustice of those who are bound by office to act according to the laws. He who is exempted by thus cooperating is held to restitution in the first place, since he himself receives the benefit of the injustice; then, however, magistrates and physicians also are held to it. In other words, those themselves who receive the gain and are holders of the gain, as holders of another's thing, are held to restitution; but if these do not restore, the magistrates and physicians are held because they are an efficacious cause of the damage, and thus they are held in solidum.

c) Probably they also hold as guilty of injustice those who liberate themselves by mutilation, feigned illnesses, or frauds, because, given a law of military service which does not enroll all, they cannot furnish this without necessarily transferring the burden onto others, and therefore they are an efficacious cause of the damage. Yet this is probably denied by others, because the whole obligation

arises from the disposition of the law; hence they are only the cause of damage by accident; nor is it established that exempt youths have a strict right against those designated, that these should go to military service.

d) The same is commonly held for deserters from military service, namely, that they must restore nothing, even if another is substituted in their place, because another does not have a strict right that they not desert military service.

634. Observation. He does not sin against commutative justice who seeks only the benevolence of the physician, for he uses his own right. Likewise, if someone, in doubt concerning fitness or concerning a legitimate cause of exemption, were to corrupt physicians, he could not certainly be obligated to restitution, for the restitution to be made is doubtful, and in doubt officials can choose the exemption of someone. Indeed, he who withdraws himself from military service by emigrating does not seem to sin, because it is not a fraudulent but a legitimate withdrawal.

Question Four: On Public Judgments

S. Th. II-II, q. 63, a. 4.

635. Public judgment formally and primarily is an act of distributive justice, by which the judge grants protection and guardianship to individuals proportionately to the quality and quantity of their rights; but if he grants it beyond proportion, there is acceptance of persons by which judgment is corrupted.

Although, therefore, public judgment by reason of the end pertains to legal justice, because it is exercised with a view to the common good (q. 60, a. 1, ad 1), and by reason of the matter can be an act of commutative justice, because it protects strict and rigorous right in individuals, nevertheless by reason of the form, according to its essence, it is an act of distributive justice. Hence St. Thomas says, q. 63, a. 4, ad 1: "Judgment can be considered in two ways: in one way as regards the thing itself judged, and thus judgment is related commonly to commutative and distributive justice: for by judgment it can be defined how some common thing is to be distributed among many, and how one person is to restore to another what he has received from him. In another way it can be considered as regards the very form of judgment, insofar as, namely, even in commutative justice itself the judge receives from one and gives to another; and this pertains to distributive justice. And according to this, acceptance of persons can have place in any judgment."

Article I: On Judges

S. Th. II-II, q. 67.

636. The office and qualities of a judge. A judge is a public person, constituted by legitimate authority for authentically declaring and defining right. It is not enough that laws be established and promulgated; it is also required that they be sedulously and faithfully observed. But for the observance of laws, judicial power is necessary, which settles disputes arising among private persons concerning their rights, and punishes those perpetrating crimes or offenses. In the former case, the cause is called civil or commercial; in the latter, criminal or correctional.

In a judge three gifts or qualities are required: jurisdiction, competent knowledge, and perfect integrity.

A. Jurisdiction (*rechtsgezag of bevoegdheid*), or the power of passing sentence and imposing it as a superior upon a subject. Jurisdiction is necessary for the validity of the sentence; St. Thomas shows this in this way, a. 1:

"The sentence of a judge is as it were a certain particular law in some particular fact. And therefore, just as a general law must have coercive force, ... so also the sentence of a judge must have coercive force, by which each party is constrained to observe the sentence of the judge; otherwise judgment would not be efficacious. But in human affairs, only he who holds public power licitly has coercive power, and those who hold it are reckoned superiors with respect to those over whom they receive power as over subjects, whether they have ordinary power or power by commission. And therefore it is manifest that no one can judge someone unless he is in some way subject to him, either by commission or by ordinary power."

Jurisdiction, however, is necessary both as regards subjects and as regards the cause: for just as not all subjects, so also not all causes are subject to every judge or tribunal, but the forum must be competent.[1]

[1] He must sedulously study the laws in force in his region and jurisprudence.

B. Competent knowledge is necessary for a judge, that he may pass equitable judgment; otherwise he would expose himself to the danger of inflicting damage upon those who present themselves before the tribunal. Therefore:

1. Thus, for Belgium, one can consult the *Cod. proc. civ.* and the *Cod. instr. crim.*, with the law of June 18, 1869, concerning judicial organization, together with the royal decree of February 22, 1892, and November 14, 1935. Besides ordinary civil, commercial, and criminal tribunals, there are special ones, such as the council of war for soldiers, the council of arbiters (*C. Prov. civ.*, art. 1003 sq.), and the council of prudent men (law of March 23, 1876; July 21, 1879; May 15, 1910; and July 9, 1926).

2. The higher and more difficult the office entrusted to him is, the greater the knowledge in which he must excel, so that for cases ordinarily to be judged by him his knowledge may suffice, and for extraordinary cases he may be able to complete it by consulting books or those more expert.

3. He who accepts the office without sufficient knowledge sins effectively against legal justice, and affectively against commutative justice, which he foresees that he will injure.

4. A judge must use at least common diligence in knowing the particular cause concerning which he must pass judgment, and in hearing the arguments which are brought forward for and against by advocates; otherwise he could easily be deceived about the facts. He is held to this both from legal justice and from commutative justice.

Hence a) a judge who is deprived of competent knowledge cannot be absolved unless a) he resigns the office, or b) learns juridical knowledge and meanwhile abstains from exercising the office, if it can be done, or c) at least takes the counsel of one more learned, if he absolutely cannot abstain;

b) He who culpably inflicted damage upon some party, whether through lack of skill or through known negligence, is held to repair the damage which the injured party suffered, and of which he is truly, efficaciously, and formally an unjust cause;

c) He who inculpably, from inadvertence, caused damage must, if it can be done without grave inconvenience, warn the injured party so that this party may provide for himself by way of "appeal" or in another way.

C. Perfect integrity and incorruptibility ought to be as it were the distinctive mark of a judge, by which, namely, he is so disposed that he yields neither to love nor hatred, neither to entreaties nor threats, neither to benefits nor inconveniences, but follows only the norm of justice and the dictate of conscience.

Hence by every law it is prohibited:

a) That the judge favor one party during the course of the process, for example, by indicating means of defense to an advocate;

b) Likewise, that for considering the matter or passing sentence he receive money or gifts, by which, namely, he would be enticed to pronounce sentence in favor of the giver: for he receives a stipend for faithfully fulfilling his office, and therefore he has no right to obtain anything else. And indeed, if he receives gifts by pact for passing a just sentence, or if he exacts them, he is held to restore them because he cannot receive the price twice for the same thing; but if for an unjust sentence, the principles concerning a base contract come to be applied, and therefore before the sentence is passed he is held to return what he received; but after an iniquitous sentence has been passed, he will be able to retain them, unless he is judicially compelled to restore, but he will be held to repair all damages inflicted upon the other party.[2]

[2] *Cod. poen.*, arts. 246 and 247.

c) Indeed, that he receive gifts from litigants as gifts offered from mere liberality, lest thus his integrity come into suspicion. Yet this is not per se unjust, but is positively prohibited; hence he is not held to restore them unless after a judicial sentence condemning him to this;

d) Finally, neither is it fitting to accept money freely offered to him, that he may expedite one cause before another, or expedite it more diligently: by force of his office he is held to expedite all causes quickly and equally.

In the aforesaid cases, the judge is held to restore to the other injured party for the damages inflicted; but if after the fact no damage was really inflicted unjustly upon anyone, then on this account there will not be present a strict obligation of restoring.

637. The duties of a judge. The judge must proceed according to the laws as regards the order and form of the judgment, and pass sentence according to the knowledge which he has as judge. For he is not the founder of the law, but its interpreter; nor does he act as a private person according to the private knowledge which he has, but as a public person, according to the public knowledge which he possesses as judge.

"To judge," says St. Thomas, q. 67, a. 2, "belongs to the judge according as he holds public power; and therefore in judging he must be informed not according to that which he himself knows as a private

person, but according to that which becomes known to him as a public person. But this becomes known to him in common and in particular: in common indeed through public laws, whether divine or human, against which he must admit no proofs; but in some particular affair through instruments and witnesses and other legitimate documents of this kind, which he must follow in judging rather than that which he himself knows as a private person."

Therefore the judge must: 1. Judge according to what has been alleged and proved in the judgment;

2. He cannot abstain from passing judgment; hence, where explicit laws are lacking, he must judge according to similar laws, or according to natural equity (*C. C.*, art. 4; *C. I. C.*, can. 1625, § 1);

3. He can pronounce only for one case, but not by way of a general disposition after the manner of a rule for similar cases (*C. C.*, art. 5).

Hence a) a judge who by private knowledge knows someone to be guilty, who juridically has not been convicted, must absolve him.

b) On the contrary, one who by certain private knowledge knows someone to be innocent, who nevertheless has juridically been proved guilty, must examine the witnesses more diligently that he may find an occasion of freeing the innocent man, or even leave him to be judged by a superior. But if he cannot do even this, he must judge according to what has been alleged and proved in the judgment, and consequently condemn him, as St. Thomas shows, loc. cit. and q. 64, a. 6, ad 3. Yet to this principle some append a restriction: unless it concerns the penalty of death or of a more prolonged prison; but this restriction is not logically founded.[3]

[3] Cf. art. 118 of the Belgian law of June 18, 1869, and *Cod. instr. crim.*, arts. 352, 363.

Today, however, that dispute is scarcely practical, since among civilized nations, quite generally in the greater criminal causes, it is now not the judges themselves but jurors who pass sentence concerning the fact of the crime, and indeed according to their intimate persuasion and conscience. Once this has been done, nothing more remains for the judges except to declare the penalty, which is to be imposed not so much according to the proofs brought forward, but rather according to the law for the crime; hence, in that case, a judge certain of the innocence of the accused could do nothing except inflict the minimum penalty which the law permits,[4] or perhaps omit a certain legal form so that place can be given for cassation of the sentence and for a new examination of the cause.

[4] In Belgium, moreover, art. 118 of the law of June 18, 1869, and art. 352 of the *Cod. instr. crim.* can be considered, and sometimes also arts. 363 and 364.

c) In the case in which the arguments brought forward on each side leave the matter doubtful, in criminal and penal causes favor is to be given to the accused, who consequently is to be absolved. Namely, no one is to be punished unless the crime is morally certain: for crimes are not presumed but must be proved, and it is better for the public good that a guilty man be absolved undeservedly than that an innocent man be punished unjustly.

But in civil causes, if one party is in legitimate possession of the thing, it is to be left to him, for in doubt the condition of the possessor is better, unless the contrary is much more probable (*C. C.*, art. 1315); but if neither party possesses, the thing must be adjudicated according to the merits of the

cause and consequently to him whom the greater probability favors,[5] first according to the rules of interpretation of law and the rules prescribed in law, then according to the proper opinion which the judge will try to form for himself.

[5] Hence proposition 2 was condemned by Innocent XI: "I probably think that a judge can judge according to an opinion even less probable."

If the reasons from each side are equal, a friendly settlement is to be advised, or even imposed, unless the law prescribes that sentence be passed, as in French and Belgian law: for then the judge is held to form an opinion for himself.

d) If the civil law is manifestly unjust, and indeed by reason of competence alone, as if it is opposed to ecclesiastical law, the judge can seek from ecclesiastical superiors the faculty of judging the cause, which generally is easily conceded to him on account of the great damage to which he is exposed; but if it is unjust by reason of the thing commanded, as if it imposes something contrary to natural or divine law, the judge cannot pass an unjust sentence, but must abstain from judging the matter or resign the office: for the application of a law which commands an unjust thing is intrinsically evil.

Some, however, admit an exception if there is question of a light penalty unjustly imposed: then indeed, they say, the innocent person is deservedly judged to consent to this penalty on account of the public good, lest, namely, the judge be compelled to resign an honorable office. But others say: this is the application of an iniquitous law, and therefore evil, which also easily causes scandal, because the law is thereby strengthened in practice.[6]

[6] The controversy is well set forth in Billuart, diss. 12, a. 2 and 3.

638. Corollaries. 1. A judge who has passed an unjust sentence, whether by condemning an innocent person, or by inflicting a penalty greater than is just, is held to repair the damage inflicted, in the better way in which he can, if he was its efficacious cause;[7] and indeed a) if he did this culpably, he must revoke the sentence while he can, even with proportionately great inconvenience to himself; otherwise he must warn the innocent person to appeal to a higher tribunal, and repair the damages inflicted under this heading. b) If he did it inculpably, from mere inadvertence, he is held to revoke the sentence if it can be done without great inconvenience, or to suggest an appeal; but he is not strictly held to repair at his own expense damage inculpably inflicted (n. 296, A).

[7] Cf. art. 118 of the Belgian law of June 18, 1869, and *Cod. instr. crim.*, arts. 352, 363.

2. A judge who should have imposed a fine and did not impose it, although he has sinned against legal justice, is not held to restitution, because there is not a strict right to a fine before it has been inflicted by the judge.

3. A judicial sentence a) certainly just produces an obligation in conscience: for it is an authentic declaration of the law, which has the force of a particular precept as regards the litigants themselves. On the contrary, b) if it is certainly unjust, it has no force in conscience, because it is founded upon a false presumption of a particular fact; but if place is given for appeal, ordinarily it is expedient to use this privilege rather than openly resist authority or use hidden compensation. c) If it is doubtfully just, appeal can be made to a higher judge, but meanwhile the sentence has force even in conscience, because in doubt the presumption stands for the superior (n. 91, C).

639. Observation concerning jurors. Among many civilized nations, in criminal causes, arbiters of two kinds are now employed: jurors, so called because they promise by oath duly to perform their office, who judge concerning the very fact of the crime; and judges properly so called, who decree the penalty proportionate to the crime.

Now it belongs to the jurors themselves to judge not only concerning the material culpability, but also concerning the formal culpability, of the deed subjected to their examination, with attention to all circumstances of persons, facts, etc., and indeed according to the intimate persuasion which they have acquired from all these things and according as they judge concerning them according to their conscience; nor are they ever held to render an account of their judgment. This also has force if in a criminal cause a civil party is also constituted and a civil action is joined to it: for it remains principally a criminal action and thus is to be considered.

Since jurors are chosen from among all upright citizens, and juridical knowledge is not exacted from them but true probity, hence:

a) They can accept that office, even if they are ignorant of jurisprudence, provided they have a just mind, free from disordered affections and prejudices, and are capable and prepared diligently to attend to all those things which will be set forth in the judicial action: for this suffices so that they can judge concerning the facts and concerning their culpability; but they must not pronounce concerning juridical questions.

b) In a criminal question, they cannot affirm culpability unless it is morally certain; otherwise they would incur the danger of condemning an innocent person. They can acquire this certitude principally indeed from the judicial acts, yet also from private knowledge: for since civil law asks them to judge according to their conscience, they can use every right knowledge acquired in whatever way.

c) But if someone appears innocent from the acts of the judgment, but from private knowledge is certainly known otherwise to be guilty, the jurors ought rather to absolve him, because then no proof is present in the external forum.

Article II: On the Plaintiff, the Accused, and Witnesses

S. Th. II-II, q. 68-70.

640. The duties of the plaintiff and accuser. A plaintiff (*demandeur; eischer, aanlegger*) is one who in a civil cause calls another into judgment. He is held: 1. to seek just things; 2. to proceed according to the tracks of law; 3. to bring forward proofs. But if he seeks unjust things, or drags an innocent person into judgment without reason, he sins against commutative justice and is held to repair the damage thereby inflicted (q. 68, a. 4).

An accuser is one who in a criminal cause brings a crime to the judge and takes upon himself the burden of proving. By present-day law, only judicial denunciation belongs to private persons, by which an offense is brought to the judge or prosecutor, without the one denouncing taking upon himself the burden of proving; but true judicial accusation is now reserved to the royal prosecutor or prosecutor of the republic, or to the investigating judge, upon whom it is incumbent to make inquiry concerning crimes and offenses.[1]

[1] Cf. *Cod. instr. crim.*, § 2, arts. 11 and 275.

They are held to denounce crimes or offenses:

1. From justice, even commutative justice, those who by force of office or special pact have been constituted for this, such as public officials, guardians of fields, vineyards, or forests, etc.; hence, if the office of denouncing has been neglected, they are held to restitution of damage as negative cooperators (n. 316);

2. From legal justice, all citizens, even if civil law does not specifically prescribe this, when a crime turns to public damage and can be proved (q. 68, a. 1); moreover, that crime which positive law commands to be denounced from a just cause;[2]

[2] Cf. ibid., art. 30.

3. From charity, all are held to denounce a crime, whether a) about to be committed, from which grave damage threatens an innocent person and cannot otherwise be averted, or b) already committed, which cannot be kept silent without grave damage to another.

But that denunciation may be made licitly, the crime must be certain, or at least very likely; in which latter case it must be manifested not as certain but only as likely.

641. The duties and permissions of the accused. The accused is called one who is dragged into judgment and against whom action is taken.

A. In a civil cause, the defendant who knows the cause of the plaintiff to be certainly just cannot begin a lawsuit, but is held to satisfy the just petition of the plaintiff; if the matter is doubtful, he can defend his probable right.

Yet 1. the defendant who has been absolved in judgment is not excused from the obligation of paying the debt; because the injured party, even if he does not appeal from the sentence pronounced, is not judged in the forum of conscience to have renounced his right;

2. But if he obtained the sentence by unjust means, he is held besides to compensate the expenses of the lawsuit; but he is not held to this if the sentence was passed in his favor on account of defect of proof.

B. In a criminal cause: 1. the accused, considered in himself, is held to respond with truth to a judge legitimately questioning according to the order of law, unless perhaps it concerns graver penalties (q. 69, a. 1); but 2. by present-day law he is not held to confess a crime committed by himself, but can declare himself innocent;1 because, given this disposition of law, from the circumstances such a declaration signifies that he has not been judicially convicted of this crime; and 3. he always has the right of defending himself against accusers by licit means; hence he can also manifest hidden offenses of witnesses, if this is necessary for weakening the force of their testimony, because he is not held to preserve their reputation with grave inconvenience to himself; yet he cannot calumniously impose upon them a false crime (n. 429), nor a fortiori introduce false witnesses or kill an unjust judge:2 for evil things are not to be done that good things may come about (a. 2).

The accused is not held to concur actively in his own punishment; therefore:

a) Even if justly captured, he can flee, or escape from prison;

b) Indeed probably he can break prison, in order to preserve life or liberty;

c) Likewise if he has even been justly condemned, at least in order to evade death or harsh prison;

d) Therefore he can deceive and terrify guards and officers, but not inflict force upon them or corrupt them so that they fail in their office;

e) Yet an innocent person can, by giving money, induce guards not to obstruct his flight, and repel them or terrify them with arms, because he does not entice them to an act objectively evil; but it is not lawful to wound them gravely or kill them.

To an accused person licitly fleeing, others who are not guards by office can furnish counsel and help; but not by force or breaking of prison, nor if it would greatly harm a third party or the common good.

1. Thus also in the new canon law, at least universal law (can. 1743, § 1 and 1947).

2. Proposition 18 condemned by Alexander VII: "It is permitted to kill a false accuser, false witnesses, and even a judge, from whom an iniquitous sentence is certainly imminent, if in no other way can an innocent person avoid damage."

642. The duties of a witness. Witnesses are those who are legitimately called into judgment to bear testimony concerning the litigated matter; and they can be obliged to appear in judgment, or even to testify.

A. To appear, he is obligated: 1. who has been cited by legitimate authority, because legitimate authority commanding is to be obeyed. The obligation is grave, unless it concerns a matter of lighter moment, or the testimony is not necessary;

2. One not cited, whose testimony is necessary for averting grave damage to the republic or to an innocent third party: for although no one is held per se to offer himself spontaneously for testifying, nevertheless, on account of special circumstances someone is obligated, and indeed if the public good is at stake, even with grave inconvenience to himself; if the private good is at stake, regularly only without grave inconvenience (q. 70, a. 1).

B. To testify, he is obligated who is legitimately questioned by the judge with the order of law preserved; and indeed:

1. He is held under grave obligation to respond according to truth and conscience, unless he is excused by a legitimate cause (a. 1);

2. He can be excused from bearing testimony on account of a founded fear of a public or private evil very notable and proportionate; in which case he can conceal and be silent, indeed say that he does not know when the external circumstances sufficiently indicate that he is not held to speak, because then the manifest sense is: I do not know it for telling in judgment;

3. Yet he can never lie and give false testimony: for this is always a sin, and of itself grave, both against truth, and against religion if an oath has first been given according to custom, and against justice: commutative justice if damage is thereby inflicted upon another, and also legal justice if it is done in public judgment (a. 4).

Generally he is excused from bearing testimony:

a) Who knows the matter from a natural and committed secret; and indeed, if the secret is sacramental, of confession, it can never be violated; if otherwise, unless the common good demands it, or also, but more rarely, the greatest private good (a. 1, ad 2), as will be said where the virtue of truth is treated (n. 855);

b) Who came to knowledge of the matter unjustly, by force or fraud, for example, by unjustly opening another's letters;

c) Who certainly knows that the accused did not sin, although he materially committed the offense;

d) Who prudently fears from his testimony that the greatest damage will befall himself or his own, unless from the testimony denied something much greater would follow;

e) Who knows the fact only from witnesses of little trustworthiness: for then he is judged not to know.

Let it be noted that one who has brought forward false testimony is held to restitution for the damage thereby inflicted, because he positively cooperates in injustice;[3] on the contrary, one who concealed or kept silent the truth which he ought to have confessed, and held himself negatively, is not held, unless, however, from commutative justice he had the office of denouncing, because then he is properly a negative cooperator.

[3] Cf. *Cod. poen.*, art. 215 sq.

Article III: On Advocates

S. Th. II-II, q. 71.

643. The duties of an advocate as regards the cause. An advocate or pleader is one who has undertaken the cause of litigants to be defended in judgment. He furnishes this both by giving suitable counsels and by pleading the cause before the judge, whether orally or in writings, according as the custom of the region bears. Hence he must excel in competent knowledge, in the same way as was said concerning the judge; otherwise he would expose himself to the danger of inflicting damage upon him whose cause he defends.

Now, as regards the cause, he has a threefold duty:

1. He cannot undertake a cause to be defended unless he has competent knowledge for this; otherwise he exposes himself to the danger of harming the cause and the client;

2. He cannot defend a cause unless it is just; otherwise he exposes himself to the danger of harming and inflicting damage at least upon the other party; and therefore he cannot be absolved who is prepared to defend any causes whatever;

3. He cannot defend even a just cause except by just means; otherwise he exposes himself to the danger of inflicting damage both upon the client and upon the other party.

Hence A. in a civil matter, an advocate:

a) Cannot undertake a cause which he certainly knows to be unjust: for if he wins, he unjustly cooperates in the damage which is inflicted upon the opposing party; if he is defeated, he inflicts damage upon his client, who incurs useless expenses (a. 3 and ad 1).

b) Therefore, if in the course of a judicial process he certainly knows that the cause which he had undertaken in good faith to defend is unjust, he must abandon it and warn the client concerning this (ad 2).

c) But if the cause is doubtful from the beginning, the advocate can undertake it, with the client having been warned, since tribunals have been instituted precisely for settling controversies; and elsewhere a cause which at the beginning seemed doubtful can in the course of the process become certainly just.

d) While the cause remains doubtful, the advocate can advise a friendly settlement; but when it appears certainly unjust, he cannot settle at least with damage to the adversary, but nothing now remains except that the cause be abandoned (ibid.).

B. In a criminal cause, an advocate:

a) Can licitly defend the accused, even if it is certain that he is harmful and culpable; indeed, among civilized peoples the custom has prevailed that an advocate be assigned to every accused person. Hence such a cause is just, if not by reason of the matter, at least by reason of the precept of law, by which the accused has a right to an advocate: for the common good demands that an apt defense be procured for anyone cited into judgment. And therefore the advocate can help the accused by the legitimate means which are available to him, but not by unjust or dishonorable means.

b) But he cannot licitly protect the parts of the accuser, if the accused is certainly or very probably innocent: for thus he would unjustly cooperate in the unjust condemnation of an innocent person, or expose himself to this danger.

C. In a cause both civil and criminal, an advocate:

a) Can hide those things by which his cause is impeded, indeed in a criminal matter he can also deny in the same way as the accused (n. 641), whose parts he plays and whom he represents (ad 3).

b) But he cannot licitly use unjust or dishonorable means, such as frauds, false witnesses or documents, indeed neither can he use lies, because fraud and deceit ought to patronize no one (ibid.).

c) Hence he cannot insist upon these if they are produced; but in a civil matter he cannot fail to produce those things which must be produced.

d) And if an authentic document has been lost, he cannot substitute for it a fraudulent copy: for this is a lie, which is also forbidden by law, lest a way be opened to all frauds with great public detriment.

An advocate who has unjustly inflicted damage, whether upon the client or upon the opposing party, is held to repair it.

644. The duties of an advocate toward the client. An advocate, by force of his office, is held to plead diligently and faithfully the cause which he undertakes.

1. Before he undertakes the cause, he must:

a) Diligently examine whether he is capable of patronizing it; otherwise let him take care to refer it to one more expert;

b) Examine the cause itself with that diligence which the gravity of the matter requires, then sincerely warn the client concerning the justice or injustice of the cause, and also concerning the probability of winning or losing, so that the client, thus duly instructed, can avoid useless expenses.

But if the advocate culpably omits these things, he is held to repair the damages which certainly followed from this.

2. After he has undertaken the cause, he must expedite and defend it diligently, with that diligence and fidelity which prudent men are accustomed to employ in a similar business. Hence he sins gravely:

a) Who is notably negligent in considering the cause, reading the documents, approaching the judges, developing the arguments, etc., and on this account exposes the client to the danger of incurring grave damage;

b) Who deliberately handles the cause badly, so that he may favor the other party, or deserts a lawsuit already begun so that he may patronize the opposing party (which is also prohibited by civil law), or reveals secrets to the other party, even if he now holds the cause deserted by him to be certainly unjust (ad 2).

An advocate who from culpable negligence or deliberately has inflicted damage must repair it.

3. After he has defended the cause or given counsel in it, he can exact a just stipend (a. 4). This is to be determined by prudent estimation, "with consideration of the condition of persons, and of affairs, and of labor, and of the custom of the fatherland" (a. 4); hence it can moderately increase with greater skill or labor of the advocate; on the contrary, if the client, even with a price agreed upon, desists from litigating for a just reason, it must now be diminished: for then the price is not owed, but only compensation for the labor already expended. But if the advocate extorts something immoderately through dishonesty, he sins against justice (a. 4).

As regards the mode of defining the rate of the due price, the principles handed down for assessing the stipend of physicians come to be applied here (n. 381), as also those things which we said there concerning the gratuitous assistance of the poor. Namely, in extreme necessity an advocate is held to defend a poor man gratuitously even with grave inconvenience; likewise in grave necessity with light inconvenience; but in common necessity under light obligation only, when another is lacking and it can be done without inconvenience.

Fifth Part: On the Virtues Annexed to Justice

Section A: On Religion According to Itself

Question One: On the Essence of Religion

S. Th. II-II, q. 81, a. 1-6; q. 84, a. 1, ad 1.

645. Religion, according to Lactantius, is said etymologically from re-binding (*re-ligando*), because it repeatedly binds men to God by knowledge and love, to whom they are already bound through dependence; but according to Cicero from re-reading (*relegendo*), because the religious man frequently meditates, treats again, and mentally reads again those things which pertain to God and His worship, because we are accustomed especially to treat again those things which more deserve veneration and fear. We pass over the opinion of St. Augustine, who says that religion is from re-choosing (*reelegendo*) that which we have lost by sinning, because this etymology does not seem possible.[1] But whether you choose the one or the other etymology, always "religion properly imports order, namely, a moral ordination, to God," upon whom we depend or to whom we owe veneration. St. Thomas aptly says, q. 81, a. 1:

[1] The other two are possible and are still proposed today by the learned. Thus Reville explains the word as Lactantius does; Max Muller holds with Cicero.

"Whether religion is said from frequent re-reading, or from the repeated choice of that which was negligently lost, or whether it is said from re-binding, religion properly imports order to God. For He is the one to whom we principally ought to be bound as to an unfailing principle; to whom also our choice ought assiduously to be directed as to the ultimate end; whom also by neglecting through sinning we lose, and by believing and by professing faith we ought to recover."

Hence a) most broadly, it is taken objectively for the complex of all our offices toward God, whether of the intellect, or of the will, or of the executive powers, and consequently of all dogmas, laws, and institutes by which men are obligated to God; and subjectively for the fulfillment of all offices toward God (Jas. I, 26, 27);

b) Most strictly, it is taken for the supreme worship which we owe to God alone (*godsdienst*) and for the virtue which inclines us to this (*godsdienstigheid*);

c) By excellence, it is said of the institute or state of those who, through the evangelical counsels, perfectly dedicate their whole life to divine worship.

646. The virtue of religion is defined: a virtue inclining man to exhibit due worship to God as the first principle of all things.

It is a virtue, because it renders due worship to God; but to render to someone what is owed to him is good and best; therefore religion renders man perfect, and therefore it is a virtue.

It is one virtue, because it has one object: for it exhibits honor to God according to one account, insofar as He is the first principle of the creation and governance of things.

It is a special virtue, because it has a special object; for to God, on account of His singular excellence, insofar as He transcends all things infinitely according to every manner of excess, there is owed a special honor, which is called the supreme worship or worship of latria, distinct from dulia, which is rendered to the saints or to those more worthy on account of their own excellence.[2]

[2] On the virtue of religion, these can usefully be consulted: St. Thomas, q. 81-100 with the commentaries of Cajetan and Billuart; Suarez, *De Virtute Religionis*; Dignant, *De Virtute Religionis*; Tanquerey and Prummer in their manuals; Monsabre, *La Priere*; Janvier, *Conf. de N. D.: La Justice envers Dieu*; Gardeil, *L'education personnelle et surnaturelle de soi-meme par la vertu de religion*, in *Rev. Thomiste*, 1919-20; Dom Lottin, *L'Ame du culte: la vertu de religion*.

647. Religion is not a theological virtue but a moral virtue, because it does not attain God Himself, the ultimate end, but is concerned with the means to the end, namely, with our acts, which are something created: for it does not have God as its immediate object, whether material or formal. But it is a moral virtue, whose:

1. Material object, or that which it intends to exhibit, is divine worship: worship is a certain testimony of submission unto the acknowledgment of the excellence of another; and therefore divine worship consists in acts by which man protests the divine excellence and his own subjection to God, and thus honors God as first principle and supreme lord;

2. Primary material object (others say the formal *quod*), which religion principally, per se, and by reason of itself intends to exhibit by divine worship, is a certain due equality between the worship exhibited and God's right to it, by which equality the worship exhibited is proportioned to the right which God has to it: not an absolute equality, but an imperfect and relative one, by which we render worship to God as much as is possible according to the consideration of human faculty and divine acceptance;[3]

[3] St. Thomas, a. 5, ad 3.

3. Formal object, or the immediate and proximate motive on account of which we exhibit due worship to God, is the special honesty of the said equality: for man wills to render due worship to God and thus preserve equality between himself and God, because this is good and is owed.

God, insofar as by reason of excellence He has a right to man's worship and holds man obligated to worship, is not the object which religion immediately attains, but only mediately the end to whom the debt is rendered. In the same way, the person to whom we render what is owed to him is not the object of justice, but only the end to whom that which is just is rendered.

648. Corollaries. From the aforesaid doctrine it follows:

1. That divine excellence is not the formal object or proximate motive of religion, but only the remote foundation on account of which God has a right to worship and worship is owed to Him.

2. The debt which religion attends to is strict or legal, indeed most strict, because God has the supreme right that worship be exhibited to Him. Yet we are not able to render that debt to equality (a. 5, ad 3), both because we do not render all that we have received, for example, being itself; and because we do not render as much as we owe, since we always receive new benefits; and because we do not pay from our own things but from the goods of God Himself. Hence even by payment the debt increases, since through it a new benefit is conferred upon man. Namely, we confer no utility upon God, but we perfect ourselves, "because by this, that we revere and honor God, our mind is subjected to Him; and in this its perfection consists" (a. 7).

3. Religion is not justice strictly so called, both a) because it does not render to God to equality, as has been said, and b) because it is not toward another perfectly distinct: for insofar as we are creatures and servants of God, to whom as supreme lord of all we are subjected, we are

something of God; hence religion, which acknowledges that subjection, supposes a certain special conjunction of Creator and creature, whereas strict justice rests upon perfect distinction. Hence religion falls short of perfect justice and is a potential part of it.

4. Since religion is a moral virtue, it is in the mean: for although under one respect there cannot be excess in its matter, insofar as the worship rendered to God cannot be excessive in quantity, nevertheless according to other circumstances excess is found, for example, because worship is exhibited to one to whom it ought not be exhibited, or when or how it ought not be exhibited (a. 5, ad 3).

5. Fidelity, observance, and gratitude toward God are not virtues distinct from religion, because by them God is worshiped under the same account, as creator and governor (a. 3, ad 1).

6. Religion differs from piety toward God: for the former is the virtue by which we worship God as creator and lord; the latter is the gift of the Holy Spirit by which we venerate God as father.

7. It differs also from obedience and humility: from obedience, because this of itself is not ordered to testifying to divine excellence, but inclines to observing the precept of any superior, because it has been commanded by him; from humility, which does not directly testify to submission to another, but represses the appetite lest it tend toward lofty things beyond the limits of its condition which it has received from God, because this is fitting to our lowliness, and therefore it submits itself to the divine rule, not indeed to honor the majesty of God (as religion does) but to confess our own nothingness. Yet these virtues have their ultimate foundation, principle, and root in reverence toward the supreme authority of God and thus in religion, to which they are akin.

8. It differs also from the theological virtues, which are not ordered to the formal testification of divine excellence, nor do they formally regard debt. But they are the foundation of infused supernatural religion, as the end is with respect to means: for by them we immediately adhere to God Himself, the ultimate end; but religion orders our acts as due means unto reverence, love, and glory of God (a. 5, ad 1). And similarly one must speak of the gifts of the Holy Spirit, which are connected with the theological virtues. Hence St. Thomas, a. 2, ad 1: "To revere God is an act of the gift of fear. But it belongs to religion to do certain things on account of reverence for God. Hence it does not follow that religion is the same as the gift of fear, but that it is ordered to it as to something more principal: for the gifts are more principal than the moral virtues."

9. It differs especially from charity, which loves the goodness of God in itself as communicated to us. Namely, religion precisely worships the excellence of God which transcends all things and cannot be communicated; hence in the same way as justice rests upon every manner of distinction from another, so also religion rests upon a certain distinction (imperfect) from God. "The object of love is the good; but the object of honor and reverence is something excellent. Now the goodness of God is communicated to the creature, but not the excellence of His goodness. And therefore charity, by which God is loved, is not a virtue distinct from charity by

which neighbor is loved. But religion, by which God is honored, is distinguished from the virtues by which neighbor is honored" (a. 4, ad 3; cf. q. 82, a. 2, ad 1).

10. Religion is more excellent than all the moral virtues, because it approaches more nearly to the ultimate end, God: for it performs those things which are directly and immediately ordered to divine honor.

Question Two: On the Object of Religion or Divine Worship

S. Th. II-II, q. 81, a. 1, ad 1; a. 3, ad 2 and 3; a. 4, ad 1 and 2; a. 7 and 8; q. 83, a. 12.

649. Worship is honor with submission and acknowledgment of dependence exhibited to someone on account of his excellence; namely, it is honor exhibited to someone superior and more excellent: for a superior exhibits honor to an inferior, not worship; for example, God honors the saints, a master honors disciples, but does not worship them. Now honor is a testification or protestation concerning the excellence of another's goodness, a sign of esteem which we exhibit to another on account of his excellence. Therefore divine worship is honor with submission and acknowledgment of dependence exhibited to God on account of His excellence. In other words: it is a certain testification and mark of submission to the acknowledged excellence of the first principle, God; a sign which signifies submission toward God, the supreme Lord (a. 3, ad 2; a. 4 and 6).

650. There is a natural and divine precept of worshiping God. It is proved:

a) From reason: 1. For God, because He is the first exemplary and efficient principle, and creator, is supreme Lord, and indeed Lord as regards our being and as regards all things which pertain to us; but a servant ought to acknowledge and worship his lord; therefore man too ought to acknowledge his dependence upon God and worship Him.

2. Similarly God, the first principle acting freely, is our distinguished benefactor, from whom we have received all things gratuitously from mere goodness; but to a benefactor there is owed the worship of gratitude.

3. Likewise God is the first final principle or ultimate end, upon whom all things specially depend, insofar as they ought through their whole existence to tend toward Him and glorify Him above all things; therefore man ought to acknowledge this dependence and procure that highest honor for Him.

b) From Scripture, Exod. XX, 2...: "I am the Lord thy God... Thou shalt not have strange gods before me... Thou shalt not make to thyself a graven thing... thou shalt not adore them nor worship them... Thou shalt not take the name of the Lord thy God in vain... Remember that thou keep holy the Sabbath day... the seventh day is the Sabbath of the Lord thy God"; in which words are contained the three offices of fidelity, observance or reverence, and service toward God, according to which it is owed that we order our acts with respect to God.

651. Elicited and commanded acts pertain to divine worship. For divine worship is constituted by our acts. Now the acts by which we worship are some elicited by religion, others only commanded. Elicited acts are those which, not through the mediation of another habit but immediately, are produced by religion and according to their own nature directly pertain to the

worship of God, such as prayer, genuflection, adoration, etc. Commanded acts are those which it produces through the mediation of another habit or virtue by which they are immediately elicited and to which by their nature they pertain: thus fasting or almsgiving, which are elicited by temperance and mercy, if they are ordered to divine worship, are commanded by religion. For just as the will moves other powers to the end, so one virtue moves others to its own end: religion often uses acts of other virtues insofar as they are suitable for worshiping God, and thus directs them to its own end (a. 1, ad 1; and a. 8).

652. Worship is internal and external. Elicited acts are some principal and internal, namely, devotion and internal prayer; others secondary, destined to the internal acts, and external, such as vocal prayer, sacrifice, etc.

Now not only is internal worship commanded, as is clear from John IV, 23-24, and was demonstrated, n. 650; but also external worship, which is the sensible expression of internal worship, accomplished by various external acts of the body, must necessarily be exhibited:

1. By reason of itself, because man consists of soul and body, and because each depends upon God; therefore he ought to worship God with both soul and body;

2. By reason of internal worship, both a) because it is its natural effect by which it is manifested, for man naturally manifests internal affections; and b) because it is the means by which it is aroused and fostered: for man needs sensible things in order to be aroused to spiritual things (a. 7; q. 83, a. 12; q. 84, a. 2);

3. By reason of social worship, because not only the individual man, but also natural society as such, since it is from God and has received benefits from Him, ought to revere Him and acknowledge dependence, which surely cannot be done except by external acts. Worship exhibited by society is called public.

653. Worship is absolute or relative. Absolute worship is that which is owed to someone on account of proper and inherent excellence: such worship is owed to God, that is, either to the divinity abstracting from the persons, or to the three persons together, or to one of the three, to the humanity of Christ, and to the Holy Eucharist; relative worship is that which is rendered to someone on account of an extrinsic excellence which is not in him, but which is in another with whom he has a relation of representation or connection: in this way the name and images of God, the cross of Christ, the instruments of the Passion, and relics are worshiped (a. 3, ad 3).

654. Observations. 1. The faithful are to be warned that interior worship is commanded; but the external and public acts of religion, though necessary, nevertheless draw their principal value only from interior worship, and therefore must be performed from the intention of worshiping God. In this sense Christ says: "God is spirit, and they who adore Him must adore in spirit and in truth."

2. Since Christ is the mediator of religion and the supreme Pontiff in the New Law, it is necessary to praise, adore, and glorify God through Christ. The Church says: "Through Him (as meritorious and satisfactory cause), and with Him (as exemplary cause), and in Him (as efficient cause), to Thee, God the Father almighty, in the unity of the Holy Spirit, is all honor and glory."

3. St. Thomas teaches, a. 8, that the virtue of religion, insofar as it commands all acts of the virtues and can order them by command to the honor of God, has a certain generality or general influence, and thus is called holiness. For holiness is the state by which the mind of man, clean from sin and abstracted from inferior things, adheres to God, the Supreme Good and supreme norm of morality, and firmly applies itself and its acts to God, the ultimate end and first principle. Hence the same virtue is called religion insofar as through elicited acts it exhibits to God due service in those things which specially pertain to divine worship; it is called holiness insofar as it refers not only these things, but also, through commanded acts, the works of other virtues to the honor of God, or according as man disposes himself through good works to divine worship. And therefore holiness does not differ from religion according to essence, because they do not differ in reality, but only in reason.

Section B: On the Acts of Religion

655. Matter to be treated. Among the elicited acts of religion: 1. some are principally interior, by which we exhibit our will or mind to God: devotion and prayer; 2. others are principally exterior, by which either a) the body itself is exhibited for honoring God, as happens by adoration and the observance of feasts; or b) something external is offered to God, whether it is given, as in sacrifice and oblations, or promised to be offered, as in a vow; or c) something divine is assumed, which is either a sacrament, as happens by the use of the sacraments, or the divine name, as happens by oath, adjuration, and divine praises.

Chapter I: On the Internal Acts by Which We Exhibit to God the Mind or the Will

Question One: On Devotion

S. Th. II-II, q. 82.

656. Devotion is said from devoting, whence it signifies the act by which someone vows himself to another (*toewijding*). To vow, however, is to promise or hand over spontaneously, and therefore he who spontaneously hands himself over to the service of someone, for example, of a prince, is said to be devoted to him. Thus he who, from an affection of divine worship and honor, hands himself over wholly to God, is rightly said to be devoted to God, that is, addicted to divine service. Therefore in the proper sense devotion is "the will of promptly handing oneself over to those things which pertain to the service of God" (a. 1), or "the act of the will of a man offering himself to God for serving Him" (ad 1).

In a derived sense, devotion also indicates the state of one who is habitually addicted to divine worship (*vroomheid*). But since the act of devotion manifests itself through a prompt and fervent mode of acting, therefore devotion, by extension, indicates not only the act, but the mode of the act, namely, the promptitude of will and fervor by which all tepidity concerning divine worship is excluded (*godvruchtigheid*), and the effect of spiritual sweetness is sometimes produced. This effect is called accidental devotion by moderns (*godsvrucht*).

657. Devotion is an act of religion. It belongs to the same virtue to do something and to have a prompt will of doing it, because the object of each act is the same. But to do those things which

pertain to divine worship is an act of religion. Therefore also to have the will of doing these things, which is to be devout.[1] Indeed, it is the principal and primary act from which all others arise (a. 2).

[1] Christ gave the example of perfect devotion, who, in the very moment of the Incarnation, entering the world, from charity toward the Father, posited the principal act of religion and of perfect obedience (Heb. X, 5 sq.).

658. The cause of devotion on the part of God is grace; on our part it is contemplation or meditation. For every act of the will proceeds from a consideration of the intellect. Now a twofold consideration induces us to serving God: 1. directly, the consideration of divine goodness and of His benefits, because it arouses love, which is the proximate cause of devotion: for from the fact that we love another, we are made prompt to serve him; 2. indirectly, by removing that which impedes devotion, the consideration of our infirmity and defects, which excludes presumption, by which someone is impeded from subjecting himself to God, while he trusts too much in himself. Therefore these considerations are causes disposing us to devotion (a. 3).

2. Hence theological science per se does not harm devotion, as St. Thomas has it, ad 3.

659. Devotion causes per se and principally spiritual joy of the mind; secondarily and by accident, sadness according to God. For devotion arises principally from consideration of divine goodness: from it per se there is born delight concerning that goodness itself, and by accident sadness because we do not yet possess it. But secondarily devotion arises from consideration of one's own defects, which per se causes sadness, and by accident joy on account of the hope of divine help (a. 4).

660. Observation. Devotion toward the saints: 1. if it happens on account of their own proper excellence, is an act of dulia, not of religion; 2. if it is not terminated at them on account of their excellence, but is ordered to God, so that the saints are worshiped solely on account of the relation which they have to God, insofar as in the ministers of God we venerate God, it will be an act of religion; but the Church does not do or approve this, in order to avoid error, namely, lest supreme worship be exhibited to the saints on account of themselves (III, q. 25, a. 3, ad 3); 3. if someone wishes to worship the saints in themselves on account of their excellence, so that he may thus worship God, it will be an act of dulia commanded by religion (q. 82, a. 2, ad 3).

Question Two: On Prayer

Article I: On the Essence and Object of Prayer

S. Th. II-II, q. 83, a. 1, 3-6, 10, 11.

661. Prayer is called by St. John Damascene (*De fide orth.*, l. 3, c. 24): "the ascent of the mind to God." Hence:

a) In the broadest sense, it is every ascent or movement of the intellect and will into God, whether it happens by religion or by other virtues, such as the theological virtues, penance, humility; and thus meditation and contemplation are called mental prayer;

b) In a less broad sense, it is that ascent of the mind which happens by religion and by which we praise God and bless Him, give thanks to Him for gifts conferred, or seek His help;

c) This last alone is prayer in the strict sense.

662. Prayer strictly so called is defined by the same St. John Damascene: a pious petition of fitting things from God. It is said:

1. Petition, that is, an explanation or manifestation of our desire made to another for obtaining something by way of favor. Namely, it is a manifestation:

a) Of desire, and thus it is distinguished from command and from the exigency of right;

b) For obtaining something, so that it is speech not simply narrative, but motive, which induces another to grant something;

c) By way of favor, and thus it is distinguished from counsel and exhortation.

2. Of fitting things, that is, of those things which are honorable and which it is unbecoming neither for men to ask from God nor for God to bestow upon men.

3. From God, so that it may be indicated that prayer properly so called is made to God alone, by whom alone it can be fulfilled.

4. Pious, so that it may be indicated that it is an act of religion: for although petition involves some humiliation, and therefore is most apt for expressing the excellence of another and our subjection, nevertheless it does not necessarily include the account of worship; therefore, that in fact it may worship God and be able to be called strict prayer, it must proceed from a pious intention of worshiping God, or from an act of devotion. Yet this intention suffices if implicit, as it is ordinarily had in the prayers of the faithful.

663. Prayer is not an act of the will but of practical reason. It is proved:

To pray bespeaks some ordering; but to order is an act of reason, not of the will; therefore. For:

a) Through practical reason, man disposes and orders something to be done by another, either by morally compelling an inferior and imposing necessity upon him: through command; or by inducing a superior or equal, and by manifestation of desire disposing him toward some effect: through petition or prayer. Therefore, just as command is an act of practical reason, so also is prayer.

b) Prayer is speech to God, as being a manifestation of desire; but speech is an ordering of concepts and an expression of them made to another, either by external or mental words; therefore it is essentially an act of reason (a. 1). But since it is an act of practical reason, it necessarily presupposes an act of the will.

664. Prayer is properly an act of religion. Through prayer man exhibits reverence and honor to God, insofar as he subjects himself to Him and professes that he needs Him as the author of all goods[1] (a. 3). Indeed, after devotion, it is the more principal act, because it is better to offer intellect to God than body or exterior things (ad 1 and 3).

[1] "Therefore when," says Prummer, *Th. M.* II, n. 332, "someone prays for recovering health, he ought first and more principally to intend divine worship and his subjection under God; secondarily, however, he can desire his own health."

665. Who can pray. Since prayer is an act of reason by which someone entreats a superior, those can pray who have reason and at the same time a superior whom they can entreat; namely: Christ as man

(who often prayed on earth, and in heaven is always living to intercede for us), the angels, the saints, and all wayfarers, even the non-predestined or sinners, as is clear from the condemnation of Wycliffe[2] and Quesnel;[3] but not the three divine persons nor irrational creatures (a. 10 and 11).

[2] Prop. 26.

[3] Props. 50 and 59.

Yet de facto demons or the damned do not pray, inasmuch as they do not will to worship God. But whether the souls in purgatory pray for themselves, and especially for others, is disputed: St. Thomas denies that they pray for us, because they are inferior to us as regards the penalties which they suffer, and therefore are not in a state of praying, but rather of being prayed for.[4] (a. 11, ad 3).

[4] Their state makes it so that they do not pray from their own office; but it does not impede their being able to pray. But, says Prummer, n. 334, it is difficult to understand that those souls can pray for themselves, or how they know the necessities of men on this earth.

666. Whom we can pray to. Prayer is directed to someone in two ways: in one way, as if to be fulfilled through him, that is, that from him we may obtain what we ask; in another way, as if to be obtained through him, that is, that by his prayers and merits our prayers may obtain their effect (a. 4). In the former way, as the author of every good, we pray to God, that is, either to the divinity abstracting from the persons, or to the three persons together, or to one of the three, and also to the Son as incarnate; and therefore the Church prays to them that they have mercy on us. This prayer is an act of religion. In the other way, we pray as to mediators and intercessors before God: the angels, saints (even baptized infants), and especially the Blessed Virgin Mary; and therefore the Church asks that they pray for us.[5] This prayer is an act of dulia; but if someone prays to the saints so that through the ministers also he may honor God, it will be an act of dulia commanded by religion.

[5] Council of Trent, sess. 25.

Christ as man, although He is intercessor for us and primary mediator, in view of whose merits all graces are granted, nevertheless because He is also God, is not accustomed to be prayed to as mediator only, but always as author of goods.

The Church does not pray to the souls in purgatory; but whether they can be prayed to privately is disputed. St. Thomas denies this, because there is no reason for thinking that they know our prayers (ad 3). Hence, for the sake of prudence, it is better to abstain from such devotion to be preached to the faithful.

The just on earth we do not pray to, honoring them as intercessors and mediators: for they are not yet our superiors, because they do not yet possess the eternal life which we seek; nevertheless sometimes we ask that they pray with us (Rom. XV, 30; Jas. V, 16).

667. For whom we can pray. We can pray:

1. For rational creatures alone, for irrational creatures are not for their own sake, but for man;

2. For those alone who can be helped: for ourselves, for the souls in purgatory, and for all wayfarers, not only in general but also in particular,[6] even unbelievers and enemies, which pertains to the love of charity; but not for demons or the damned, nor for angels and saints who lack nothing (a. 7 and 8).

[6] Wycliffe, prop. 19 condemned.

Some, however, think that we can ask for an increase of accidental glory for the saints.

668. What we can ask by praying. Since prayer is a petition of fitting things, hence:

1. We can ask for all goods, not only in general but also in particular;[7] and indeed:

[7] But since it is not fitting for God to give evils to His children, it is not lawful to ask for evil as such, and indeed:

a) The principal object of prayer is spiritual and eternal goods, whether supernatural or natural, which per se and directly regard the moral perfection of man; and these we can ask absolutely, because man cannot use them badly according to themselves, whence they are sought according to the will of God. Yet they must be sought according to the order established by God, and indeed extraordinary gifts are not licitly sought except with subjection to divine providence (a. 5).

b) The secondary object of prayer is temporal goods insofar as through them bodily life is sustained and insofar as they organically serve the acts of the virtues; and these we can ask under the condition (at least implicit) insofar as they are expedient for salvation: for man can use these goods well or badly (a. 6).

a) Never moral evil: for it would be grave irreverence to ask the help of God even for a venially evil thing, because it is directly repugnant to the holiness of God;

b) But physical or temporal evil may licitly be sought insofar as it is good, that is, on account of an honorable end proportionate to it, for example, tribulations for the exercise of virtue, and the illness of a sinner for his amendment.

2. Thus against Socrates, Wycliffe, the Illuminati, and the Quietists.

Article II: On the Species of Prayer

S. Th. II-II, q. 83, a. 9, 12, 13, 17.

669. Prayer is one kind internal, another external and vocal. By reason of the mode in which it happens, prayer is distinguished into merely internal, which happens by the mind alone, and external, which is performed at once by mind and by an external act. This latter happens principally by the voice, and then is called vocal; and it is necessary on account of reasons similar to those for external worship (n. 652). Moreover, for the essence of vocal prayer three conditions are required: one exterior, the pronunciation of words; two interior, namely, intention on the part of the will, attention on the part of the intellect.

670. For vocal prayer, first there is required the pronunciation of words. The pronunciation of words requires two things:

1. That the words be truly pronounced by human speech, that is, be emitted by an articulate voice; hence he would not pray vocally who only read the words with his eyes or conceived them in his mind; nor he who, with mouth unmoved, emitted a sound from the throat; nor he who, without expiration or inspiration of air, moved only tongue or lips. And although vocal prayer by its nature is audible, nevertheless it is not required that in fact someone hear himself or be able to hear himself, because it can be so quiet that it is not perceived, and on the other

hand the one praying can be certain that he is pronouncing by consciousness of his own inner sense.

2. That the words truly signify the desire of the one praying; hence he would not pray vocally who brought forth incoherent words.

671. For vocal prayer there is also required intention, or the purpose of praying. It is not enough to bring forth words even voluntarily, but there is required:

1. On the part of the end or object, a determinate intention: for vocal recitation is an indifferent action which can be done for diverse things, for study, curiosity, play, the worship of God, etc.; therefore that it may be an act of religion, it must be determined to the worship of God through the intention of praying. Yet with this intention and with the essence of prayer there can stand an evil secondary end, as if someone were at the same time to pray for the honor of God and for vain glory.

2. On the part of the subject: a) an actual intention had here and now is not required, but a virtual one suffices, by which someone from the force of a past intention begins or continues prayer;

b) Nor is an explicit intention required, by which someone says: I intend to pray to God; but an implicit one suffices, contained in another act, as if someone goes to church, or takes up the breviary according to custom, or takes up the rosary and recites in the manner of one praying, etc.: in these actions there is included the intention of praying and worshiping God.

672. For vocal prayer, attention is also required. Attention is an act of the mind applying itself to something. Although all attention, as an act of the intellect, is subjectively internal, nevertheless:

A. On the part of the object, a twofold attention is usually distinguished: internal and external.

1. External attention is when the mind is applied to avoiding external actions incompatible with prayer or with internal attention, such as talking, writing, attentively hearing others speaking, dressing oneself quickly, doing something with great application, etc.

2. Internal attention is when the mind is applied to something intrinsic to prayer: a) either to the right pronunciation of words, and then it is called superficial; b) or to perceiving the signification of the words, and then it is literal; c) or to God and divine things, and then it is spiritual.

B. On the part of the act or subject, attention is perfect, distinct, great, or intense, which is also reflexively perceived by consciousness; or imperfect, small, confused, or remiss, which man does not easily or in no way perceives in consciousness, so that he also attends to several things.

C. On the part of its own being, it can be according to essence or according to virtue. Now:

1. At least that attention is required which is necessary for the right pronunciation of words; for this cannot happen without some attention or application of mind so that the words may be

duly pronounced; otherwise it will not be a human act: for the preceding intention does not exercise its force upon the subsequent prayer except through some application of mind.

2. The attention required for this is not only external but also internal, by which the mind is applied not only to removing those things which impede prayer, but also positively to the right pronunciation of words.

3. Yet this attention is not required to be great, intense, and distinct, but confused, remiss, and minimal attention suffices.

4. Indeed, it is not proved that during prayer more is required than virtual attention. Thus the older authors, who say that internal attention according to the essence of the act is necessary at the beginning, but in the course of prayer it suffices that attention remain according to virtue, insofar as it perdures unless it is removed by a contrary intention, or through an incompatible work there occurs so great a wandering of the mind that the force of the first intention wholly perishes, as St. Thomas has it, in IV Sent., d. 15, q. 4, a. 1, qc. 4. The reason is the general principle: when two or more powers concur for the same operation, it suffices that the influx of the moving power virtually remain while the action is exercised.

But if theologians who require only external attention and deny that internal attention is required intend only to exclude intense and conscious attention, or actual attention, in fact they agree with us; just as those who require actual attention continued during prayer, but unconscious and very remiss, do not differ much from us. In practice: as long as the first intention of praying and attending is not revoked, whether directly through a contrary intention, or indirectly through an act incompatible with attention, prayer perdures; indeed, he who has external attention is judged to have that minimal superficial attention which seems to be required for prayer; nor therefore should penitents examine themselves more scrupulously concerning this.

With the essence of prayer the following actions are compatible: walking; looking at fields, a hill, a river; making a bed; building a fire; preparing a pen for writing; gathering herbs, grapes, flowers; dressing not altogether quickly; combing the head; looking up psalms, lessons, etc.; likewise distractions even voluntary, provided they do not wholly remove the attentive pronunciation of words. But if these actions are placed together with prayer from a cause of necessity or utility, they are no sin, for example, if someone thinks about a matter to be retained, or if he wishes to pray while he must dress; if they are exercised idly, without reason, they are a venial sin against religion, because it is irreverence toward God during prayer to divide one's attention between prayer and idle acts, for example, if someone, while he prays, wishes to dress (a. 13, ad 3); finally, if someone places an action gravely evil while he truly prays, for example, a shameful desire, the irreverence will be greater, but it is not proved to be mortal.

673. Among vocal prayers, the Lord's Prayer is the most worthy, because it has Christ Himself as author, and the most perfect, because with the greatest brevity it embraces all things which can rightly be asked, in that order in which they are to be asked.

It is proved: first we ought to desire the end, then the means to the end, finally the removal of those things which impede the attainment of the end. Now the primary end, the glory of God, we ask by

saying: Hallowed be Thy name; the secondary end, beatitude by which we enjoy the glory of God, by saying: Thy kingdom come. The means conducing to the end principally and directly, namely, merits which are acquired by the fulfillment of the commandments, we ask by saying: Thy will be done; temporal goods, which conduce to beatitude instrumentally and indirectly, we ask by saying: Give us this day our daily bread. Finally we ask that sin, which directly impedes the attainment of the end, be turned away from us, by saying: Forgive us our debts; temptation, which impedes indirectly by leading to sin: And lead us not into temptation; finally temporal evils, which impede altogether indirectly, by impeding the sufficiency of life, and to this pertains: Deliver us from evil (a. 9).

But if we have asked these things, nothing remains which ought further to be asked.

674. Private and public, solitary and common prayer. On the part of the one praying, prayer is divided into private or singular, which is made by private persons in their own name, and public or social and common, which is made by the whole community or by the ministers of the Church in the name of the whole community; thus the canonical hours. Moreover, prayer, whether private or public prayer of the ministers of the Church, can be made solitarily, by one person only, or in common, by several gathered together at the same time; in which case it is better and more efficacious, according to Christ, Mt. XVIII, 20: For where two or three are gathered together in My name, there am I in the midst of them (a. 12).

675. Observation. Several parts of prayer can be distinguished, namely: obsecrations, prayers, postulations, thanksgivings. St. Thomas shows this in this way, a. 17:

"For prayer three things are required: of which the first is that the one praying approach God, whom he prays to; this is signified by the name of prayer, because prayer is the ascent of the intellect into God. The second thing required is petition, which is signified by the name of postulation: whether the petition is proposed determinately, which some properly name postulation; or indeterminately, as when someone asks to be helped by God, which they name supplication; or whether only the fact is narrated, according to that of John XI, 3: Behold, he whom Thou lovest is sick, which they call insinuation. The third thing required is the reason for obtaining what is sought; and this is either on the part of God, or on the part of the one asking: a) the reason for obtaining on the part of God is His holiness, on account of which we ask to be heard... and to this pertains obsecration, which is a sacred attestation, as when we say: By Thy Nativity, deliver us, O Lord. b) But the reason for obtaining on the part of the one asking is thanksgiving, by which, giving thanks for benefits received, we merit to receive greater ones...

"And therefore... in the Mass, obsecrations are those things which precede the consecration, in which certain sacred things are commemorated; prayers are in the consecration itself, in which the mind ought especially to be raised to God; postulations are in the petitions which follow; and thanksgivings are at the end."

1. Insofar as prayer is taken more strictly and is distinguished from the remaining parts, which all together constitute prayer taken commonly (ad 2).

Article III: On the Necessity and Efficacy of Prayer

S. Th., q. 83, a. 2, 7, 8, 14, 15, 16.

676. Principle I. Prayer is necessary for all adults for salvation by necessity of means. - It is theologically certain, against the Deists and Fatalists who deny Providence.

Prayer is not necessary from the nature of the thing, but from the positive institution of God, according to the ordinary law of saving men: exceptionally, indeed, God sometimes saves those who do not pray. The reason is that God is not accustomed to grant actual graces necessary for salvation, and especially the gift of perseverance, except to those who pray. The Scriptures often inculcate this necessity, holding prayer as a condition without which necessary grace and salvation are not granted (Mt. VII, 7; XXVI, 41; Lk. XI, 9; John XVI, 24; Jas. IV, 2-3); likewise St. Augustine, St. Thomas, in IV Sent., d. 15, q. 4, a. 1, and theologians commonly; the Council of Trent hints at it, sess. 6, c. 11.

677. Principle II. Prayer is necessary by necessity of precept. - That is, there is a precept of praying, both from divine law, as is plain from Scripture: Eccli. XVIII, 22; Lk. XVIII, 1; Col. IV, 2; Eph. VI, 17-18; I Thess. V, 17; and from natural law, because, given the ordering of divine providence of which we spoke in the preceding number, prayer is a necessary means to salvation. - Moreover, it is a precept of religion: for the intrinsic and proper end of prayer is to profess our need and subjection to God, and therefore God ordained prayer as a means to salvation, so that men would be compelled in their necessities to have recourse to the worship of God.

That precept obliges under grave obligation several times in life; some determine this by saying: at least once in a year; others, in individual months, or even weeks; finally, others more probably: at least several times in a year.

Per accidens, by reason of a special circumstance or of another precept, we are also obliged to pray: 1. when a temptation arises which is not hoped to be overcome otherwise; 2. when one must rise from the state of mortal sin, for example, in order to receive a sacrament or at the moment of death; 3. if charity toward neighbor requires it, for example, if a grave necessity urges, especially a public one; 4. when someone wishes to pray vocally, or is bound to this by an ecclesiastical precept, for example, in the canonical hours; otherwise he would be a hypocrite. In these cases, if prayer is omitted, it is not a sin against the precept of praying, but against another precept or virtue, for the fulfilling of which, or for the exercise of which, prayer was necessary.

678. Observations. - 1. Prayer ought to be assiduous or continual, not considered according to itself, because sometimes one must be occupied with other works; but a) according to the power of the cause from which it ought to proceed, namely, the desire of charity, which ought to be continuous in us according to its power, insofar as we ought to do all works from the power of this desire, and the desire of eternal life, which is the principle of prayer, should remain in all good works (a. 14); b) also in this sense, that someone should not omit praying at the appointed time. And therefore he always, that is, often and frequently, prays, so that prayer perseveres morally through his whole life (ad 4).

2. Prayer commanded by precept ought to be at least internal; public vocal prayer is also prescribed, so that what is done for all may be known to all, but private vocal prayer is not prescribed (a. 13).

3. Per se he does not sin who omits morning prayers, evening prayers, or prayers before principal meals; in practice, however, this omission, made without a sufficient reason, often includes some venial fault of negligence, sensuality, sloth, or fear or human respect. But if someone

often or always neglects them, it will frequently be a sign that he omits all prayer, or lives in an evil state.

4. We ought to pray for others, that is, for all wayfarers and the souls of purgatory, in the same way as we ought to love them, namely, in general, so that we exclude no one from prayer; in particular, we are not bound to pray for others unless there is grave necessity, or a special conjunction with them (a. 8).

5. It is not proved that there is a strict precept expressly of invoking the saints: for the Council of Trent says only that "it is good and useful suppliantly to invoke them" (sess. 25); nevertheless, in practice, one who never prayed to them, and especially to the B. M. V., would deprive himself of an excellent means and would not seem easily to be excused from every venial fault of sloth; indeed, one who studiously excluded the B. V. from prayer would rightly be judged to act from grave contempt or heretical error.

679. Effect of prayer. - Prayer, besides the spiritual consolation or refreshment which it procures for one praying devoutly and attentively, and which wandering of mind impedes, has a threefold force or efficacy: meritorious, satisfactory for sins, and impetratory. This last is proper to prayer, and is the force inherent in it of moving God to grant the benefits which are asked, not on account of merits, but solely on account of the mercy of God, because it is consonant with the divine goodness to give to those who ask. Nevertheless, that force from the dignity of prayer alone does not necessarily and infallibly produce the effect; but infallibility comes from the divine promise (Mt. VII, 7, 8; Lk. XI, 9, 13; John XIV, 13-14; XVI, 24; I John V, 14; Ps. XLIX, 15).

But that prayer may efficaciously obtain, four conditions are required:

1. that it be pious, that is, that it proceed from faith, lean upon hope, and be made with humility accompanying it, from the intention of worshiping God (Jas. I, 6; Mt. XXI, 22; Mk. XI, 24; Rom. X, 13; Heb. IV, 16);

2. that things necessary for salvation be asked (Mt. VII, 11; Lk. XI, 13), which however is probably to be understood of all things useful for salvation (I John V, 14);

3. that one ask for oneself, for if he asks for another, the latter can be badly disposed and place an impediment to the benefits asked from God (John XVI, 23; I John V, 16; Is. I, 15); besides, from its nature and from the divine promises, prayer tends to obtaining for those who ask. But whether prayer made for another who is well disposed is infallible is disputed;

4. that it be persevering, so that meanwhile through prayer we may be better disposed to receive those things which we ask, or especially that our dispositions may be tested; according to Lk. XI, 5; XVIII, 1, and Mt. XV, 22 (a. 15 and ad 2; a. 7, ad 2 and 3).

Some add: that it be made in the state of grace, but undeservedly. For such a condition is opposed to the universality of the promises which God has made to prayer, and would render the prayers of sinners inefficacious.[1]

[1] St. Thomas openly teaches that even the prayers of sinners are infallibly heard, given the required conditions: "In a sinner two things are to be considered, namely, the nature which God loves, and the fault which He hates. Therefore if a sinner by praying asks for something insofar as he is a sinner, that is, according to the desire of sin, in this he is not heard by God from mercy, but sometimes he is heard unto vengeance, while God permits the sinner to fall still more deeply into sins... But God hears the prayer of a sinner proceeding from a good desire of nature (under the influence of actual grace, as is said in a. 15, ad 1), not as from justice, because the sinner does not merit this, but from pure mercy, yet with the four conditions mentioned above observed, namely, that he ask for himself, things necessary for salvation, piously and perseveringly" (a. 16).

For prayer to be meritorious or satisfactory, there are required the conditions necessary for every meritorious or satisfactory work, among which is the state of grace; as respectively is usually explained in the treatise on Human Acts, and in the treatise on Penance.

From these things it is plain that prayer can be impetratory without being meritorious or satisfactory, as in a sinner; or contrariwise, as in a just man asking for what would not profit salvation (a. 15, ad 2, and a. 16).

680. Objection: God cannot acquiesce in our prayers unless by changing His counsels or by performing miracles. But the divine counsels are immutable; indeed, all things happen from necessity.

Resp. God, by hearing prayers, in no way changes His counsel. From eternity He disposes that certain effects should be obtained through our prayers, and should happen dependently upon them. Namely, He foresaw and ordained prayers as means by which we would obtain His graces, or as a condition that second causes should produce effects consonant with our prayers at the due times. Therefore by praying we do not ask that the dispositions of the divine counsel be changed, but that the counsel be fulfilled, and that what God from eternity disposed to be fulfilled through prayers may happen. A fortiori, we do not ask for a miracle; but that God should will to lavish His graces according to the ordinary rules of His providence, and procure for us temporal goods, such as health, but dependently upon their natural causes.

Fittingly St. Thomas, a. 2: "For the evidence of this, therefore, it must be considered that by divine providence not only is it disposed what effects should happen, but also from what causes and in what order they should proceed. Now among other causes human acts also are causes of certain things. Hence it is necessary that men do certain things, not that by their acts they may change the divine disposition, but that by their acts they may fulfill certain effects according to the order disposed by God; and the same is also true in natural causes. And it is similar also concerning prayer: for we do not pray for this, that we may change the divine disposition, but that we may obtain that which God disposed to be fulfilled through prayers; namely, that men by asking may merit to receive what almighty God disposed before the ages to give them."

Chapter II: On the Acts by Which We Exhibit the Body to God

Question One: On Adoration

S. Th. II-II, q. 84.

681. Adoration etymologically is the action of one moving his hand to his mouth, or kissing the hand, as a sign of reverence and worship (Job XXXI, 27; III Reg. XIX, 18), and therefore in a broad and less proper sense it is taken for the external act by which worship and honor is shown to any

superior, angel, saint, or prince, in protestation of our submission (Jos. V, 15; Apoc. XIX, 10; XXII, 8; Gen. XVIII; IV Reg. II, 15; Gen. XLIII, 26; XXIII; III Reg. I, 16). - In the theological sense adoration {aanbidding} is the reverence to be rendered to God alone, and it is taken generally for every act of latria; and specially for the formal testification of the divine excellence and of our submission. This is an act of religion; the former is an act of dulia, namely, of reverence owed to an excellent creature; nevertheless it would be an act of latria if in an angel or saint someone adored God who appears or speaks in his person (a. 1).

682. Internal and external adoration. - Religious adoration is twofold: internal, which is made by the mental signification of submission, and is the same as devotion; this also is found in the angels; external, which is the external testification of submission to God through an act or movement of the body. This is adoration strictly so called (Esther XIII, 14; Lk. IV, 8). Moreover, it is made in various ways: by prostration, genuflection, inclination, joining or extending of the hands, lifting of the eyes, etc.

Internal adoration can exist without external, but not conversely, because God is not worshiped without the intention of worshiping; moreover, he does not intend to worship God who, internally unwilling to submit himself to God, externally feigns that he submits himself. Therefore external adoration 1. is a sign of the internal; 2. is its effect, because a fervent affection toward God spontaneously and naturally breaks forth into acts of external reverence; 3. is at the same time its cause, for external reverence provokes the internal and adds fervor to it (a. 2).

683. Internal adoration does not require a determinate place, but external adoration does: 1. on account of the consecration of the place, from which those praying conceive a special devotion so that they may be heard more; 2. on account of the sacred mysteries and other signs of sanctity which are contained there; 3. on account of the coming together of many adorers, from which we are incited to pray better, and prayer becomes more capable of being heard (a. 3).

*684. The observance of feasts** contains several acts of religion; yet because it was instituted for the social exercise of religion, it pertains essentially to the worship of external adoration; moreover, the very cessation from bodily works is already a certain (negative) handing over of the body to divine things. Hence the consideration of the observance of feasts is rightly joined to the doctrine on adoration.

Question Two: On the Observance of Feasts

S. Th. II-II, q. 122, a. 4.

685. From what law and to what does the precept of the observance of feasts oblige. - From the law of nature there is a precept of assigning some time to the external worship of God: for there is in man a natural inclination to this, that some time be deputed to every necessary thing, such as bodily refreshment, sleep, and other things of this sort; hence also to divine worship, by which the mind is spiritually refreshed. But positive law establishes the determination of this time and the mode of externally worshiping God: in the Old Testament, indeed, the divine Mosaic law established the observance of the sabbath, but this determination, as being purely ceremonial, ceased when the New Law came, along with the other ceremonies of the Old Law, so that it was not changed into another but was totally abrogated; but in the New Testament, from the time of the Apostles, a custom was introduced and gradually made obligatory, establishing the observance of the first day of the week. To

this day the Church has still joined several other feasts, which today are those of the Nativity, Circumcision, Epiphany, Ascension, and most holy Body of Christ, the Immaculate Conception and Assumption of Mary, the gracious Mother of God, St. Joseph her Spouse, the blessed Apostles Peter and Paul, and finally All Saints (can. 1247).

But in certain regions, as in France and Belgium, by territorial privilege they have been reduced to four: the Nativity and Ascension of the Lord, the Assumption of the B. M. V., and the Feast of All Saints. Hence if a Frenchman or Belgian is staying outside his fatherland in a place where the other feasts have not been abolished, he is bound to observe them.

Moreover, the precept of observing feasts includes a twofold part: the one negative, of abstaining from one midnight to the next from servile and forensic works (can. 1248), which are especially apt to draw the faithful away from divine worship; - the other positive, of assisting at the sacrifice of the Mass, concerning which it will be said where sacrifice is treated.

686. Servile works to be avoided are those which a) are performed principally by the powers of the body, and b) tend immediately to bodily use, and therefore c) formerly were usually exercised by servants, now by domestics and workers. They are opposed to liberal works, which principally tend to the powers of the soul, or at least to cultivating the soul, and which are usually exercised by free men or masters, or by all indiscriminately. From this definition it is plain that there are no common works; nor does a work become servile because it is exercised for the sake of profit, or for a long time and with great bodily weariness, or vice versa; but the matter depends upon the nature of the work and its intrinsic end.

According to the aforesaid definition, liberal works are: works which regard the exercise of letters or sciences: studying, reading, teaching, disputing, preaching, writing or transcribing, by hand or machine, even for profit; - works of the liberal arts, such as singing, playing musical instruments, painting artistically, sculpting more subtle works or completing greater ones, delineating figures, exercising the photographic art unless it is done with great apparatus; - making a journey and all things which are necessary for this: arranging and guiding horses, preparing a vehicle, carrying baggage, the labor of coachmen, sailors, and attendants of railway carriages; - engaging in bodily games: military, nautical, theatrical, dancing; - hunting, fowling, and fishing, unless they are done with great apparatus (for example, at sea) or labor; - banquets, feasts, drinking-parties, conversations, etc.

On the contrary, servile works are: rural works, such as plowing, digging, sowing, reaping, gathering harvests, cultivating vineyards, cutting trees, measuring fields, plucking or peeling fruits; - works of the mechanical arts: masonry, smithing, carpentry, tailoring, shoemaking, roofing, weaving, typography even in composing type, which is not immediately ordered to the expression of concepts but to the printing of letters or forms; - drawing musical lines, multiplying transcriptions, for example, polycopy; - labors in factories, mines, foundries; exercising the works of a butcher and skinning beasts, baking bread, making distillations of liquors with great apparatus; - painting not artistically, or preparing colors, a board, or a wall for artistic painting with notable labor, doing preparatory works of greater labor or works pertaining to sculpture; - women's works, such as spinning, sewing, making netted or checked work, weaving by hand, making lacework, - indeed, embroidering images with a needle or reproducing them on cloth, not only by means of a machine but also by hand, unless it is done with singular art; in which case one must still beware lest women

think any ornaments whatever are lawful; - stringing gems on thread, making rosaries, scapulars, cords, artificial flowers, images of wax, silk, paper, etc.; - and more probably: driving loaded beasts of burden, or with their help loaded wagons and ships, and a fortiori, placing burdens on beasts, wagons, or a ship; likewise grinding, etc.; but in these things the custom of places is to be considered.[1]

[1] Custom is not to be understood of great workshops in which there is no less labor than elsewhere.

687. Forensic works prohibited are a) public market and b) forensic acts or judicial commotion; for both are signified by the name forum: the place where trials are held, and the place where markets are held (can. 1248).

1. Under the name of market there are prohibited a) annual fairs which are celebrated once or twice in a year; it is excepted if by custom they are tolerated somewhere, but to introduce such a custom would be a sin; b) quasi-weekly fairs which are held once or twice in a week (the practice exists of transferring them to another day); c) negotiations held on the Exchange; d) public rentals and sales of houses, fields, trees, furniture, etc.; but private ones are not prohibited, even if such contracts are made before a notary; e) per se sales and purchases in public shops are also prohibited; but in certain regions, as in Belgium, there already seems to be a legitimate custom of selling and buying in this way indiscriminately whatever things; likewise it is licit to sell things of lesser importance even in public streets, such as newspapers, flowers, cards, and some edible things.

2. Under the name of forensic acts or judicial commotion there are prohibited actions which intrinsically regard the cognizance and decision of both secular and ecclesiastical judicial matters, such as summoning and hearing the parties, interrogating witnesses, receiving a judicial oath, taking proofs, rendering or executing sentence.[2] But extrajudicial acts are not prohibited, such as privately consulting advocates or informing judges, or examining a case, or questioning a client, or transcribing the acts of a suit.

[2] It should be noted that ecclesiastical trials are also prohibited on the last three days of Holy Week (can. 1639).

688. The precept of abstaining from prohibited works obliges under grave obligation all the faithful who have the use of reason from the age of seven onward;[3] nevertheless it admits lightness of matter. Authors generally judge:

[3] Hence proposition 52 was condemned by Innocent XI: "The precept of keeping feasts does not oblige under mortal sin, scandal set aside, if contempt is absent."

a) with regard to servile works, it is certainly mortal to labor beyond two hours, or two and a half hours for a very laborious work, and up to about three hours for a lighter work;

b) if the matter is so light that it is in no way contrary to the end of the law, and is reckoned as almost nothing, it is not a sin, for example, to sew one or another stitch;

c) with regard to forensic works, the gravity of matter is determined more from the quality and importance of the work (and from scandal) than from its quantity itself; for example, a sale of a house with great solemnity, or a session of a tribunal, would be mortal, even if it is done in a brief time;

d) prohibited works, performed without an excusing cause within the same day, coalesce, provided they are exercised by the same person; hence one does not sin gravely who orders six servants to labor for an hour, unless however there is scandal.

689. The causes excusing from the obligation are:

1. Legitimate custom (can. 1248), at least probable, as was said concerning trade in shops for Belgium, and in certain places milling.

2. Legitimate dispensation by the Supreme Pontiff, and also by the Bishop or by the pastor or superior of an exempt clerical religion, but in a particular case, according to the norm of can. 1245, namely, for a just cause, with the individual faithful or individual families subject to him, even outside the territory, and in his own territory also with travelers.

Pastors, unless they have received special delegation, cannot, for example from the pulpit, dispense the whole parish for rural works in time of harvest; yet in a case in which necessity is evident, they can declare the works to be licit, but then there is no need of dispensation.

3. Necessity of worship, or piety toward God, which permits:

a) works which directly contain the external worship of God, such as the acts of the priest and of those serving him: carrying the cross, images, relics in processions; ringing bells, blowing the organs, swinging the thurible;

b) works which regard the worship of God altogether proximately, such as adorning altars, arranging sacred vestments;

c) indeed works which regard it less proximately, such as adorning or cleaning the church, erecting altars in public streets, baking hosts, erecting a funeral structure, if they could not conveniently be done at another time, or if a custom exists somewhere; otherwise they do not exceed venial sin.

But those things are not permitted which regard worship only remotely, such as restoring a church, whitewashing walls, sweeping the church, making candles, making or repairing vestments, chalices, linens, washing linens, cutting or carrying stones or wood for constructing a church or altar.

4. Public necessity, from which are permitted works of war, repair of public works which allow no delay, labor to be expended for the celebration of public festivities which are a moral necessity of social life, selling and distributing things or merchandise morally necessary to the community, capturing and interrogating a thief who otherwise would flee, printing daily newspapers where there is a custom, etc.

5. One's own private necessity, from which it is licit:

a) proximately to prepare the necessary foods of the day; and from custom, even superfluous and unusual foods, and to do all things in order to the table, such as plucking some fruits, washing dishes, slaughtering smaller animals;

b) to do what is necessary for the neatness of the house or of a person (such as shaving the beard, cleaning clothes, dyeing shoes), namely, things which usually cannot conveniently be done at another

time or on all days;

c) to labor if otherwise someone could not feed himself and his own, or would undergo a sufficiently notable detriment, or would lose the occasion of a great and extraordinary profit.

Hence workers do not sin who mend clothes or wash and repair tools, cultivate a little garden, if another time is lacking and they cannot have it done by others without subtracting from due sustenance; likewise those whose work cannot be interrupted without notable damage, such as workers with molten iron or glass, burners of bricks or lime; likewise farmers who, to avert damage from rain, turn, bind, or carry hay or crops, gather fruits, water vegetables; likewise children, workers, servants who are compelled, provided it is not done in contempt of the precept or hatred of religion. Nevertheless servants and workers who were often compelled would be bound, as far as they can, seriously to seek another master for themselves.

The need to avoid idleness does not excuse, nor the weight of vehement sadness, indeed not even the danger of sin, unless it cannot otherwise be avoided, which scarcely happens. But in these circumstances a reason will more easily be present for the pastor to dispense and grant permission to work for some hours.

6. Another's necessity, or charity toward neighbor, permits, even for profit:

a) works which per se and proximately are works of mercy, such as serving the sick, burying the dead;

b) other works which per accidens and remotely are works of charity, if grave necessity is present, such that the neighbor could labor for himself, or if a determinate church or pious place were very needy;

c) but it is not licit to labor for the poor or poor churches in general, nor for them in particular, if they are in only common necessity.

Hence bakers, butchers, smiths, tailors licitly labor for neighbor because of some urgent necessity, for example, of a funeral, wedding, journey,[4] etc.; - likewise from custom, barbers, hairdressers, and those who dye the shoes of passers-by, even when offering their work to all; - likewise with regard to judicial matters: it suffices that necessity, charity, or the public good demand them (can. 1639). Thus the reason of assisting the poor or oppressed, the necessity of finishing a case or avoiding the expenses and journeys of litigants, for which reasons by Belgian law justices of the peace can sit on feast days,[5] and a criminal case begun is not to be interrupted.[6]

[4] Yet they can be culpable if they have rashly promised, or during the week have neglected the work, or have undertaken too much work, more than they can perform.

[5] Code de Procedure civile, a. 8.

[6] Code d'instruction criminelle, a. 533.

690. Observations. - 1. Among works not prohibited, there are several which, in some determinate case, are more opposed than servile works to the end of the precept, namely, to the sanctification of the feast; but for this reason they do not fall under the precept. Yet they are not to be commended to the faithful, but rather the faithful are to be kept away from them.

2. Although sins committed on a feast day are directly contrary to this end (and therefore much more gravely than servile works), and thence are more grave, nevertheless they are not directly opposed to the ecclesiastical precept itself; hence one who sins mortally on Sunday nevertheless keeps the ecclesiastical precept: for an extrinsic end does not fall under the precept (I, n. 361).

3. The ecclesiastical precept does not oblige one to elicit acts of faith, hope, and charity, although the virtues are the end of the precept, and this is fulfilled in a more perfect mode from them: for they do not pertain to external worship, and besides, the end of the precept and the mode of fulfilling it do not fall under the precept (I, n. 362).

4. Those who labor on a feast day because of an excusing reason should take care lest they be a scandal to others!

Chapter III: On the Acts by Which We Offer Something to God

691. Matter to be treated. - We can offer something to God either a) by handing it over, as happens in sacrifice and in oblations of various kinds, whether made to God Himself, or to His ministers, the priests; - or b) by promising something, which happens in a vow, whose essence, matter, obligation, and de-obligation are to be considered successively.

Question One: On Sacrifice

S. Th. II-II, q. 85 and q. 86, a. 1; I-II, q. 102, a. 2, 3, 4.

692. Sacrifice (offer) is said from making sacred, and therefore signifies an act by which man makes something sacred; hence:

1. in the broadest sense it signifies an act or work of any virtue whatever, done in honor of God, and commanded by religion, for example, works of mercy or obedience (Heb. XIII, 15-16; Ps. L, 19);

2. in a stricter sense it is every act elicited by the virtue of religion, namely, one which has no other goodness except because it is done in honor of God; in this sense internal sacrifice (Ps. XLIX, 14; I Pet. II, 5, 9), by which the soul offers itself to God, is more sacrifice than external sacrifice: for exterior worship is nothing except the expression of the interior;

3. in the strictest and proper sense it is the principal act of external and public worship, distinct from all others, most solemn and most excellent, because it more perfectly testifies to the supreme dominion of God and the full dependence of all things upon Him; hence it is to make sacred by excellence (Os. VI, 6; I Reg. XV, 22).

Consequently, by extension and improperly, sacrifice also designates the term of the sacrificial action, namely, the thing sacrificed or victim, the host, insofar as by sacrifice it has been offered to God and made sacred; or the sacred thing made itself.

693. Sacrifice strictly so called is of natural law. - It is proved:

If the excellence of the person to be worshiped differs from the excellence of others not only in degree but in order, then in society special signs of honor must be exhibited and reserved to him for testifying to his excellence.

But such is the excellence of God, who is the first principle and last end, from whom all things have being and acting, and who is the supreme lord of all things, who can create all things and also destroy them.

Therefore in external and social worship special signs of honor must be exhibited and reserved to Him, by which we testify to His supreme dominion and our subjection.

Now that God is the first principle and end, the supreme lord of all things, and has the power of destroying all things just as of creating them, we signify most fittingly by sacrifice, especially because no other external sign of oblation or adoration exists which of its nature represents the supreme dominion of God and our dependence in every mode, and in fact is reserved to God.

Therefore this sign, which is sacrifice, must be exhibited and reserved to God. - History proves that this has been done at every time among all peoples (Cf. C. Trid., sess. 22, c. 1).

It is confirmed: External and public worship is ordered so that a right estimation of God may be formed in us, and so that we may be stirred up to a special reverence of God. But for this a special worship reserved to God is required. "We see this," says St. Thomas, q. 85, a. 2, "observed in every republic, that they honor the supreme ruler with some singular sign, which, if it were offered to anyone else, would be the crime of lese-majesty."

694. Sacrifice strictly so called is defined: The external oblation of a sensible and permanent thing, through some alteration or destruction of it, made by a priest to God, for testifying to His dominion and our subjection. In this definition there is indicated:

1. The genus to which sacrifice pertains: oblation, by which something is offered to God to be deputed to divine worship; and indeed external oblation, because it pertains to external and public worship. Thus it differs from devotion and from merely internal sacrifice.

2. The matter: of a sensible and permanent thing; sensible, indeed, because sacrifice is a sensible sign, since it is made for signifying the internal oblation of the mind, by which man offers and subjects himself to God as supreme Lord; and permanent also, namely, something apt both for signifying the permanent dominion of God over man and over all creation, and for representing man himself, who hands himself over to God.

Through this, oblation differs from adoration, because the latter exhibits to God a transient action, for example, genuflection, while the former exhibits to God a permanent thing, which in sacrifice is offered as the substitute of our sensible and permanent substance; hence it is understood why especially those animals and other things were employed for sacrifices which serve for the sustenance of man.

3. The form: through some alteration or destruction, by which, namely, in order to signify God's supreme dominion over all things, the thing is withdrawn from every human use and totally and in perpetuity passes into the dominion of God, and thus is made sacred: whether it be said

that the oblation is made to God formally through the alteration itself, which seems truer; or whether it be said that the alteration is a condition prerequired for sacrificial oblation, as pleases some more.

It is not required that the alteration always be had through real or physical destruction, but an equivalent can suffice, namely, one which as to exterior form or according to human estimation is equivalent to a real alteration in the order of signifying: thus a thing which is rendered unfit for natural uses, such as wine poured out, or is placed on the way of destruction, and whatever bears the appearance of destruction so that it is apt for expressing the signification proper to sacrifice. These things are customarily explained more where the Mass is treated.

By destruction or alteration sacrifice is distinguished from all other oblations: in a simple oblation the thing, while it is offered, remains whole, although afterward it can be consumed; in sacrifice the oblation itself is made formally through destruction. Hence St. Thomas, q. 86, a. 1: "The name of oblation is common to all things which are exhibited for the worship of God, so that if something is exhibited for the worship of God, as to be consumed in some sacred thing which ought to be made from it, it is both an oblation and a sacrifice; but if it is exhibited so that it may remain whole, to be deputed to divine worship or to be expended for the use of ministers, it will be an oblation, not a sacrifice." And again, q. 85, a. 3, ad 3: "They are properly called sacrifices when something is done concerning the things offered to God, as that animals were killed and burned (bloody sacrifice), that bread is broken and eaten and blessed (unbloody sacrifice). And this is what the name itself sounds forth, for sacrifice is said from the fact that man makes something sacred. But oblation is directly said when something is offered to God, even if nothing is done concerning it, as coins or loaves are said to be offered on the altar, concerning which nothing is done. Hence every sacrifice is an oblation, but not conversely."

4. The efficient cause, namely, the minister: by a priest. To express the public sense of religion in the name of society, a public person is required, that is, one who enjoys public authority or is legitimately deputed by it, so that he may act for all or in the name of all.

Thus, before cities and kingdoms were constituted, when there were only families and tribes, the father of the family or the firstborn were as it were naturally indicated for offering sacrifice; afterward kings also sometimes did this, as Melchisedech; but for the most part distinct ministers were designated for this: for it is fitting that in society there be ministers separated from the people, permanently instituted for this, who in the strict sense are called priests; once these have been instituted, such an act of sacrifice would be attempted invalidly by others. But since Christ was constituted the head of all men, He was naturally the priest of all humanity. But if God reserves to Himself the ordering of all worship, as was done in the supernatural order, no other can institute sacrifice or priesthood (Heb. V, 1-4).

5. The end of sacrifice, both the end to whom: made to God, for sacrifice is an act of religion; and the end which: for testifying to His supreme dominion and our subjection.

695. Diverse species of sacrifice. - Every sacrifice is essentially and primarily latreutic, because it is made in honor of God, to testify that He is the first principle upon whom man totally depends and by whom he is whatever he is. From this it follows that man has from God whatever he has, and awaits

whatever he will receive, and, if he turns himself away from God by sin, is worthy of the penalty of death; sacrifices can also be offered for acknowledging these things. Hence by reason of the end, sacrifice is divided into latreutic (huldeoffer), which is specially offered for the worship of God; and eucharistic (dankoffer), for benefits received; and impetratory (smeekoffer), for benefits to be received; and propitiatory (zoenoffer), which is also specially made for placating God offended and repairing sin.

In the Old Law, by reason of form and end, there were distinguished: the holocaust, which was a latreutic sacrifice; the host for sin or for offense, which was offered more specially for sins; and the pacific host for benefits received or to be received.

696. The sacrifice of the New Law is more eminent than all others. - Sacrifice, although considered in common it is of natural law, nevertheless is not so as a particular sacrifice to be offered in such a thing or in such a mode. But by human or divine institution, in various times and among various peoples, sacrifices have been diverse. Under the law of nature they were determined from the choice of men; under the Mosaic law, by God; under the new Christian law there is only one sacrifice: the death of Christ on the cross and symbolically renewed in the Mass, which is proved in the treatise on Redemption and on the Sacrifice of the Mass.

The sacrifice of the New Law differs from the ancient sacrifices:

1. in dignity, by which it is infinitely distant from them: a) on the part of the one offering, who is the Son of God made man, and b) on the part of the thing offered, which is His body and blood;

2. in end, because it is offered at the same time for the fourfold end;

3. in efficacy: it is not only of value from the work of the men offering, but by intrinsic dignity is always acceptable to God, whom it infallibly honors; hence from the work worked it not only removes legal uncleanness, but, as far as is of itself, also infallibly obtains grace;

4. in perfection and stability, because it prefigures, announces, and prepares no other, but itself is prefigured by all others, which therefore, when it came, had to cease (C. Trid., sess. 22, c. 1).

697. The sacrifice of the New Law exists under a twofold form: as bloody on the cross and as unbloody in the Mass. - The sacrifice of the New Law is simply and substantially one, that is, by reason of the principal offerer, by reason of the thing offered, and by reason of the merits and satisfactions; modally and secundum quid, that is, by reason of the form under which the victim is offered, it is diverse (C. Trid., sess. 22, c. 1 and 2):

a) The bloody oblation of the cross (Mt. XXVI, 28; John XVII, 19), whose victim was the Son of God made flesh so that He might be substituted for men (Heb. II, 11, 17; I Tim. II, 5, 6; Rom. V; Eph. V, 2); - the form was not so much the material killing as the voluntary laying down of the soul and disposition of His own life, made in honor of God, and externally manifested in the free permission of death; - the minister was not the killers themselves, but Christ, who voluntarily admitted the death being inflicted, while He could have impeded it (John X, 17, 18); - the value (namely, the honor of God, merit, and satisfaction) was infinite. Hence there will never be a new sacrifice, meritorious

and satisfactory, because Christ satisfied for the sins of all and merited for all the graces of salvation as to sufficiency (Heb. VII, 27; IX, 25-28; X, 10, 14); but as to efficacy, the application of the merits and our own cooperation are required.

b) The unbloody sacrifice of the altar, which is made both for acknowledging the supreme dominion of God, and for applying to us the merits and satisfactions of the cross, and consequently is not a blasphemy against the sacrifice of the cross nor does it derogate from it (C. Trid., sess. 22, c. 2, can. 4).

Yet they differ:

1. Christ on the cross was the sole offerer; but in the Mass the minister offers in the name of Christ as head, and of the faithful as members of the Church (C. Trid., c. 1).

2. Christ on the cross was the sole one offered; in the Mass the Church also is offered, which is represented by the victim who is its head: Christ.

3. Christ on the cross was offered in His own species, mortal, passible, bloodily; in the Mass He is offered under the species of bread and wine, immortal, impassible, and unbloodily; there real death intervened, here symbolic death intervenes.

4. The sacrifice of the cross was meritorious and satisfactory de condigno, and indeed infinitely, on account of the dignity of the one offering and of the one offered; hence it was offered once. The sacrifice of the Mass only applies the merits and satisfactions of the cross; hence it is to be offered until the consummation of the age.

5. The sacrifice of the cross was offered directly for all; the sacrifice of the Mass is offered directly only for the members of the Church.

6. The sacrifice of the cross is not significative or representative of another; the sacrifice of the Mass is representative and commemorative of the cross, just as the sacrifices of the Old Law were prefigurative of it.

698. There is an ecclesiastical precept of assisting at the unbloody sacrifice and of hearing the whole Mass on Sundays and feast days, obliging under grave obligation all the faithful of both sexes, after they have arrived at the years of discretion.

The precept was introduced by custom, which already flourished in the apostolic age, and which in the course of time gradually became obligatory, and afterward was confirmed by written law (can. 1248). This is altogether congruent 1. with natural law: sacrifice is an act of public worship, offered in the name of all, prescribed by natural law; hence it is necessary that all come together some times to render divine worship through sacrifice; 2. with divine law: there is a divine precept of offering the unbloody sacrifice of the Mass in the Church, according to the words: Do this in commemoration of Me. Therefore it is necessary that the members of the Church sometimes participate in this sacrifice by cooperation or at least by assistance. Therefore this time is conveniently determined by ecclesiastical law.

The precept is imposed from the motive of religion, of which virtue sacrifice is an act.

699. The precept obliges one to hear the sacred rite whole and entire.

1. Whole; hence the hearing is prescribed not only as to the substance or essential and integral parts of the sacrifice itself instituted by Christ, namely, the double consecration and communion, but also as to the integral parts of the whole liturgy from the beginning up to the Last Gospel, but exclusively, because formerly it was not read.

2. Entire; and therefore it does not suffice to hear parts of two Masses, whether simultaneously, as is clear from prop. 53 condemned by Innocent XI,[1] or successively, if the consecration and communion do not pertain to one and the same Mass: for from the parts of two sacrifices, for instance from the consecration of one host and the communion of another, there is not made one integral sacrifice.

[1] "He satisfies the precept of the Church concerning hearing the Sacred rite, who hears two parts, indeed four parts, at the same time from different celebrants."

If, however, the consecration and communion pertain to one and the same Mass, the hearing is more probably valid, provided the part omitted is supplied from another Mass. For on the one hand there is an integral sacrifice; on the other hand, the Church does not seem to prohibit under grave obligation that a lesser and accidental part be added from another sacrifice; yet to do this without reason is a light fault.

700. The precept obliges under grave obligation, because its matter and end are grave, namely, both that God may be honored by sacrifice insofar as the people join their affection with the celebrant, and that the memory of the passion and resurrection of Christ may be recalled. Hence not to hear an entire Mass is a mortal sin from its genus, that is, grave if a notable part is omitted, light if a modest part is omitted. Therefore:

1. An omission is notable qualitatively if a part principal in itself, pertaining to the substance of the sacrifice, is omitted:

a) If the consecration and communion are omitted at the same time.

b) If only both consecrations are omitted, because in them the essence of the sacrifice consists.

St. Alphonsus regards the contrary as probable, because he judges communion to be the more essential part, but this opinion does not seem solidly probable, for the symbolic immolation is perfected in the consecration. Hence one who arrives after the consecration, even if he cannot hear another Mass, is not bound to remain, because the essence of the sacrifice is now lacking, and the other parts are prescribed only by reason of the essence; - on the contrary, if he arrives later but before the consecration, he will be bound to remain, because he can be present for the substance of the sacrifice.

c) Likewise the omission of communion alone seems grave: for this pertains to the integrity of the sacrifice, was instituted by Christ, and without it the sacrifice is incomplete. A fortiori the omission of either consecration is grave, because both consecrations are not only of the integrity but, far more probably, also of the essence, as necessary for the representation of the bloody death of Christ and therefore for His symbolic immolation.

Some, however, deny these things, because they say that they are not essential parts, and it is not sufficiently clear whether the Church prescribes being present at these under grave obligation. But the reply is easy: the Church prescribes according to the matter, under grave obligation for grave matter, such as the other consecration is, and also communion, as being a part of great importance. Hence it seems certain to us that the omission of communion is notable and grave, at least if both communion rites are omitted; but in practice the question is of lesser importance, for one who is absent from communion also omits the prayers following, and thus certainly there is already a notable omission by reason of quantity, as will be said under 2, a.

d) Even voluntary distraction during the consecration does not impede the hearing of Mass, provided it does not totally take away all attention so that one cannot testify concerning the things done.

2. Omission can be notable quantitatively, if a great part is omitted comparatively to the whole. The third part is judged notable, which is not to be understood materially from the duration of time alone, but also from the greater or lesser dignity and proximity to the consecration, or necessity for the sacrifice. Hence:

a) The omission is judged grave of those things which precede the Gospel together with those things which follow communion; - or communion with those things which follow; - or one half of the Canon, whether from the preface to the consecration, or from the consecration to the Pater Noster; - or those things which are had from the beginning up to and including the offertory.

b) On the contrary, the omission is judged light, at least probably, of those things which precede the offertory, because they are only the Mass of the catechumens; - or of those things which are had up to the epistle together with those which follow communion; - or only the offertory; - or the Gloria and Creed, or other musical parts, even if they are prolonged for a long time, because they are not ordinary parts of the Mass. Likewise the memento of the priest is not of the substance of the Mass.

c) Per se there is no sin, with scandal, contempt, or the necessity of instruction set aside, in omitting the sermon, because it is not part of the sacrifice; likewise the Last Gospel, since the people are already dismissed before it.

One who was present for the substance of the sacrifice but omitted a great part is bound to supply it from another Mass. But one who omitted a modest part, according to many, is bound to nothing, because the precept is substantially fulfilled, nor are lighter things to be demanded so rigorously; nevertheless he sinned if he voluntarily omitted it, for example, from culpable negligence; yet others say that he is bound under venial obligation to supply, unless it is a matter of a very modest part.

701. For a valid prescribed hearing of Mass there is required moral presence of the body, for which three things are required and suffice:

1. That one, according to the estimation of men, be judged united to the celebrant: either directly, from a place not very distant, by seeing or hearing him; or indirectly, by joining himself to the crowd of those assisting or to those who are in sight of the altar, so that he can be said to be among those standing around, or part of the multitude.

2. In a place apt for fulfilling the precept, which is indicated in can. 1249: "He satisfies the law concerning hearing the sacred rite who is present at Mass, in whatever Catholic rite it is

celebrated,1 under the open sky or in any church or public or semi-public oratory,2 and in private chapels of cemeteries; but not in other private oratories, unless this privilege has been granted by the Apostolic See," but only those who are comprehended in the indult, and only on the days conceded. Yet one satisfies in the private oratories of Cardinals or Bishops, because they enjoy the rights and privileges of a semi-public oratory, and also in a "decent place" of which can. 822 § 4 speaks, where for a just and reasonable cause, in some extraordinary case and by way of an act, Mass is celebrated by permission of the local Ordinary or major Superior of a religion (Com. I. C., 26 March 1952); but the priest himself satisfies everywhere by celebrating.

3. And that at least in some way by external signs, whether through sight or hearing, whether by himself or through the actions or movements of others standing by, he can discern what is being done by the celebrant, even if per accidens he hears, sees, or understands nothing, as happens among the deaf and blind.

Hence A. he is morally judged present:

a) Who is in the church, even in a place very distant from the altar, provided he can see or hear the celebrant.

b) Or who, existing there, neither sees nor hears the celebrant, but perceives something of those things which are done, by the sound of the bell or the movement of those assisting, or who stands behind a wall or column, provided he is united to one of those assisting.

c) Or who remains outside a church not containing the multitude, even with the doors of the church closed, provided he is joined to the multitude assisting outside: according to some, one who is distant from it by a space not greater than 30 paces is probably still joined to the multitude, but according to St. Alphonsus this is perhaps too much.

d) Or who is in the vestibule, sacristy, room, or another part of the church, provided through an open door he distinguishes some parts of the Mass from sound, the movement of the people, or otherwise; indeed who from a neighboring house sees the priest or the movement of the people through a window, even probably if some road intervenes, provided the distance is not great, say beyond 30 paces.

e) Or who, while it is celebrated under the open sky, stands at the altar or in proximity to the priest, or, if this is impossible, at least is joined to the multitude of those assisting, in the mode in which it was said.

B. But he would not be morally present who by means of a telescope observed Mass in a distant place, or by means of a radio heard the prayers, chants, or sound of the bell.

1. Vermeersch notes: therefore even if it is done by a schismatic, it suffices, but a sin of communication in sacred things is committed.

2. For semi-public oratories it does not follow from this that it is licit to open them to all.

702. There is also required human religious assistance, or religious presence of mind, which includes intention and attention.

A. Intention is necessary, because the Church prescribes assisting at Mass as a sacred or religious act; but assistance at Mass is in itself an indifferent action, which can be done for diverse things, for example, only for waiting for a friend, for hearing music, for curiosity, for lust, for profit, etc.; therefore, so that it may be an act not profane but sacred and religious, and also be done for the worship of God, it must be determined by the intention of worshiping God. And indeed:

1. On the part of the object: a) The intention of placing the external act, which he who waits for a friend has, does not suffice, but in addition there is required in some way the intention of worshiping God, or of offering sacrifice, or of hearing Mass as a sacred act, etc.

Hence he satisfies who, from the evil end of taking delight in the sight of a woman, nevertheless comes to hear Mass in the manner of the faithful: for although he sins against chastity, nevertheless he also intends to hear Mass; likewise he who comes from fear of a father, master, or teacher, otherwise not going to hear, provided in the church he now wills to hear; - on the contrary, if meanwhile he resists and does not wish to consent to the hearing, because then in no way does he intend the sacrifice, indeed such assistance would not be a human act.

b) The intention of satisfying the precept is not required, but it suffices to place that which is prescribed.

Hence he satisfies who is ignorant that it is a day of precept, or who does not wish to satisfy the precept by this Mass but afterward to hear another: for he who hears Mass by that very fact satisfies, since he places what is prescribed. But one who hears Mass, if it is not clear that he has intention, is presumed to have sufficient intention.

2. On the part of the subject: a) An actual intention had here and now is not required, but a virtual one suffices, by which from the influx or power of a past intention one begins or continues to assist at Mass.

b) Nor is an explicit intention required by which one says: I intend to offer sacrifice, to participate in that which the priest acts for the people, to pursue the four ends of sacrifice (which is best), but an implicit one suffices, contained in another act, which he has, for example, who in the manner of the faithful proceeds to the place in which Mass is celebrated: in this is included the intention of worshiping God or offering sacrifice.

B. Attention also is necessary, because reverence toward God requires that the one assisting apply his mind to the worship to be offered to God and do nothing which is alien from the worship of God; hence:

1. External attention is required, by which the mind is applied to avoiding external actions incompatible with the religious hearing of Mass and with internal attention.

2. More probably internal attention also is required, at least minimal, which is either to the words or actions of the priest, or to the sense of the words and actions (or to the mysteries of the sacrificial action), or to divine things and to God, who is worshiped by the sacrifice: for one who in no way, not even confusedly, attended at least to the principal parts of the Mass would

not place a human act. Yet it suffices to attend to the actions of the priest in general: for the Church prescribes no prayer or meditation during Mass, but only that one assist at Mass.

3. Virtual attention suffices, namely, attention which, had at the beginning, perseveres by its power so long as it is not revoked, or there does not occur so great a wandering of mind that the force of the prior intention wholly perishes.

In practice, as long as the intention of hearing Mass is not revoked, and no act incompatible with internal attention is placed, this is judged sufficiently to remain: one must stand for the validity of the act until it is proved invalid. Nor is greater internal attention required than that which in fact is usually joined to external attention.

With the required attention the following are incompatible: sleeping, being perfectly drunk, painting, teaching, writing, reading history, profane matters, or speculative questions, attentively and fixedly considering images or reading inscriptions, talking about a serious or difficult matter, playing, doing or treating some business with great application of mind, memorizing even a sacred text, making calculations, etc.; but for these things to be a grave sin, they must be prolonged through a notable part of one Mass heard.

On the contrary, the following are compatible, insofar and if they do not necessarily remove all attention:

a) serving the sacrifice, as acolytes or the sacristan do, even if they withdraw to bring the necessary things, provided they do not withdraw from the church except for a brief time: for they also cooperate in the sacrifice;

b) likewise playing music, playing the organ or the bells, provided the actions of the priest in general at least are in some way noticed;

c) collecting alms, walking in the church, clothing oneself;

d) being lightly drunk or dozing;

e) examining conscience, reading the canonical hours or an imposed penance, or a spiritual book (unless it is done from a profane end), making the way of the cross;

f) probably: hearing confessions, celebrating sacrifice, confessing sacramentally, provided it is possible that they do not remove all attention to the priestly acts in general;

g) talking discontinuously about a light matter, or even being voluntarily distracted, provided they do not remove all attention; - yet these things are a venial sin against religion, because it is irreverence toward God to divide attention during worship between worship and alien things without reason; but if the conversations or distractions are gravely sinful, for example, if they are about a shameful thing, the irreverence is greater, but it is not proved mortal nor does it impede assistance at Mass.

703. The causes exempting from the obligation of hearing Mass are:

1. Physical or absolute impossibility, whether

a) spiritual, as among the excommunicated or interdicted by name; and among others, if there is no priest present except one to be avoided; or

b) bodily, as among the sick fixed in bed, those navigating at sea, the incarcerated (such also are children whom the father keeps shut up in punishment, and whom he can detain even on Sunday), those living in places in which Mass is not celebrated.

2. Legitimate custom of the fatherland, by reason of which women after childbirth are excused, and children and widows or nearest blood relatives on account of mourning when the father, husband, or brother has died, according to the diverse custom in diverse places, provided they do not go out for other causes; likewise in some places those who are about to marry, on account of the proclamation of the banns, but this is valid only concerning the Mass in which the proclamation is made.

3. Legitimate dispensation, granted to subjects by the Supreme Pontiff, Ordinary, pastor, or religious superior, according to the norm of can. 1245.

4. Necessity, that is, any moderately grave cause involving a notable inconvenience or damage, spiritual or bodily, one's own or another's:

a) Moral impossibility, such as: notable inconvenience of health or bodily condition, for example, a notable heaviness of the head, weariness of strength, on account of which someone prudently omits visiting friends or fears a delay in convalescence; notable damage to goods of fortune, reputation, honor, or even modesty, as can be the case in an honest pregnant girl who hides herself at home for that reason, and in the poor who lack decent clothing according to their state, unless they could hear Mass in another place or very early without infamy; grave offense of parents; an occasion of relatively great and extraordinary profit; confession of a mortal sin which otherwise could not easily be made; great distance, unless a carriage or another means is had without great expenses: a distance is judged great at 1 1/4 leagues, and a lesser distance according to the qualities of the person, such as age or infirmity, the conditions of the air and roads and the inclemency of the weather, yet in such a way that habitual omission is excused with more difficulty.

b) Office, by which stationed soldiers are excused; guardians of infants, towns, or flocks when they are necessary and others are lacking; servants and workers who must labor: all of whom, if they were often compelled, would be bound, if they could without great inconvenience, to seek another master.

c) Another's necessity, or charity, excuses those who assist the sick, while these need their help or bear their departure with difficulty, so that they cannot withdraw without danger or great annoyance of the sick person; those who bring help in case of fire or flood; those who have hope that by their presence they may impede grave quarrels, thefts, shameful acts, or who thus avoid the mortal sin of some determinate person, for example, a wife the great indignation of her husband (unless she would yield in contempt of religion), a girl the shameful desire in such a young man.

704. Observations. - 1. He who is legitimately excused from hearing the sacred rite is not bound to supply by saying other prayers or by hearing the sacred rite during the week, because the ecclesiastical precept ceases to oblige. But if the cause is perpetual, by force of the natural and divine precept obliging to sacrifice, he is bound sometimes to alternate with another (for example, spouses change turns), and if he cannot even do this, he ought sometimes (three or four times in a year) to

assist during the week; - otherwise, besides, there would be danger that little by little he would abstain from every religious practice.

2. Every precept in some way obliges one to employ the means so that it can be observed, and to avoid the impediments which stand in the way of its being fulfilled. Hence:

a) directly to place an impediment, whether proximate or remote, is illicit, namely, for the end that the precept cannot be satisfied;

b) indirectly, that is, for another end, yet with the foresight that Mass cannot be heard, it is illicit to place a proximate impediment, that is, while the time of obligation is present or is now morally close, for example, to begin a journey on a feast day or on the preceding day in the evening; unless there is a proportionate cause, namely, a grave inconvenience, as if otherwise the occasion of a convenient journey or useful assembly would be omitted;

c) indirectly to place a remote impediment is not prohibited, for example, to begin a journey on Friday or Saturday morning: for it would be a grave inconvenience also to be obliged to avoid remote impediments.

3. With regard to means: a) no one is bound to employ extraordinary means, for example, a sick person for recovering health, or even to use the privilege of a private oratory (although he could conveniently do so), in order to be able to fulfill the precept; - b) to neglect ordinary means for the end that the precept cannot be fulfilled is a sin; - c) to do this for another end is not a sin unless it is done when the precept is already pressing.

Question Two: On Oblations

S. Th. II-II, q. 86 and 87.

705. Oblation {offerande} generally is the bestowal of some thing not asked for; hence religious oblation is a spontaneous largess for divine worship. Taken generically, it also includes sacrifice, in which a thing is offered insofar as it is to be consumed into something sacred (n. 694); taken specifically, as distinct from sacrifice, it is the largess of a thing as whole in honor of God.

One kind is immediate and properly so called, by which something is immediately offered to God in His honor, whether to be deputed to worship itself, or to the uses of the ministers, or to the use of the poor: then the priest accepts, not indeed in his own name, but in the name of God.[1] Thus formerly the first-fruits of the fruits of the earth and of animals were offered from special reverence and gratitude for divine worship; today various collections are made for pious works. Another kind is mediate and improperly so called, which is immediately offered to priests, as tithes in the Old Testament and in the Middle Ages were imposed for the sustenance of ministers, and now Mass stipends are offered: then the priest accepts in his own name (q. 85, a. 3, ad 3; q. 86, a. 1 and 2).

[1] "The priest is constituted in a certain way as sequestrator and mediator between the people and God,... and therefore it pertains to him to exhibit divine dogmas and sacraments to the people; and again those things which are of the people, such as prayers, and sacrifices, and oblations, ought to be exhibited to the Lord through him, according to the Apostle to the Hebrews V, 1. ... And therefore the oblations which are exhibited to God by the people pertain to priests, not only so that they may convert them to their own uses, but also so that they may dispense them faithfully, partly indeed by expending them on those things which pertain to divine worship, partly on those things which pertain to their own

sustenance, and partly also for the uses of the poor, who are to be sustained, as far as possible, from the goods of the Church, because the Lord also had purses for the use of the poor," q. 86, a. 2.

706. Oblation according to its nature is voluntary and free; but per accidens it can be obligatory:

1. From contract, as if someone receives land of the church under the condition that at certain times he make oblations, by way of rent.

2. From a preceding deputation or promise, as if someone by donation or testament leaves some thing afterward to be paid to the church.

3. From the necessity of the church or of ministers: for natural law dictates this, that the people supply necessary support to those who minister in divine worship for the salvation of the whole people; furthermore divine law established this (Mt. X, 10; I Cor. IX, 13). Namely, public worship cannot conveniently be had without churches, ornaments, ministers; therefore the faithful are bound by oblations to procure that the things necessary for public worship be had, and therefore, in a case of necessity, oblations can be prescribed by the Church to all the faithful.

4. From custom the faithful are bound in certain solemnities to certain customary oblations, for example, on the occasion of the reception of some sacrament (such as Baptism or Extreme Unction), of proclamation, dispensation, funerals, etc.

When an oblation is obligatory, it often remains voluntary in some way as to the quantity or species of the thing offered; nevertheless the Church can also stipulate the quantity and impose a determinate tax, and thus it has done several times (a. 1).

707. An oblation can be made, as far as is of itself, from all things licitly possessed; - per accidens it can be illicit, for example, 1. if it tends to the detriment of another to whom a debt or assistance is to be rendered; 2. on account of scandal, if it is made from profit received from sins, for example, from prostitution; 3. on account of contempt, if a vile or useless thing is offered, etc. (a. 3).

708. The precept of the sustenance of ministers. - By natural and divine law, as we noted in n. 706, the faithful are bound to supply the necessaries for sustenance to pastors and ministers; this was also confirmed by ecclesiastical law (can. 1502), which can determine this obligation as to mode and quantity.

In the first centuries of the Church the spontaneous oblations of the faithful sufficed for this; afterward tithes had to be paid by precept. But with this law abrogated almost everywhere, in several places provision has been made for the sustenance of pastors either by the revenues of benefices and stole fees or also partly by a pension paid by the government; but where provision has not been made otherwise, the obligation falls upon the faithful of contributing the necessaries for this, as in North America.

The precept is certain, as is clear from the profession imposed on the Waldensians, and from the condemnation of prop. 18 of Wycliffe, and of itself it obliges under grave obligation. And indeed 1. if it has been accurately determined anywhere, it must be observed in this way by the faithful; 2. but

where it has not been determined, the obligation generally falls upon individual faithful, according to their resources, of contributing something for the sustenance of their ministers.

In practice, however, a) the faithful are not easily to be accused of grave sin, unless without reason they refuse a subsidy, and thus are the cause that priests are in need or at least in a certain serious want;

b) although those denying an imposed subsidy commit a sin of a twofold species, of irreligion and injustice, the Church nevertheless does not seem to urge its right under the burden of restitution; hence the sin seems rather to be opposed to legal justice than to commutative justice;

c) indeed, generally a priest who would deny the sacraments to those not paying would act against the mind of the Church;

d) besides, in collecting the subsidies of the faithful, priests should diligently beware of all things which may introduce suspicion of avarice.

709. Observation. - Supreme adoration is formally referred to reverence for God (q. 84, a. 1, a. 2, ad 2); oblation properly so called is specially referred to the recognition of divine benefits (q. 86, a. 4); sacrifice is specially referred to the protestation of the supreme dominion of God, because we have all things from God and they are God's (I-II, q. 102, a. 3).

Question Three: On Vow

Article I: On the Essence of Vow

S. Th. II-II, q. 88, a. 1, 4, 5, 6.

710. A vow (voeu; gelofte) is a promise made to God.1 - In this definition there is indicated:

1. The genus: promise, that is, a deliberate and spontaneous obligation of faith or fidelity toward another, undertaken for doing or omitting something; and thus it is distinguished from a simple purpose, even one made before God and firmly established, which per se induces no obligation, although by not fulfilling it one can sin by negligence or inconstancy toward oneself. A purpose, namely, is the mere will of doing or omitting something, but a vow is the will of furnishing it as a debt, so that from it there arises an obligation toward God, and as it were a special title is acquired by God for exacting for Himself the thing promised. The reason is that a vow, like a contract, is a certain private law which the one vowing of his own accord imposes upon himself and by it obliges himself to God.

Moreover, for a promise, on the part of the one promising, three acts are required: a) deliberation of the intellect; b) a spontaneous purpose of the will, that is, the intention of obliging oneself or giving faith; c) the signification or manifestation and expression of this will, which is essentially the promise itself. This is an act of practical reason, to which it pertains to order: for just as by commanding or entreating a man orders what is to be done for him by others, so by promising he orders what he himself ought to do for others. To these, on the other side, is added a) acceptance of the faith given. But since every heart lies open to God, the will and interior thought suffice for a vow; and if the due conditions are present, it is accepted by God, because it is pleasing to Him (Deut. XXIII, 21; Num. XXX, 3; Eccl. V, 3).

2. The specific difference: made to God, so that it may be indicated that a vow is an act of religion: for a promise is made to another for his advantage and utility, or service and honor; but from our promises no advantage can arise for God, but only honor and glory; hence by vow we order good works to be performed in honor of God, and therefore by its nature it is an elicited act of religion.

Hence promises which are made directly to the saints are not vows strictly so called, but acts of dulia, as if someone promises something to the Blessed Virgin, not thinking of God and without any relation to God. Nevertheless a) a promise made to God of fulfilling or executing what was promised to the saints (a. 5, ad 3), b) likewise a promise made to God before the saints as patrons or witnesses, under their invocation or protection (IV Sent., d. 38, q. 1, a. 1, qc. 1, ad 4), c) or made principally to God but secondarily in honor or memory of the saints, in the way in which churches and altars are erected to the saints and sacrifices are celebrated, so that they may be more honored and God may be honored by the worship of the saints, are vows: this last mode the faithful generally intend when they say that they vow to the saints.

1. Canon 1307: "A vow, that is, a deliberate and free promise made to God concerning a possible and better good, must be fulfilled from the virtue of religion."

711. The conditions on the part of the act required for the validity of a vow are three: for the intention of obliging oneself must be true and sincere, deliberate and free.

1. A true and internal intention of obliging oneself is required; hence:

a) There is no vow if someone, even in serious circumstances, does not wish to promise, but only externally expresses the words of a vow; hence in doubt whether someone has emitted a true vow, the intention of the one vowing is to be considered rather than the words.

b) Likewise, if someone, wishing to promise, positively intends not to oblige himself.1

In these cases there is a fictitious vow, which is a sin because it includes a certain irreverence toward God, but only venial, unless contempt, grave scandal or injustice, or deception in a matter of great importance is present, as in religious profession or the reception of sacred order.

c) But for the validity of a vow the intention of executing the vow is not required.

1. Unless perhaps the will of vowing were altogether predominant and more efficacious than the will of not obliging oneself, which is not presumed.

2. Deliberation is required, and indeed full and perfect, such as is required for an act simply and absolutely human and perfectly moral: for no one is judged to will to impose an obligation upon himself except from perfect deliberation.

Hence there is no vow if the promise is made by one drunk, half-asleep, deprived of the senses, or if it proceeds from a motion which is called primo-primus or secundo-primus; likewise vows emitted by hysterical persons, or by children even after the use of reason, are often invalid. - Yet he who, knowing that a vow induces obligation, here and now does not explicitly think about it, is judged to

make a valid vow; similarly, knowledge of all the circumstances of the thing promised is not required, but knowledge as to the substance suffices.

3. Liberty is required, and indeed perfect liberty, such as is in an act directly and in itself voluntary: for this is required for a good act.

Hence the indirectly voluntary or voluntary in the cause does not suffice, as if someone, foreseeing that he will promise when drunk, nevertheless makes himself drunk and promises; besides, such an act is not apt for signifying the undertaking of an obligation. - Yet an actual and explicit will is not required, but a virtual and implicit will suffices, as if someone freely receives the subdiaconate, to which he knows a vow is annexed.

Hence on the part of the one vowing, one vow is expressed or formal, another tacit, implicit, and virtual.

712. Ignorance or error is opposed to deliberation, even if only concomitant or crass:

1. when it is concerned with the essence of a vow; hence he does not vow who is ignorant that a vow is a promise, or induces obligation, or is made to God: exception is made if he altogether wishes to vow in the mode in which others are accustomed to vow, because then he has the implicit will of obliging himself;

2. or when it is concerned with the substance of the thing promised, for example, if someone vowed entrance into religion, being ignorant that it includes chastity, poverty, and obedience;

3. or concerning a substantial condition of the thing, which, if known, would impede the vow, for example, if a Belgian vowed a Roman pilgrimage, thinking Rome to be in the vicinity, or the journey to be undertaken for 100 francs;

4. or concerning the final cause of the vow, for example, if someone vowed for the health of his father, thinking him to be dying.

The reason is that in those cases the intention of obliging oneself is lacking.

But the following do not impede the validity of a vow:

a) ignorance concerning an accidental circumstance, for example, error concerning the pleasantness of the journey for a Roman pilgrimage;

b) nor error concerning an impulsive cause, for example, if someone vowed to give alms to poor Peter, whom he erroneously thought honest.

1. For vows of religious profession, however, only substantial error invalidates, not error of condition or circumstance, even if it gives cause to the profession; because this participates in the nature of an onerous contract.

713. Fear is opposed to liberty:

1. when it so disturbs the mind that it takes away deliberation;

2. also when it is grave and unjustly inflicted for extorting a vow, in which case the vow is null at least from ecclesiastical law, as is clear from tradition and the perpetual practice of the Church, as can. 1307, § 3 also testifies,[1] and also probably from natural law, because God does not accept a promise extorted by injury;

[1] "A vow emitted from grave and unjust fear is null by the law itself."

3. indeed probably, on account of the same reason, when a vow is extorted by slight fear unjustly inflicted, provided it was the sole cause of vowing; but in the external forum slight fear is not judged to have been the cause of a matter as grave as a vow.

Any other fear whatever, whether it is from a necessary cause, or is justly inflicted, or unjustly but not for extorting a vow, does not render a vow invalid. Examples are vows emitted from fear of shipwreck or illness, - of just imprisonment from the sentence of a judge, - of robbers.

714. To vow is useful and of counsel, not indeed for those who are in the state of perfection or of the term, as Christ or the angels, but for those who are in the state of the way and of imperfection, so that their will can be strengthened in good. And indeed:

1. on the part of the act of vowing, because by vowing we immovably strengthen our will in the good of virtue (a. 4);

2. on the part of the promised work, because it is better and more meritorious to do something from a vow than without a vow: a) because to vow is an act of religion, which is nobler among the moral virtues; b) one who does something by vow subjects himself to God not only as to the act but also as to the power of acting, because henceforth he cannot licitly do otherwise; c) because it is more perfect to do something from a will more firmly established in good (a. 6). Cf. Ps. LXXV, 12; CXXXI, 1-2; Is. XIX, 21.

Yet per accidens, on account of special circumstances, a vow is often not expedient; hence it should not be emitted except according to the rules of prudence.

715. It is objected: A vow removes liberty, since by it the moral power of choosing between contraries is removed; and this is especially true of the vows of religious profession, by which the whole life is bound, so that it is perpetual servitude.

Resp. 1. Liberty is not removed by moral obligation, but this is a help to it for tending toward the end and pursuing good better, more easily, and for a longer time, so that liberty is perfected and freed from the passions which impede it; - otherwise it would have to be said that the power of choosing evil is a perfection essential to liberty, although it is an imperfection, because it does not exist in God and in the blessed. Hence St. Thomas, a. 4, ad 1: "Just as not being able to sin does not diminish liberty, so also the necessity of a will strengthened in good does not diminish liberty, as is plain in God and in the blessed; and such is the necessity of a vow, having a certain likeness with the confirmation of the blessed. Hence Augustine...: happy is the necessity which compels to better things."

2. This holds a fortiori if the moral obligation was freely undertaken, as happens in a vow; otherwise it would have to be said that liberty is destroyed by all human promises and

contracts; which however no one affirms. Namely, a work freely undertaken is not against liberty.

3. Obligation does not impede us from fulfilling an obligatory work in a fully free and meritorious mode, but just as we contracted the obligation altogether freely, so we can fulfill it from full liberty: for this it is enough that we be so disposed that we would do the work even if we were not bound. And thus it is understood that religious perfectly faithful to their vows are the freest men.

Article II: On the Matter of Vow

S. Th. II-II, q. 88, a. 2.

716. Conditions required on the part of the matter for the validity of a vow. - By the matter of a vow we understand the action itself which is promised to God. If it is a mere action or omission of the one vowing, for example, a pilgrimage, fasting, the vow will be personal; but if the operation is concerned with an exterior thing, as almsgiving with money, the vow is real, in which case the proximate matter will be the action, but the thing the remote matter; but if a mere action is promised and at the same time an operation concerning an exterior thing, the vow is mixed (can. 1308, § 4).

Moreover, on the part of the matter three conditions are also required for the validity of a vow: for the promised action must be morally good, better than its opposite, and possible (can. 1307, § 1).

717. The matter of a vow must be morally good. - For it would be vain to promise to someone what would not be acceptable to him; but a work acceptable to God exists only if it is virtuous; therefore a vow can be made concerning nothing illicit, nor concerning anything indifferent, but only concerning a virtuous act. Hence:

1. A vow concerning an evil act is invalid, whether it is prohibited by the law of nature or by positive law, unless in this latter the exception of a vow is understood; whether it is evil from the object, or from the end or circumstance, which hold themselves on the part of the promised work and therefore fall under the vow: for these affect the very matter of the vow, that is, the promised work, and render it evil.

Thus a vow is not valid concerning alms to be given solely for seducing a girl or for committing theft, for acquiring victory in a duel, for obtaining vain glory by it, in thanksgiving for theft committed, or concerning the sacrifice of Mass to be performed on Good Friday, etc. - On the contrary, if a circumstance or evil end holds itself on the part of the one vowing and therefore does not fall under the vow, these do not render the very matter of the vow or the promised work evil, but only the act of vowing, for example, if the evil end is only secondary and an impulsive cause of the vow, or an evil circumstance is added to the vow, or the vow is emitted on the occasion or under the condition of some evil.[1] Examples are: a vow formed from ambition, the vow of one who is prohibited from vowing, a vow emitted before several persons so that vain glory may be obtained from hearing of the vow, a vow of giving alms if I escape healthy from the duel, a penal vow.

[1] And so an evil circumstance on the part of the promised work, because it affects the matter of the vow, renders the vow invalid; an evil circumstance on the part of the one vowing alone or of the promise renders the vow only illicit, because it does not affect the very matter of the vow.

2. A vow concerning a licit work incompatible with the fulfillment of a precept is invalid.

Thus a vow concerning a pilgrimage to be undertaken while Mass of precept is to be heard.

3. A vow concerning an indifferent work is invalid, except insofar as it is employed for a good end, not indeed from the mere intention of the one vowing, but from itself as a proportionate means for better attaining that end: for by this reason it is good by the goodness of the end.

Thus, for example, a vow not to approach a house which is an occasion of sin for someone is valid. But eating, drinking, walking, not mounting a horse, passing through such a street, playing, are not matter of a vow; but in these things to avoid excess is matter of a vow.

718. The matter of a vow must be better than its opposite. - For it is not pleasing to God that someone oblige himself to omitting what is more pleasing and acceptable to Him, "nor does it pertain to reverence for God that a less good work be done, while its better opposite is omitted." The better good is:

a) a work of counsel, which by excellence is better than its contrary and is maximally voluntary or in the power of the one vowing, and therefore is most properly the matter of a vow, principal and spontaneous;

b) a work of precept, which is also better than its contrary, at least insofar as it is prescribed: for nothing prevents someone from adding the voluntary bond of a vow to the necessary bond of a precept;

c) indeed even a work which is not in itself, but in these circumstances for the one vowing, better than its contradictory, that is, than its omission.

Hence per se and generally a vow is invalid concerning a good which is impeditive of a greater good, for example, not to undertake the clerical or religious state, to marry, to practice trade, to go into the military, etc.; nevertheless some good which per se and absolutely is lesser can per accidens and relatively become a greater good, and then the vow is valid, for example, if someone sees that the reception of orders would become harmful to himself, or if someone vows marriage for repairing scandal, or fulfilling a promise, or on account of the honor of a girl, or for legitimizing offspring, or on account of great fragility as a remedy of concupiscence, or on account of the common good. Nor is a vow not to vow valid, but a vow not to vow without the permission of the confessor is valid; in which case, if nevertheless someone vows without consulting the confessor, he does this illicitly indeed but validly, unless he intended the vows to follow not to be valid, and had not retracted this prior will. Nor is an unlimited vow not to petition dispensation from vows valid; nor a vow of obeying the confessor in all things in such a way that confession could not licitly be made with any other.

719. The matter of a vow must be possible, or in the power of the one vowing. - For the impossible cannot be efficaciously intended, and no one is bound to it, nor can he oblige himself to it. Hence a vow is invalid:

1. concerning a necessary thing, for example, a vow of dying, of not flying, etc.;

2. concerning another's thing insofar as it is not in our power, for example, a father vowing his son to a religious order. Namely, concerning the deed of another it is not valid, except insofar as it is in the power of the one vowing and he promises that he will take care, as much as he can, that the work be placed by the other;

3. concerning a thing physically or morally impossible; hence a vow of avoiding all venial sins, even the very slightest, collectively, or of never sinning venially, is invalid.

But a vow of avoiding all mortal sins is valid; likewise a vow of avoiding fully deliberate venial sins, or a certain species of venial sins, or of always choosing that which seems more perfect, unless it is a question of persons of modest virtue, or of matter which absolutely no one can avoid, for example, indecent, idle thoughts, etc.

720. A vow whose matter is only partly honorable, better, or possible, if one intended the parts undividedly after the manner of one thing, as in a disjunctive vow, is wholly null; - but if dividedly after the manner of several things, so that the vow is equivalent to several and is virtually multiple, or if someone wished to oblige himself as much as he can, he is bound to the possible part. But if he explicitly intended nothing, he is judged to have vowed according to the nature of the thing and common estimation: when the parts of the thing promised cannot or are not accustomed to be separated, the vow ceases, for example, a vow of celebrating Mass, of building a church, of undertaking a pilgrimage, etc.; but when they can and are accustomed to be separated, it obliges to the part, for example, a vow of fasting the whole week, of giving 100 francs; or also if the principal part is possible and the accessory impossible, it obliges to the possible part, otherwise conversely, for example, a Roman pilgrimage with fasting or a hair-shirt (a. 3, ad 2).

One vowing to avoid all venial sins is bound to nothing, unless he intended to oblige himself as much as he can; a spouse vowing chastity is bound not to ask the conjugal debt.

One who has emitted several incompatible vows ought to keep the more worthy; if such is not present, the earlier is to be preferred to the later.

721. How great a sin it is to vow invalid matter. - These principles are valid: 1. To vow a mortally evil thing is a grave sin.

2. To vow a lightly evil thing, even per se, seems a grave sin: for it is a great direct irreverence toward the most holy God, to will that He have even the slightest evil as acceptable; but per accidens, on account of ignorance or inadvertence, it is often venial.

3. To vow an indifferent thing or a lesser good is only venial.

4. No one seriously vows an impossible thing, except from ignorance, which can be lightly culpable; to do this from jest and levity is venial.

Article III: On the Obligation of Vow

S. Th. II-II, q. 88, a. 3 and 7.

722. The intrinsic and formal effect of every vow is an obligation in conscience, from the virtue of religion, to furnish the things promised. - It is a proposition certain by faith and reason.

It is proved: From fidelity a man is bound to pay that which he has promised; but he especially owes fidelity to God, both by reason of dominion and by reason of benefit received; therefore from fidelity toward God he is especially obliged to fulfill the vows made to Him. Moreover, fidelity toward God pertains to the worship owed to Him and consequently to the virtue of religion. - This obligation is expressly stated in the Scriptures: Deut. XXIII, 21-23; Lev. XXVII, 2; Ps. LXXV, 12; Eccl. V, 3; and in law, can. 1307, § 1.

Therefore violation of a vow is a sin against religion; and indeed against it alone, unless the work was already commanded from elsewhere, as chastity. Yet of itself it is not sacrilege, because it is not the violation of a sacred thing: for a vow of itself does not render either the person vowing or the matter vowed truly sacred. But it is a sin of infidelity, that is, of perfidy toward God.

But since in all vows reverence and fidelity owed to God are of the same account, per se violations of vows in any matter whatsoever are of the same moral species; for which reason it is not necessary that the matter of the violated vow be declared in confession.

723. The obligation of a vow is grave from its genus, because it arises from fidelity toward God (I Tim. V, 11, 12). Nevertheless it is light a) always in matter altogether light, because no one is able to oblige himself beyond the capacity of the matter; b) even in grave matter, if someone obliged himself only under light obligation, because a vow does not oblige beyond the intention of the one vowing.[1]

[1] By the nature of the thing and the will of the Church, exception is made for the vow emitted in sacred ordination or in religious profession.

But if he did not think about this, generally he is presumed to have obliged himself according to the quantity of the matter. Grave matter is that which conduce notably to the worship of God, or to the utility of neighbor or of the one vowing himself, whether from itself or from the circumstances, or is usually prescribed under grave obligation by natural, divine, or ecclesiastical law, for example, fasting, Mass, communion, confession.[2]

[2] This is the general rule handed down through the centuries; but now, after Noldin, Th. M. II, n. 215, some think that the rule is not to be strictly applied when not a singular action but a series of actions or a habitual manner of acting is promised after the manner of one thing: then, namely, the omitted matter is to be considered not absolutely but relatively to the whole thing promised, and thus an action notable in itself ought to be judged a modest part from the promised series. Hence one who after the manner of one thing vows for the whole month daily hearing of Mass or assistance at Marian devotion is not to be judged guilty of mortal sin if he omits it once or twice (provided, he says, it is less than a fourth part!), since he has fulfilled the promise substantially. Certainly so, if the one vowing intended in this way to oblige himself only under light obligation to such a part; but such an intention cannot be presumed, because this estimation is established neither from the nature of the thing nor from custom.

It should be noted that several light omissions coalesce into one grave omission if several things are vowed after the manner of one matter to be fulfilled several times, but not if they are vowed after the manner of several things and singly. Unless the one vowing intended otherwise, they are not accustomed to coalesce in personal vows, they are accustomed to coalesce in real vows; nevertheless disparate things: fasting, Mass, meditation, rosary, etc., do not coalesce unless they are vowed by the same vow for the same end, for example, one vowing various spiritual exercises for a month.

724. A vow cannot be fulfilled without the intention of the one vowing; hence if, explicitly or equivalently, someone positively intends not to satisfy, he remains obliged, because in acts which depend totally upon the one operating, the act does not operate beyond his intention.

Nevertheless there is not required 1. a formal and explicit intention, but it suffices that someone, even unmindful of the vow, do the prescribed work: for everyone before he makes gifts is judged first to furnish debts; nor 2. the special final intention of the one vowing or of the promised work, for example, that fasting be done for penance, alms for the glory of God, because ordinarily it does not fall under the obligation of the vow; nor 3. that it be fulfilled in the state of grace, from love of God, or from a supernatural end, unless the one vowing specially obliged himself to this.

725. The obligation of a doubtful vow. - In doubt concerning the existence of a vow, whether a vow was emitted, if after serious examination the doubt remains, the vow is judged not to be present. In doubt concerning the obligation of a vow, that is, concerning its validity or fulfillment, whether the vow was valid or was fulfilled, if the doubt is negative or light, that is, if there are light reasons for thinking that it does not oblige because perhaps it is invalid or already fulfilled, the obligation of fulfilling remains; but if, after diligent examination, a grave and positive doubt perdures, from the indirect principles of Probabilism it can be judged that no obligation is present: nevertheless dispensation is better sought.

But if one doubts concerning the mode of fulfilling, first the intention of the one vowing is to be investigated, then the words by which the promise was made, the nature of the thing promised, and the common usage and sense of the faithful; but if nevertheless the doubt remains, the one vowing may choose the mode of fulfilling which pleases him.

Hence, unless he intended otherwise: one vowing fasting is bound as the faithful in the region are accustomed to fast; one vowing fasting on each Saturday is not bound to fast if the Nativity of the Lord falls on Saturday; one who vowed fasting for an entire week is not bound on that day on which he must undertake such hard labors that he is excused from fasting; one who vowed an undetermined quantity is bound to the minimum among those things which befit God.

726. From a vow only the one vowing is formally obliged. - For by his vow he cannot oblige another, because no one can promise the thing or action of another, not even of those especially conjoined, as sons or subjects.

Yet someone can be obliged from elsewhere to execute the same work, whether from human fidelity, as if he promises that he will fulfill the vow of another; or from obedience, as if a father vows that he will hear Mass with his children and commands this to them; or from justice: thus an heir, after all things due to others and to himself have been paid (among which St. Alphonsus enumerates the legitimate portion of the inheritance owed to a son by law), before all legacies, even pious ones, is bound to fulfill the real vows of the deceased (can. 1310, § 1 and 2).

The one vowing is bound to execute personal vows through himself, nor can he do this through another: the act does not extend itself beyond the intention of the one vowing; - real vows he can fulfill through another, yet from his own goods, for example, by commanding him, or by holding his act ratified.

727. The one vowing is bound to fulfill the vow at the time determined by himself; when this time has passed, he is still bound, if by intention he established the time for urging the obligation; but if for ending it, the obligation ceases but the vow was violated. But if the intention is unknown, the time is judged to have been determined for urging the obligation in real vows, for example, a vow of giving alms for a month; but in personal vows for ending it, for example, a vow of fasting on

Saturday: thus unless from the nature and end of the vow it must be established otherwise, as if someone for amendment vows to confess for a week, or in thanksgiving vows to fast on a certain day, or, on the contrary, to offer candles for a certain solemnity.

One vowing who has determined no time is bound to fulfill as soon as he morally and conveniently can, which is to be judged according to the matter and common estimation: a delay is grave which notably diminishes the matter promised, for example, if entrance into religion is deferred for a long time; but if the matter of the vow is not diminished by delay, probably even a long delay is only venial, unless it includes danger of not fulfilling the vow.

One who foresees an impediment is bound to anticipate it, provided the time of fulfilling has now begun, for example, a vow of fasting once in this week or of making a pilgrimage within this month.

728. The obligation of a conditioned vow. - On the part of affection a vow is pure if it has been emitted solely from love of the thing promised and of the honor of God; - not pure if another end is joined, for example, of obtaining conversion. Now on the part of the affection by which it is vowed and of the form by which it is expressed, one vow is absolute, circumscribed by no condition, by which the thing is promised simply in the present; - another is conditioned, by which a thing is promised under an extrinsic condition concerning a future contingent thing, suspensive or resolutory, and which, when the condition has been fulfilled, is either perfected or dissolved, for example, a vow of alms if an inheritance is obtained from a parent, or unless adverse fortune comes, a vow of religious life if a sister consents or unless the sister dies. Yet a vow to which a day is merely joined is not to be judged conditioned, for example, I will bid farewell to the world if my parents have died: for such a condition is necessary, not contingent; it is the same as saying: when they die.

A vow under a suspensive condition:

1. Obliges to furnishing the thing promised when the condition has been truly fulfilled: for then it passes into an absolute vow; it need not be observed a) before the condition has been fulfilled, nor b) if the condition is fulfilled not formally but only equivalently: thus one vowing entrance into religion if his sister marries is not bound if she dies, even if the reason of the condition added was the sustenance of the sister, unless however another intention of the one vowing were clear.

2. Obliges one not maliciously and fraudulently to impede the condition; hence a) if the condition is evil, as in a merely penal vow, the one vowing can, indeed is bound to, avoid the fulfillment of the condition; b) if the condition depends upon the will of the one vowing and is a free thing, for example, alms if the first prize is obtained, the one vowing can licitly not fulfill the condition: for he is bound by no precept to place the condition; c) if it depends upon the will of another and is a free thing, for example, entrance into religion if the father consents, he cannot licitly impede the condition by unjust means, such as force, threats, fraud; he can do so by just means, such as persuasions; d) if the condition depends partly upon natural causes, for example, fasting on such a day if convalescence has been obtained, he cannot studiously impede the causes from fulfilling the condition.

3. It does not oblige to furnishing the thing promised if the one vowing illicitly impeded the fulfillment, although in this case he sinned against the vow.

729. The obligation of a penal vow. - One conditioned vow is simply such, another penal, if under the condition of fault a penalty is promised. This can be emitted as one vow, purely penal, or a simple promise of penalty, for example, a vow of alms if someone either plays or makes himself drunk; or as a twofold copulative vow, or a promise of a better good with the sanction of a penalty to be undergone if it is not fulfilled, for example, a vow of not playing or of hearing Mass under penalty of alms.

A penal vow does not oblige to the penalty if the transgression was inculpable or only venially culpable, at least insofar as it is a transgression of the vow, in the case in which it was copulative, as if one vowing to hear Mass on Sunday omits it while not thinking of the vow: for no one is judged to oblige himself to a penalty, especially a grave one, on account of no or light fault. On the contrary, if the vow is not only penal but rather medicinal, so that someone may become more cautious and watchful in avoiding something or eradicating a custom, for example, if he promises alms as often as he blasphemes.

730. The obligation of an alternative or disjunctive vow. - On the part of mode, a vow is determinate if a certain and definite thing is promised or accurately designated; or disjunctive or alternative, by which an option among several remains if, from several things, one thing to be furnished is promised after the manner of one thing, for example, a vow of hearing Mass or of giving alms. Such a vow:

1. If it is valid, can and must be fulfilled a) per se, in one or the other matter, according to the choice and determination of the one vowing; b) per accidens in one matter (for example, Mass), in the case in which the one vowing by as it were a new vow has so determined himself that he willed absolutely to transfer the whole obligation into that matter: for then the vow is no longer disjunctive.

2. It need not be fulfilled a) if the matter determined in this way becomes impossible; indeed b) if, with such a determination not made, one part becomes evil, vain, or impossible, and thus the faculty of choosing does not remain, while however the intention of the one vowing was to determine himself freely to some part; on the contrary c) it must be fulfilled in the possible matter if the intention was to determine himself in any case whatever, or if by his own will one part becomes impossible: for then he is judged to have wished to choose the other, which is still possible.

3. It is invalid from the beginning if either matter is not apt, for example, evil or vain or impossible, because someone cannot be equally obliged to a good thing and an evil thing, for example: I will steal or enter religion.

731. Corollary. - From the foregoing, practical rules for the interpretation of vows can easily be deduced.

Article IV: On the Cessation of the Obligation of Vow

S. Th. II-II, q. 88, a. 8-12.

732. The obligation of a vow ceases: 1. from within, that is, by a substantial change in the matter or in a circumstance of the vow or of the one vowing; 2. from without, or by the legitimate

intervention of authority through irritation, dispensation, and commutation. Hence canon 1311:

"A vow ceases by the lapse of time added for ending the obligation, by a substantial change of the matter promised, by the failure of the condition upon which the vow depends or of its final cause, by irritation, dispensation, and commutation."

733. Cessation of a vow from within. - A vow can cease or be suspended partially or totally:

a) When the better good promised to God is no longer better, or is prohibited and thus is impeditive of a greater good, or becomes indifferent, useless, or impossible.

b) When in the matter promised to God or in the state of the one vowing comparatively to it, so grave a change occurs that morally it is believed that the one vowing did not intend to oblige himself for such a case or state: a vow does not oblige beyond the intention of the one vowing. Thus illness excuses from a votive fast, a great diminution of status from a notable alms; but a change in the disposition of the will alone of the one vowing neither removes nor suspends a vow.

c) When the final cause of the vow ceases, which the one vowing intended to attain through the execution of the vow. Thus a vow of giving alms to a poor man ceases when his poverty ceases; a vow of undertaking a pilgrimage for obtaining the health of a friend ceases when that end ceases through his death; a vow of not entering a house on account of an occasion of sin ceases when the occasion ceases; but it does not cease when its merely impulsive cause ceases.

d) By the failure of the condition upon which the vow depends, for example, while I am rich, I will give alms; or conversely, by the fulfillment of a resolutory condition.

In doubt of fact whether a sufficient change of matter is present and the vow has ceased from within: either dispensation or commutation is to be sought, or the vow must be fulfilled.

734. Irritation of a vow is its annulment or suspension by him to whose power the very will of the one vowing, or the matter of the vow, is subject: "for no one can firmly oblige himself by a promise to that which is in the power of another, but only to that which is in his own power; but he who is subject to someone, as to this, is not of his own power to do what he wills, but depends upon the will of another; therefore he cannot firmly oblige himself by vow in those things in which he is subject to another, without the consent of his superior"; whence in every vow there is implicitly contained the condition: unless the superior resists (a. 8).

Hence irritation is twofold: direct and indirect; between which there is a manifold difference. Direct irritation, and that properly so called, is the annulment of a vow (verbreking) made by him who has dominative power over the will of the one vowing, whence it touches the act itself and so dissolves it that it never revives: it is valid for vows emitted at the time of subjection, while one is under the power of a superior, even if they are to be fulfilled afterward (can. 1312, § 1). Indirect irritation, and that improperly so called, is the suspension of a vow (opschorsing) made by him who has power only over the matter of the vow; it touches the thing promised, whose obligation is impeded, and therefore it only suspends the obligation of the vow, which of itself revives as soon as the promised matter is withdrawn from the power of the one irritating it (can. 1312, § 2). Hence it is valid even for vows emitted previously, but not for vows to be fulfilled afterward (cf., for example, can. 1315).

735. They can directly irritate or annul a vow who have dominative power over the person or will of subjects (can. 1312, § 1):

1. The father (if he is lacking or far absent, the tutor, or the mother as tutrix) can annul the vows of minor children, at least those of the non-pubescent; whether also those of pubescent children not emancipated is disputed, some affirming it because of the general manner of speaking of the new law without restriction in canons 1312 and 89, others denying it because there is no reason for thinking that the legislator wished in this matter to introduce some change.

2. Religious superiors: the Supreme Pontiff, the bishop for non-exempt religious, legitimately constituted superiors, even abbesses and female superiors, can annul the vows of professed religious, except the vows of the profession itself.

3. The husband, probably, can annul the vows of his wife, because he is the head of the woman.

The Church cannot directly irritate the vows of subjects over whom it has only the power of jurisdiction; yet it can require conditions for their validity. Thus it has declared null a temporary religious profession before the completed sixteenth year; but perpetual profession if it is made before twenty-one years, or if a profession of three years has not preceded (can. 573-574).

*736. They can indirectly irritate or suspend a vow** who have power, whether dominative or of jurisdiction, over the matter of the vow (can. 1312, § 2):

1. The father can suspend the vows of minor children, as long as they remain under his power, concerning things or actions which are subject to his administration and governance.

2. Spouses mutually: namely, the husband can suspend vows of the wife prejudicial to marital right, to the education of offspring, or to domestic government; and the wife, vows of the husband adverse to her rights.

3. Religious superiors can suspend the vows of the professed and even of novices, prejudicial to their exercises and probation; whence canon 1315: "Vows emitted before religious profession are suspended, as long as the one vowing remains in religion."

4. Ecclesiastical and civil superiors can suspend vows of subjects prejudicial to their rights.

5. A master can suspend the vows of servants when they do not accord with due duties: such often are vows of making a pilgrimage, fasting, hearing Mass daily.

The superior who permitted or confirmed vows nevertheless validly irritates them directly or indirectly, because he did not abdicate his power of irritating. Likewise a vow confirmed by some superior can always be irritated by a higher superior in the same order; but a vow confirmed by a higher superior cannot be irritated by an inferior of the same order.

737. Dispensation (ontslaging) is the condonation or relaxation, for a time or in perpetuity, of the debt contracted from a vow, granted by ecclesiastical authority in the name of God.

Christ granted to the Church the power of dispensing in the power of the keys (Mt. XVI, 19), as is clear from perpetual usage. There is not a dispensation in the natural law of keeping faith and

standing by promises; but from the remission of the debt by God there arises a case in which that law is not applied.

Dispensation is an act of spiritual jurisdiction in the external forum, and therefore belongs to ecclesiastical authority alone; and indeed:

1. The Supreme Pontiff is able to dispense in every vow, yet not if it confirms a right acquired by a third party, unless the gratuitous promise is subordinated to the vow, because then the accessory follows the principal.

2. The local ordinary, with subjects and travelers, can dispense in all non-reserved vows, provided the dispensation does not injure a right acquired by a third party.

3. The superior of an exempt clerical religion can dispense, in non-reserved vows, with his subjects: professed, novices, and others dwelling with them according to the norm of canon 514, § 1; but abbesses and female superiors cannot.

4. By privilege, regular confessors of mendicant orders, and those who are assimilated to them in privileges, can dispense in non-reserved vows.

5. Others who are delegated to dispense by those who have ordinary power of dispensing, as happens in the time of Jubilee (can. 1313).

But parish priests and simple confessors cannot.

738 [printed 734]. Vows Reserved to the Supreme Pontiff. - Besides the vow emitted in ordination and the vows of profession in a religion approved by him, two private vows are reserved to the Supreme Pontiff, namely, of perfect and perpetual chastity, and of entering a religion of solemn vows, which have been emitted absolutely and after the completed eighteenth year of age (can. 1309).

This reservation is to be understood strictly, so that the vows must be perfect from every part: a) on the part of the act, that is, that they have been emitted with most perfect liberty, spontaneity, and discretion, without any fear inflicted by others or fraud; b) on the part of the obligation, that the vow has been emitted under grave obligation; c) on the part of the matter: namely, they are vows of perpetual and complete chastity, and of entering religion strictly so called; but not a vow of celibacy or of not marrying, of virginity alone, or of conjugal chastity, or of receiving orders, or of entering a congregation; d) on the part of the end, from love of the promised work alone, and consequently without any indetermination (as a disjunctive vow would be), or condition concerning the future (as a penal vow would be). It should be noted that the circumstances of a vow are not reserved, for example, the circumstance of time, entrance into an austere religion.

In doubt, a vow is not judged reserved.

739. Commutation (omzetting, omwisseling) is the substitution of some honest work in place of the work promised, under the same obligation and bond of the vow, or the transfer of the obligation of a vow from one matter to another. It can be made into a good which, considering all the

circumstances, is better both for God and for the one vowing; or into a morally or almost equal good; or into a lesser good.

Apart from reserved vows and those which confirm the right of a third party, vows can be commuted into a better or equal good by the one vowing himself, as has been conceded in the new law, or by a confessor with the consent of the one vowing; into a lesser good by those who have the power of dispensing, because this includes a partial dispensation (can. 1314).

The one vowing can ordinarily return to the first work, because the commutation is made for his utility; except the case in which he wished to oblige himself to a better thing by a new vow. But if the substituted work becomes impossible, he is not bound to return to the first if the commutation was made by the authority of a superior, because the latter absolutely removed the obligation concerning the prior matter and transferred it to the other, in which it has been extinguished by reason of impossibility; but he is bound to return if it was made by his own authority.

740. Observations. - 1. Irritation of a vow requires no jurisdiction, but direct irritation requires dominative power; dispensation always requires jurisdiction; commutation sometimes requires jurisdiction, but not always.

2. For the validity of irritation, whether direct or indirect, of vows made through dominative power, no cause is required; for liceity, a reasonable cause is required, by the lack of which a sin is committed which of itself is venial. But for the validity of indirect irritation of personal vows through the power of jurisdiction, that is, through the imposition of a precept, a just cause is required, though less than for dispensing: for a precept does not oblige unless it is reasonable.

For the validity of dispensation a grave cause is required, proportioned to the gravity of the vow, which nevertheless need not be sufficient for excusing: for God does not relax or change a vow without reason.

For commuting into a lesser good a just cause is required, proportioned to the gravity of the vow and to the diminution, but a lesser cause suffices than for dispensing completely; for commuting into an equal good a light cause suffices, for example, greater devotion, less danger of transgression; for commuting into an evidently better good the very excess of goodness suffices: for God prefers that which is better and accepts it as a superabundant fulfillment. A commutation made without sufficient reason or by one who does not have power does not seem valid; nevertheless some affirm that it is valid, provided the defect is supplied up to equality.

3. The causes are: a) on the part of the act, an imperfect, indiscreet, coerced mode of vowing, for example, if the vow was made from fear, fraud, anger, sadness, levity, by a non-pubescent child, etc.; b) on the part of the matter: 1. if it is more difficult; 2. if it is an occasion or cause of evil, for example, of spiritual ruin: thus a great danger of transgressing the vow from frailty; 3. if it impedes a greater spiritual good, as if it is an occasion of scruples; 4. if it impedes the common good of the Church, or of the republic, or of the community. Those causes ordinarily suffice for commuting into a lesser thing, rarely for dispensing totally.

In doubt whether the cause is sufficient, the superior can grant a dispensation if some utility is hoped for and no scandal is feared; and the one vowing can acquiesce in the judgment of the superior.

4. If the cause is manifestly insufficient, the dispensation is to be held invalid; in doubt it can be judged sufficient.

5. A simple confessor can only suggest commutation into a better or equal good.

Chapter IV: On the Acts by Which We Assume the Divine Name

741. Matter to be treated. - Besides divine things or sacraments, concerning which it will be spoken in volume III, we can assume the divine name either to confirm our own words in an oath, or to induce others in adjuration, or to invoke Him in divine praises.

Question One: On Oath

Article I: On the Essence and Object of an Oath

S. Th. II-II, q. 89, a. 1, 4, 6.

742. Oath (serment; eed) is said from right, because it was introduced for right or law, among all nations, so that what is said under invocation of divine testimony may be held as true; therefore to swear (eed doen of zweren) is to appeal to God as witness of some matter, or, as St. Thomas says, a. 1, "to assume God as witness." Whence oath is defined: Invocation of divine testimony, or with the Code (can. 1316): "the invocation of the divine Name as witness of truth."

Therefore the end of an oath is the confirmation of truth. Confirmation in the sciences is made through reason, which proceeds from evident things to conclusions; there witnesses and oath are not employed: for one would seem ridiculous if, in the disputation of some science, he wished to prove what was proposed by an oath. But the particular and contingent facts of men cannot be confirmed through reason (from intrinsic causes), and therefore they are accustomed to be confirmed through witnesses. Human testimony, however, is not always sufficient for confirming these things, on account of defect of veracity or knowledge, and therefore it was necessary to have recourse to divine testimony, because God can neither lie nor be ignorant of anything (a. 1).

But one swearing does not ask that God here and now testify to the truth of the statement by an actual sign (for that would commonly be tempting God), but when and how it pleases Him, at least in the future judgment (a. 2, ad 3), or that He punish most gravely one swearing falsely (a. 1, ad 3). And yet the invocation serves to produce faith immediately among men, because someone is not easily judged to be of such impiety and boldness that he would make God a witness of falsehood and subject himself to divine vengeance.

743. An oath is an invocation; therefore it is an act of reason: an interior speech, which nevertheless presupposes an act of the will, namely, at least the implicit intention of swearing and of calling God as witness.

Hence an oath is not:

a) An invocation pronounced indeliberately by him who does not know what an oath is, or by him who is ignorant of the sense of the words or does not advert sufficiently: an unconscious oath.

b) Nor an invocation pronounced merely materially in circumstances which exclude every intention of invocation, for example, if it is made in school or in a theater for the sake of teaching or representing, or by way of interjection as in common speech, by God (for example, par Dieu, c'est vrai): a narrated oath.

c) Nor a deliberate but merely external invocation without intention: a fictitious oath, for example, by him who does not admit the existence of God.

For a human act does not operate beyond the intention of the agent. But an oath must be a human act, not only insofar as it is speech, but also insofar as it is an invocation of God as witness: for invocation can be made for a diverse end. Therefore, in order that it be made for a witness, the intention of uttering words and expressing an invocation of divine testimony does not suffice, but the will of invoking God as witness is required. A fictitious oath is an irreligious lie, of itself venial, sometimes mortal because of grave public or private harm, as in judgments and contracts.[1]

[1] Hence condemned by Innocent XI is proposition 25: "With cause it is licit to swear without the mind of swearing, whether the matter is light or grave."

A merely internal oath, although it is valid before God, as if someone invokes Him internally as witness that he wishes firmly to avoid sin, nevertheless does not obtain its effect of confirming assertions and promises before men, whence it is incomplete; likewise if someone, intending to swear, uses a formula wholly unfit for this. Therefore, in order that an oath be complete, it must be expressed by some oath formula; and therefore on the part of the mode by which the invocation is expressed, it is divided into verbal, real, and mixed, according as it is expressed either by words or by signs (the raising of fingers, the touching of a scepter, cross, or gospels), or by both.

744. An oath is the invocation of testimony or an appeal as witness of truth.

Hence a) it is not the invocation of the merciful and omnipotent God by way of prayer and supplication for obtaining some good, favor, or help, even, for example, for showing truth or conciliating faith for ourselves; but it is the invocation of the infinitely true God for obtaining testimony for confirmation, by which, insofar as it is in us, we constitute Him witness, that is, we cite Him and consent that He be witness, if He wills.

b) Nor is it the invocation of Sacred Scripture to confirm doctrine: for it is one thing to use testimony already given, another to invoke the testimony of God as to be exhibited (a. 1, ad 1).

c) Nor is it a simple assertion of divine omniscience, as in the expressions: I speak before God; God hears me; He knows that I speak the truth; God is witness; God will testify in His own time; God is truth; the Lord lives; the Lord sees my conscience, etc.; unless they are pronounced not only narratively and enunciatively, but invocatively, as the Apostle, Gal. I, 20: Behold before God, that I do not lie...

d) Nor is it a simple comparison of the asserted truth with an evident truth, for example, it is as true as God exists, as the sun shines, as I sit here (as in Dutch waarachtig Gods), or with a truth of faith, for example, it is true as the Gospel, after the likeness of faith, as infallible as the Church: in which case nevertheless ordinarily some irreverence toward God or sacred things will not be lacking.

e) Nor is it a simple vehement affirmation as in the expressions: in truth, by my faith (that is, human faith), in conscience, by my conscience, by the conscience of my soul (for example, ma foi, ma parole

d'honneur; op mijn woord).

f) Nor is it a simple wager or obligation of a penalty, for example, if it is false, I pledge my head; I wish to be a thief; let me be a heretic; let my ears be taken off; let me be killed, hanged, die; let the devil take me; ... by damnation, come here, etc.; unless God is invoked as witness of truth and at the same time avenger of falsehood.

On the part of the testimony which is sought, an oath is merely contestatory or directly invocatory (getuigeniseed) if God is invoked only as witness for manifesting truth; or indirectly, namely, execratory or imprecatory (vervloekings- of verwenschingseed) if He is also invoked as avenger for punishing falsehood. This often happens if He is expressly named, for example, if I lie, may God punish me, destroy me, damn me..., or if the evil is commonly regarded as proceeding specially from divine providence, for example, if I lie, may lightning from heaven strike me, may I descend into hell (a. 1, ad 3).

745. An oath is the invocation of divine testimony or of the divine name. Hence he does not swear 1. who does not say whom he invokes, for example, I swear that it is so, unless from the circumstances it is clear that he intends God, for example, if the demand for an oath preceded; nor 2. he who invokes false gods; nor 3. he who appeals to men as witnesses; or 4. even to the saints, stopping at their testimony: for this is nothing but an act of dulia.

Yet a) if a creature is invoked insofar as it belongs and is referred to its Author, and represents His supreme truth and majesty, the Creator who shines forth in creatures is implicitly and mediately invoked, for example, if someone swears by heaven, by the holy faith, by the cross, by the Gospels, by the sacraments, by the temple, by the saints, by relics, or by other nobler creatures which commonly are regarded insofar as they have a special relation to God; but by baser creatures no one is judged to swear, nor would that be licit because of irreverence.

Similarly b) if someone obliges himself or something pertaining to himself to a penalty and offers it to God as avenger of falsehood, there is an execratory oath in which God is implicitly invoked as witness and avenger, for example, I swear by my head, by my son, by my salvation... Such an oath is the expression by my soul (II Cor. I, 23), unless nevertheless, as often happens, the faithful do not advert to the special relation of the soul to God.

On the part of Him by whom one swears, an oath is explicit or immediate, or implicit or mediate (a. 6).

746. Famous is the division of oath into assertory and promissory, which is taken on the part of the object or matter, according as an oath turns upon the assertion or affirmation of the one swearing concerning the present, for example, I think it is so, I am incapable of paying, or concerning the past, for example, I did this, or upon an action or omission to be executed by the one swearing in the future. In the first case it is assertory (bevestigende of bloote eed), in the other promissory (belovende of verbindende eed).

In a promissory oath 1. God is invoked to testify to the present intention of the one swearing to do what he proposes; whence it includes an assertion concerning the present and adds a purpose concerning the future, and therefore when we distinguish an assertory oath from a promissory one, we understand it as merely assertory. 2. Nevertheless God is not invoked as witness of the future

execution, for testimony is not given about a thing not yet done;[2] nevertheless 3. God is as it were the patron,[3] who gives special authority and force to the promise and urges its execution by a special obligation of religion: for just as men promise or enter betrothals before a king, judge, or other man of great authority, who lends authority to the contract, so that they understand that they would do injury to him if they do not fulfill the promises, so also they promise with God invoked; but if they do not fulfill, they inflict injury upon Him. Whence by such an oath God is invoked that He may confirm the present sincere will and bind it lest it be changed in the future.

[2] Although future things are present before God, nevertheless by oath there is not asked from God testimony concerning a future thing as it is present to Him, but as it is in the word of the one promising. But in this way testimony does not fall upon the word except insofar as it is capable of truth when it is spoken; therefore with respect to a future deed God is not invoked as witness. Suarez, De Religione, l. I, c. 9, n. 25.

[3] Others say surety, but "this word... we cannot take in the strict sense, in which he is called a surety who answers for another so as to take upon himself the burden of paying the promise in defect of another." Dignant, De Virtute religionis, n. 221.

A promissory oath is a) strictly promissory or accessory when the action which is sworn is truly promised, whether to God by vow (a sworn vow), or to man (a sworn deed), or to both (a sworn vow in favor of a third party); or b) broadly promissory or standing of itself when the action is not promised but only proposed, whether for another's honor or favor (an oath confirmatory of a purpose or a sworn purpose), or for penalty or vengeance (a comminatory oath; bedreigingseed).

747. An oath is an act of religion. For nothing is confirmed except by something which is more certain and more excellent; therefore he who invokes divine testimony to confirm what he says, by this very fact professes God to be more excellent, as one whose truth is indefectible and whose knowledge is universal, and thus he exhibits reverence to God. But to reverence God belongs to religion; therefore. Cf. Deut. VI, 13; Ps. LXII, 12; Hebr. VI, 13-16.

All oaths in the account of oath are of the same species, because since the account of oath consists essentially in the invocation of God, all the differences brought forward above, or diverse modes of invocation, are related materially and per accidens to God's testification, and consequently do not change its essence and species.[4] - Nevertheless other species can accede, for example, of fidelity, justice, dulia, and if the oath is sinful, of blasphemy, injustice, scandal, etc.

[4] Nor is a promissory oath distinguished in species because one thing is to invoke God as witness of present truth, and another as patron of future execution. For in an oath the testimony of God and His authority are not invoked distinctly and separately, but God is invoked as testifying to the present intention and consequently He urges the future execution, because the matter concerns a future thing promised; which returns to a material difference. Dignant, o. c., n. 246.

748. Practical observations. - 1. In doubt concerning the intention of the one swearing, judgment is to be made from the circumstances, for example, whether the demand for an oath preceded, whether the one swearing is accustomed to swear, etc., but especially from the words employed: if the formula from its proper sense and common usage is oath-like, and was pronounced advertently, an oath is presumed; if it is doubtfully oath-like, it is not presumed but must be proved; but if it is ambiguous and the intention is not established, an oath is not judged to be present.

2. By the prescription of the Church, "an oath which the canons require or admit cannot validly be furnished through a proxy" (can. 1316, § 2).

Article II: On the Liceity of an Oath

S. Th. II-II, q. 89, a. 2, 3, 5, 7, 10.

749. Thesis. An oath according to itself is licit, under the due conditions. - It is of faith from Lateran Council IV, c. 3, against the Waldensians, and from the Council of Constance, against Wyclif, sess. 8, prop. 43 and a. 12.

The Beguines and Beghards, Fraticelli, Hussites, Anabaptists, Mennonites, and Quakers also denied the thesis.

The first part is proved: a) From the origin and end of an oath. From origin, because it has been introduced from faith by which men believe God to have infinite truth and universal knowledge and providence; from end, because it is introduced for justifying men and for ending controversies (Hebr. VI, 16), and because it is an efficacious means for obtaining the necessary security in human affairs, especially in contracts and judgments.

b) From many places both of the Old and the New Testament (Gen. XXII; Deut. VI, 13; X, 20; Ps. XIV, 4; LXII, 12; CIV, 9; CIX, 4; Eccli. XLIV; Is. XLV, 23; LXV, 15; Jer. IV, 2; Rom. I, 9; Phil. I, 8; II Cor. I, 23; Gal. I, 20; Hebr. VI), although Scripture proscribes its abuse, for example, in ordinary conversation (Exod. XX, 7; Lev. XIX, 12; Eccli. XXIII, 9-14; Mt. V, 34 sq.).

c) From the constant practice both of the faithful and of the Church, even in the earlier centuries (a. 2).

The second part is proved: An oath is not good through itself, but as a means to another thing; therefore it is not licit except under due conditions. For that which is sought only as a remedy for helping a defect is not good through itself, as is clear concerning medicine; but an oath is sought only for helping a defect, namely, that one man distrusts another; therefore an oath is not good through itself, nor licit except in necessity, but under due conditions (a. 2 and 5).

750. Three conditions are necessary for the liceity of an oath: judgment, truth, and justice, as Jeremiah IV, 2 indicates: "And you shall swear: The Lord lives, in truth and in judgment and in justice," which St. Jerome calls the companions of an oath (can. 1316).

For the good use of an oath two things are required: 1. that someone swear not lightly, but from a necessary cause and discreetly, namely, judgment of discretion on the part of the one swearing; 2. that the thing which is confirmed by oath be neither false nor illicit, namely, truth and justice on the part of the thing sworn. An incautious oath lacks judgment, a lying oath or perjury lacks truth, an iniquitous or illicit oath lacks justice (a. 3).

751. Judgment of discretion signifies a sufficient cause for swearing. For it is against the reverence due to the divine majesty to invoke it as witness of a thing of no or little moment (a. 2); which inordination nevertheless is of itself venial. In an assertory oath, a sufficient cause is a true utility for an honest end of sufficiently great moment, such as the public good, the peace of the family, security in a contract, one's own or another's reputation (condemned prop. Quesnel 101; Pistoia 73): in a promissory oath, it is required besides that the thing be in the power of the one swearing (a. 7).

752. Truth essentially requires conformity of the statement, not indeed with the thing sworn (material and objective truth), but with the mind of the one swearing (formal truth). For it is of itself a very grave irreverence toward God, infinite truth, to invoke Him as witness of falsehood or even as patron.

In an assertory oath there is only the truth of the assertion concerning the present, or the conformity of the statement with knowledge of the fact concerning which one swears, whence the certain is to be sworn as certain, the doubtful as doubtful, the probable as probable; in a promissory oath there is conformity of the statement with the present intention of doing that which is promised, and besides another truth is required, namely, conformity of the deed with the present promise, or truth of execution in the future (a. 7 and ad 1).

Therefore truth excludes a lie, but not error: thus he swears in truth who swears to something false which he prudently judges to be true; on the contrary, he commits perjury who swears what he thinks is false, although on the part of the thing it is true. Therefore in order that something be sworn as certain, practical and prudential certitude is required, or moral certitude improperly so called, which excludes every prudent doubt, greater however than for simply affirming; but for swearing judicially, experiential knowledge is required, because it is demanded by law.

753. Justice here signifies honesty. It requires 1. in an assertory oath, not indeed that the thing asserted, but that its assertion be honest: attestation of a crime before a judge is licit; the disclosure of a secret, profession of heresy, boasting of a crime committed, detraction, confirmed under oath, are dishonest; 2. in a promissory oath, not only that the promise itself, but also that the action or omission promised, insofar as it is sworn, be honest. For it is irreverence toward God's sanctity to call Him into testimony for a purpose or assertion which He prohibits (a. 7 and ad 2); which irreverence is grave from its genus.

754. Whether to swear befits all? - In an oath two things must be considered: one on the part of God whose testimony is invoked, and as to this the greatest reverence is due to an oath, and therefore non-pubescent persons and perjurers or those who are in danger of perjury are not admitted to it;[1] the other on the part of man whose statement is confirmed by oath, which he does not need except if there is doubt concerning his truth: but this derogates from the dignity of a person, that there be doubt concerning the truth of those things which he says, and therefore it does not befit persons of great dignity to swear, except on account of great utility or necessity (a. 10). Whence the Church has permitted an oath more sparingly to priests and religious, and prohibits a cleric from swearing before a lay judge unless the permission of the Apostolic See or of the bishop has been obtained (can. 120).

[1] Cf. can. 1757; and Belgian Penal Code, a. 31-34; Code of Civil Procedure, a. 285.

Article III: On the Obligation of a Promissory Oath

S. Th. II-II, q. 89, a. 7-9.

755. The intrinsic effect of a promissory oath is the obligation of executing the thing sworn from the virtue of religion. - It is certain, both from Scripture (Num. XXX, 3; Mt. V, 33), and from reason, because he who does not fulfill a promise confirmed in His name inflicts injury upon the authority of God (can. 1317, § 1).

The obligation is grave from its genus, yet probably admits lightness of matter, just as a vow does.

It is proved: 1. directly. Because the obligation of a vow is graver than the obligation of an oath as promissory.[1] For the former is caused from the fidelity which we owe to God Himself, so that we pay Him what was promised; the latter is caused from reverence toward God, from which we are bound to verify that which through His name we promised before Him. But the obligation of fidelity regards God more directly than the obligation of reverence, for infidelity contains irreverence, not conversely, and infidelity toward a lord is the greatest irreverence. Therefore we are more strictly bound to do that which we promised to God Himself than that which we promised with God only as witness (a. 8). Whence if the obligation of a vow admits lightness of matter, a fortiori the obligation of a promissory oath does.

[1] We say: as promissory. For the obligation of an oath as assertory is greater: there it is a negative precept not to swear falsely, which is directly contrary to God; here it is an affirmative precept of fulfilling a sworn promise. But a negative precept obliges more than an affirmative.

2. indirectly. Because the violation of a promissory oath is not proved to be perjury strictly so called, as the adversaries[2] contend, saying: He who does not fulfill an oath makes it be false and lying, because he makes God witness of a lie. For he who does not fulfill what he sincerely promised does not make a lie; because he does not say or do against his mind, but only changes his mind, inconstant and unfaithful, as St. Thomas himself explains (II-II, q. 110, a. 3, ad 5). Therefore he who does not fulfill what he sincerely swore does not make God witness of a lie, provided he had the intention of fulfilling the oath; but he only acts inconstantly or unfaithfully in a thing promised under divine authority, and thus contracts irreverence toward God, which is a grave or light sin according to the gravity or lightness of his inconstancy or infidelity.

[2] For example, Cajetan, Toledo, Valentia, Lessius, Gabriel, Bonacina, etc. On the contrary, St. Antoninus, Sylvester, Soto, Suarez, Laymann, Navarrus, Sylvius, Azor, the Salmanticenses, Billuart, and almost all moderns.

In other words, violation of an oath as promissory is not a sin which directly opposes a divine attribute, and therefore it is not necessarily and always mortal.

Nevertheless it does not follow that someone can oblige himself by oath under light obligation in grave matter, as for a vow. For the disparity is that to promise is nothing other than to will to oblige oneself, whence the whole obligation of a promise immediately depends upon the will of the agent, who can promise or oblige himself more or less. But an oath is not directly for obliging but for the confirmation of truth by divine testimony, from which confirmation obligation naturally follows, because of the reverence of God; whence this obligation of an oath does not depend only and immediately upon the will of the one swearing, but upon the law of reverence owed to God, because it is a consequence of the testimony invoked. For someone cannot swear more or less, or invoke God as witness more or less, but he either invokes or does not invoke, and once He is invoked, God is patron of the obligation and urges fulfillment from the law of reverence owed to Him, which is greater or less not indeed according to the intention of the one swearing, but according to the gravity of the promise or of the promised matter sworn.

756. The conditions required for the validity of a promissory oath, both on the part of the act and on the part of the matter, are almost the same as for a vow.

Yet there are two exceptions:

1. An oath made in favor of a third party need not be made concerning a better good, but it suffices that it be concerning a good useful to one's neighbor. The direct end of a vow is the greater worship and honor of God; but the direct end of an oath is the confirmation of truth, which can also be had in a lesser good.

2. Even grave and unjust fear does not invalidate an extorted oath, as is now altogether certain from canon 1317, § 2, because although it renders the act involuntary in a certain respect, nevertheless it does not simply remove the voluntary. Whence an oath remains a human act and consequently is capable of inducing obligation; which nevertheless can, in the name of God, be relaxed by an ecclesiastical superior.

Nor should you say that God does not accept an oath extorted by injury, because an oath is not made in favor of God nor must it be accepted by Him, but is a simple appeal to His testimony; that God as patron gives authority to the promise is only a consequence of the invocation. Yet in the case the one swearing can use a restriction: I will give insofar as you have a right; but if he did not do this but truly invoked, he is bound to pay the promise, yet he can immediately seek back in judgment what he paid (a. 7, ad 3).

If a condition required for the validity of an oath is lacking, sin is committed, grave or light, in the same way as was said concerning a vow (n. 721). But he who swears fictitiously or merely externally is not obliged by force of the oath from religion, but can sometimes be held because of scandal or harm inflicted.

757. The obligation of a promissory oath must be fulfilled and ceases in the same way as was said concerning the fulfillment of a vow (n. 727) or its release from obligation (n. 732). Yet the obligation of an oath ceases not only by all the things by which the obligation of a vow ceases, but also by the renunciation of the third party or by condonation made by him in whose favor it principally redounds (a. 7, ad 2 and a. 9; can. 1319).

But three things should be noted: 1. that he who can irritate, dispense, or commute a vow can by that very fact do this concerning a promissory oath (can. 1320); 2. but if the dispensation of an oath tends to the prejudice of others who refuse to remit the obligation, the Apostolic See alone can dispense, and only because of necessity or utility of the Church or the common good (ibid.); 3. probably no oaths are reserved, even if they confirm reserved vows.

758. The obligation of a promissory oath is to be interpreted strictly, because the one swearing is judged to have wished to oblige himself as little as he could. Thus especially canon 1321, conformably to St. Thomas, a. 7, ad 4.

Hence: a) An oath per se, and unless the one swearing intended otherwise, follows the nature of the act to which it is joined: the accessory follows the principal; therefore if it is added to a vow, promise, or contract, its obligation will have the same extension, the same limits, and the same expressed or tacit conditions (can. 1318, § 1). Thus, for example, an oath of keeping a secret, residence, a contract such as betrothal, the statutes of a college, fidelity toward a regime, per se does not oblige beyond what is demanded by the matter of the secret, or the law of residence, or the nature of the contract,

for example, of betrothal, or the custom had concerning the statutes of a college not to be published but already published, or the fidelity of a regime insofar as it is not opposed to a superior divine and ecclesiastical right.

b) "If an oath is added to an act directly tending to the harm of another or to the prejudice of the public good or of eternal salvation, the act obtains no firmness from it" (can. 1318, § 2).

c) Although an oath does not have the force of validating and confirming invalid or rescindable contracts, nevertheless, if the contract is invalid, it can induce an obligation of religion, if it is emitted absolutely and independently of the obligation of the contract, so that the one swearing is prohibited by religion from seeking the annulment of the contract, and, with the contract irritated, the obligation of religion remains until there is dispensation in it. Then, namely, there is a mere purpose confirmed by oath and a promissory oath broadly so called or standing of itself.

d) Oaths very often used: of not selling for less or not buying for more, of not granting or accepting a favor, of chastising a subject, etc., generally do not oblige, because the intention of swearing is lacking, or the matter is vain and useless, or finally the condition understood is lacking (for example, if the matter is not otherwise more opportune), or the state of things is sufficiently changed.

Question Two: On Adjuration

S. Th. II-II, q. 90.

759. Adjuration (bezwering), in ecclesiastical speech, is an obtestation or interposition of the divine name by which, by entreating or commanding, we induce someone to do or omit something. It is called:

1. an interposition of the divine name, that is, an invocation or mention of divine authority; whence adjuration taken strictly as an act of religion is made through God, whether immediately, or mediately through the saints or sacred things, insofar as in them God Himself is regarded.

But he who adjures by the saints considered in themselves makes an act of dulia; if by the death, life, love of father or mother, it will not be a religious adjuration of which we now speak.

2. by which we induce someone to do something; whence adjuration is an act of reason, not of will.

For just as a man by a promissory oath orders himself immovably to doing something because of reverence for the divine name which is invoked, so he can order others to doing something, by entreating superiors and commanding inferiors, and confirm this by the name and authority of God, so that because of reverence for Him they may do it.

3. by entreating or commanding, whence oath and adjuration are distinguished.

a) Namely, divine authority is interposed in the former for confirming an assertion or promise; in the latter for confirming a petition or command. b) In the former God is brought forward as witness; in the latter as one requesting or commanding with us. c) In the former God is invoked as infinitely true; in the latter as the object of love or fear, by which the one adjured may be moved to acting.

760. Adjuration is twofold: deprecative and imperative.

1. Deprecative is made by way of benevolent inducement, on account of reverence for some sacred thing: we use this toward God, angels, saints, superiors, and equals. It is often called obsecration (Rom. XII, 1), which the demon himself used (Mk. V, 7). Thus the Church asks all things through Our Lord Jesus Christ.

2. Imperative is made by way of compulsion, which superiors can use toward subjects (Mt. XXVI, 63; Mk. I, 25).

It is not licit to adjure demons deprecatively, nor imperatively for learning something from them or for obtaining something through them, because there can be no benevolence, friendship, submission, or society toward them (I Cor. X, 20); but it is licit imperatively and by rebuke through divine virtue, lest they harm us spiritually or corporally (Mk. XVI, 17; Lk. IX, 1; X, 19). This adjuration is called exorcism (duivelsbezwering); in it it is not licit to do or ask anything except those things which conduce to the expulsion, disgrace, contempt of the demon, or to the glory of God; yet if someone from levity, not employing faith, were to ask one thing or another, not deprecatively but imperatively, it would probably be only venial, because it is not perfect society with the demon: for it is not a perfectly social act, although it is a perfectly human act.

We can adjure irrational creatures (the sun, clouds, locusts, a new house, a bedchamber, hail, storms, water), not directly considered according to themselves, for this would be vain; but insofar as they are moved by some intelligent being, namely, indirectly by adjuring either God that their use may help us (thus miracles), or the demon that he cease to harm us through them.

761. Adjuration is an act of religion, because it is apt for expressing both the submission of the one adjuring to God, whose authority is interposed, and God's excellence: for it belongs to excellence that someone be worthy of love or fear, and that the love or fear owed to him be able to move another. Namely, we profess the name of God to be so venerable that, when it is heard, others are induced to do or omit something.

It is licit, as is clear from its notion and from the use of Scripture and the Liturgy; but only under the due conditions of justice and judgment.

1. Justice requires that both the thing to be obtained through command or petition, and the command and petition itself, be honest. Defect of justice is a grave or light sin, in the same way as in a vow and in a promissory oath.

2. Judgment of discretion requires a sufficient cause; the lack of which of itself is only venial.

Besides these conditions, for adjuration that is not private but solemn, which is made in the name of the Church by ministers and in modes constituted by the Church, legitimate deputation or permission is required (can. 1151).

762. Observation. - Quite commonly authors require a third condition: truth; but it does not seem to be posited as a distinct condition, since adjuration differs precisely from an oath in this, that God is not invoked as witness of truth. They say it is required that the adjuration be made through the true God, that the one adjuring truly intend to obtain the thing, and that the cause on account of

which he asks be true, not deceitful, lest he deceive the one adjured. But the first is not a condition of liceity, but is contained in the very essence of adjuration; the second and third can be reduced to the other conditions: if he does not truly intend, the adjuration will be fictitious and vain and judgment is lacking; if the cause is not true, it will be dishonest, as joined to a deceitful and deceptive petition, and thus justice already fails.

763. The effect of adjuration is twofold: a) of moving the one adjured to furnish that which is commanded or asked; b) of moving God, through whom another is adjured, so that He may compel or induce him to the intended effect.

There is a special efficacy in exorcisms performed in the name of the Church, which have force chiefly from the impetration of the Church and the will of Christ communicating His power over demons to the Church.

Question Three: On Divine Praises

S. Th. II-II, q. 91.

764. Praise (louange; loving) is "speech elucidating the greatness of virtue": thus St. Thomas, on Ps. XVII; whence to praise someone is to proclaim and extol what is good or perfect and virtuous. And since God is supremely good and His virtue greatest, He is supremely to be praised by mind and heart. But also, besides, by mouth; not indeed according to His essence, for, incomprehensible and ineffable, He is greater than every praise, but according to His wonderful works and effects (a. 1, ad 2), which are ordered to our utility (ad 3). Cf. Ps. XXXIII, 1; LXII, 6; XLIX, 23.

For although praise of the mouth is not necessary on account of God, either that something accrue to Him, since He is infinite, or that our concepts become known to Him, since He is the inspector of hearts, nevertheless it is useful on account of those praising and hearing: 1. whose affection is stirred toward God from vocal praise and, thus stirred, is withdrawn from those things which are against God (Ps. XVII, 4); 2. and who ought to serve God according to the whole of what they have received from God, that is, with mind and body (a. 1, ad 2 and 3).

765. Song is fittingly employed for divine praises, as is clear both from Scripture (Lk. II, 13-14; Col. III, 16), and from the constant practice of the Church from its beginnings. This must be held against the Waldensians, and Wyclif, who compared clerics singing with the prophets of Baal. And indeed vocal praise is necessary for this, that the affection of man be aroused toward God; whence whatever things can be useful for this are fittingly assumed into divine praises. But through diverse melodies of sounds the souls of men are disposed in diverse ways. Therefore song is fittingly assumed into divine praises, so that the souls of the weak may be more aroused to devotion.

But it should be noted: 1. It is not to be sought "after a theatrical manner, not for arousing devotion but for display or for provoking delight" (a. 2, ad 2). For "through song which someone studiously uses for delighting, the soul is distracted from the consideration of those things which are sung. But if someone sings for devotion, he considers more attentively the things which are said, both because he lingers longer over the same things, and because, as Augustine says (Conf. X, 33), all the affections of our spirit, according to sweet diversity, have their proper modes in voice and song, by whose hidden familiarity they are aroused. And the same reason also holds concerning hearers, in whom, even if some do not understand the things which are sung, they nevertheless understand why

they are sung, namely, for the praise of God; and this suffices for arousing devotion" (ad 5). Whence Cajetan: "In ecclesiastical song two things must be guarded against: lest it be sung as if the song itself according to itself were more pleasing to God; and lest it be sung for the sake of our own or another's delight in ecclesiastical offices."

2. "A nobler mode of arousing men to devotion is through doctrine and preaching than through song. And therefore deacons and prelates, to whom it belongs through preaching and doctrine to arouse the souls of men toward God, should not labor at songs, lest through this they be drawn back from greater things" (ad 3).

3. Musical instruments are not to be employed, especially those of greater noise, unless very sweetly and sparingly, not on account of themselves but by way of assistance: "for musical instruments of this sort move the soul more toward delight than through them is formed inwardly a good disposition. But in the Old Testament there was use of such instruments, both because the people was harder and more carnal, whence it had to be aroused through instruments of this sort and through earthly promises; and because bodily instruments of this sort figured something" (ad 4).

766. Corollary. - Hence in song they can sin in various ways, as Billuart explains, diss. 5, a. 11, "namely if profane, vain, or shameful things are mixed with divine offices and are sung either by voice or by organ, which can happen in many ways:

"1. When someone from a vain intention inserts it as a part of the divine office, for example, in place of an antiphon, etc., and this act, besides the deformity which it can have from its own nature, insofar as it is vain and provocative of evil, is besides, under the present head, a mortal sin from its genus, both because it is repugnant to the end of divine worship, and because one so acting is a falsifier in divine worship, inserting as a part of it in the name of the Church what the Church in no way wishes to be inserted.

"2. When someone wishes to signify profane things with organs, not by inserting them as a part of the office, but only for the sake of delight: and if those profane things are honest, it will be only a venial sin, because there seems to be a light injury done to divine worship; if they are dishonest, it will be a mortal sin (from its genus), both by reason of scandal and provocation to evil, and against religion because of the grave injury inflicted upon divine worship and the sacred place.

"3. When someone precisely applies the consonance of a profane sound to sacred words; and then it does not seem to be per se a sin, for the sound, whether of voice or organ, from its own nature is indifferent for signifying sacred and profane things, and therefore can equally be referred to both. Nevertheless per accidens it happens to be a sin, namely, if that sound is of such a condition that it is judged provocative of evil; and it will be mortal or venial according to the account of the evil to which it provokes and of the scandal caused thereby."

767. Opposed to praise is the use of the name of God in vain, besides blasphemy, concerning which it has already been spoken in the treatise on Faith. For the name of God is holy, and must be pronounced only with due reverence, and consequently not in vain and without cause.[1] This also, with proportion preserved, holds concerning the assumption of the name of the saints, since irreverence toward the saints or sacred things as such ultimately redounds against God.

[1] The vain use of the name of God is not sacrilege, as it has seemed to some, because it is not directly against a sacred thing, but against the name of God, that is, against God Himself.

Vain appellation arises especially from a twofold cause: from impatience and anger, or from levity and custom:

a) From anger and impatience, when from a movement of soul there is said, for example, name of God, thousand names of God, name of the Lord. This use generally and per se does not exceed venial sin, both because it proceeds from a sudden and indeliberate movement, and because it includes only a small irreverence; per accidens it is mortal if it proceeds from deliberate contempt of God and from anger against God, or by reason of scandal.

b) From levity and custom, when without cause it is frequently employed in conversation from a certain admiration, for example, my God! Great God! Good Jesus! Sweet Mother of God!... This bears a certain irreverence toward God, but does not exceed the venial fault of light inordination, unless someone exposes himself to the danger of making gravely evil oaths. Whence Eccli. XXIII, 10: "Let not the naming of God be continual in your mouth."

768. Observation. - The frequent invocation of the divine name from an internal affection of reverence and from devotion of heart is not prohibited but rather commended, as the Prophets often saying: Lord! or pious Christians: Praised be Jesus Christ! Hence the Catechism of the Council of Trent, 2nd precept, n. 4: "We venerate and worship the divine name when, for the sake of duty and religion, we celebrate divine praises, and give Him singular thanks concerning all things, both prosperous and adverse... Therefore when we are tormented with pains of soul and body, when we are afflicted with miseries and hardships, let us immediately turn every zeal and the powers of our soul to praising God, saying that word of Job: Blessed be the name of the Lord!"

Section C: On Sins Opposed to Religion

769. To the virtue of religion there is opposed a twofold genus of vices: one by excess in divine worship, namely, superstition; the other by defect, because it posits something contrary to divine worship and exhibits contempt or irreverence toward God or divine things, namely, irreligiosity.

Chapter I: On Superstition

S. Th. II-II, q. 92.

770. Superstition (bijgeloovigheid) is said from that which stands over, and therefore etymologically signifies every excess; but chiefly in the most excellent matter, namely, religion. Whence it is religion observed beyond measure. It is opposed to religion by excess, not indeed according to quantity, as if it exhibited more in divine worship than true religion, or as if God could be worshiped sufficiently or too much, or with greater honor than He is worthy of, for however much man worships, it is less than is owed to Him; but according to the object of worship or the mode of worshiping, and therefore it is defined: a vice exhibiting divine worship either to one to whom it ought not, or in a mode in which it ought not (a. 1).

This consequently contains two species: for divine worship can be exhibited 1. to Him to whom it is to be exhibited, namely, the true God, but in an undue mode, and this is undue worship of the true God; or 2. it can be exhibited to him to whom it ought not, namely, to a creature, and then it is worship of an undue thing. This in turn is threefold in species: for divine worship is directly ordered

a) to exhibiting reverence to God (by sacrifice, vow, oblation), and therefore the first species of worship of a false deity is idolatry, which exhibits divine reverence to a creature; it is directly ordered b) to this, that man be instructed by God (by prayer, meditation, reading), and therefore the second species is divination, which seeks instruction from a demon; it is directly ordered c) to the direction of human acts (by sacraments, blessings, feasts) according to the institutions of God, and therefore the third species is vain observance, which seeks direction and assistance from a demon for obtaining certain effects, to which magic is reduced, by which someone seeks marvelous things (a. 2).

Question One: On Undue Worship of the True God

S. Th. II-II, q. 93.

771. Undue worship of the true God (ongeschikte eeredienst) is twofold, either because it is false or because it is superfluous. - For not only every falsity in divine worship imports a certain irreverence toward God, but also whatever superfluity, vanity, or uselessness does nothing toward the end of worship.

772. False or pernicious worship is that through which something false is signified and which contains a pernicious lie:

a) Either on the part of the thing signified, when an act assumed for divine worship signifies something false which does not agree with the signification of worship, for example, if someone uses ceremonies of the Old Law which signify Christ as about to come; if someone proposes false miracles, revelations, prophecies as true; one who proposes false relics to be venerated, or exhibits an image falsely portentous (can. 1283-86, and 2326); one who invents miracles or stories to be found in the Scriptures.

b) Or only on the part of the person worshiping, when someone, acting as a member of the Church, worships God contrary to the mode established by God or the Church, for example, if a faithful person deliberately fasted on the day of Easter, with other days excluded. This happens chiefly in public worship, when someone worships God in the name of the Church who is not a minister of the Church or not deputed to such an act, for example, if a layman or a priest excommunicated by name were to celebrate Mass in the name of the Church, or if a minister performs ceremonies, administers sacraments, by a rite contrary to the will and ordinance of the Church, or by private authority proposes things as if they were ordered by the Church to the worship of God: for he is a falsifier who in the name of another proposes certain things for which he is not deputed (a. 1).

It is a sin from its genus and ordinarily mortal: a pernicious lie in a very grave matter.

Nevertheless Noldin notes, Th. M. II, n. 149, 2: "It is said for the most part, because it seems that it must be conceded that the superstition of false worship is sometimes a venial sin on account of smallness of matter: thus if a preacher in a miraculous story otherwise true added a false circumstance (or one not investigated), or invented an entire story (not miraculous) to move the people more, this could be a venial sin, both because falsity is not employed immediately for worshiping God, and because this does not always greatly prejudice true religion."

773. Superfluous worship is that which does not have falsity in its signification, but is not proportioned to the end of divine worship. For the end is that man give glory to God and subject himself to Him in mind and body. But if something, so far as concerns itself, does not pertain to the

glory of God, nor subjects the mind or body of man to God according to the institution and common custom of God and the Church, but is beyond it, this is vain and superfluous in divine worship (a. 2).

It is accustomed to be committed concerning number, color, position, time, etc., for example, a ceremony of hearing Mass before sunrise, with a certain number, position, order of candles, by a priest who is called John, or who has the stature of Christ; in Mass to kiss the foot of the chalice after the elevation; to form more crosses, or to say alleluia more times than has been instituted by the Church; to add or remove the Gloria, Creed, or ceremony besides the rubrics; strange devotions prohibited by the Sacred Congregation of Rites (can. 1261, 1385, 1388, 1399).

It is a sin from its genus venial; per accidens it can be mortal from contempt, scandal, a dishonest ceremony, a grave prohibition of the Church, as if someone were to violate a precept of the Church in order to honor a saint.

Question Two: On Idolatry

S. Th. II-II, q. 94.

774. Idolatry (afgoderij) etymologically is divine worship exhibited to an idol or image of a false god, whether the image itself is worshiped as god, or he whom it represents. Whence that word has been received to designate the supreme worship of divine reverence exhibited to any creature whatsoever.

One kind is merely internal, by which merely internal worship is attributed to a creature; another is merely external or simulated, by which someone, without internal affection, seriously and advertently exhibits external adoration to a creature, for example, from fear of death, as certain Christians did in persecution; another is internal and external at the same time, or true, by which external worship is attributed to a creature from the soul. This again is twofold: perfect or imperfect, according as worship is attributed to a creature with persuasion of its divinity, and this proceeds from culpable ignorance of the intellect; or without persuasion, and this proceeds from malice of the will, as from hatred of God or excessive affection toward a creature, for example, from affection for knowing from a demon (a. 1).

775. Idolatry is a mortal sin from its whole genus. - For even the least idolatry exhibits to a creature the supreme reverence owed to God alone, compares it to God, and thus does the greatest injury to God; but if it is simulated, it is a most pernicious lie, very injurious to God, and for the faithful it is against the precept of faith to be confessed externally (a. 2). Indeed, on the part of the object it is the gravest sin. For although sins directly opposed to the theological virtues are the greatest of all, and therefore idolatry considered abstractly and formally, insofar as it is only the worship of a false god and is opposed only to religion, is less grave; nevertheless, if it is considered in the concrete, it supposes and includes at least the external malice of infidelity and hatred of God, because it is a protestation of both, and adds something (the worship of a false god) to them, and thus is graver than they are,[1] so that the greatest idolatry viewed objectively is graver than the greatest infidelity and the greatest hatred of God. For just as in a republic it seems most grave that someone pay royal honor to another than to the true king, so in sins against God it seems most grave that someone pay divine honor to a creature, because, so far as in him lies, he makes another God in the world.

[1] "One worshiping idols, so far as in him lies, takes away from God His singular excellence, by which God alone is God; but this is His deity, which pertains to hatred of God. And he denies this singularity, which pertains to infidelity; and through

this it is a graver sin than those according to itself: if idolatry is merely external, it does not lose the fact that it is a protestation of interior infidelity." Cajetan on this place.

Yet on the part of the sinner other sins, such as heresy, are often graver, because they are done with greater knowledge or contempt. In this way imperfect idolatry is graver than perfect idolatry (a. 3).

776. The cause of idolatry is twofold: 1. One dispositive cause on the part of men, who were disposed to it in three ways: a) from an inordination of affection toward parents, children, kings, ancestors, etc., they exhibited reverence and divine honor to them; b) from the delight which they naturally perceived from representation, the unlearned worshiped expressive images as gods; c) from ignorance of the true God, they exhibited divine worship to creatures on account of singular virtue or beauty.

2. The consummative cause is on the part of demons, who exhibited themselves to men as to be worshiped, by giving answers in idols and doing certain marvels (a. 4).

Question Three: On Divination

S. Th. II-II, q. 95.

777. Divination and its various species. - Those who presume to foreknow and foretell future contingent things attribute to themselves something which is proper to God, and therefore they are called diviners, and their action divination (waarzeggerij). By extension this word designates every undue inquiry into hidden things by the help of a demon (a. 1).

It is twofold: 1. Express, which is made by expressly asking the intervention of a demon, and which is divided into various species according to the diverse modes by which he himself is consulted, or responds: prestige, if he appears under some sensible form; necromancy, if he responds through the dead, whom he falsely presents as present; pythonism, if through the living whom he invades; oracle, if through idols; haruspicy, if through the entrails of sacrificed animals; geomancy, hydromancy, aeromancy, pyromancy, if from signs in inanimate things; oneiromancy or divination of dreams, etc.

2. Tacit, which is made by seriously employing means which, unless a demon intervened, are wholly ineffective for the knowledge of hidden things, and thus by implicitly imploring his help. For he who employs means disproportionate and vain for naturally detecting a thing, by that very fact expects help from an intelligent being. But God or a good angel cannot approve these vain inquiries, nor do they involve themselves in them or furnish aid; but if the means is not valid for divine aid, by that very fact someone expects help from malign spirits, who willingly insert themselves into vain inquiries. Nor does it suffice to protest that he does not intend this; he acts against the protestation while he uses means disproportionate and otherwise ineffective. This is done in two ways:

a) Either by considering, for foreknowing future things, certain dispositions of things; as judicial astrology does, from the position or even motion of the stars; augury or auspice from the voices or motion of birds; chiromancy from the lines of the hands; physiognomy from the lines of the face; spatulamancy from the shoulder-blades of animals; omen from a chance occurrence, for example, meeting a funeral or human words said without intention which someone twists toward future things, etc.

b) Or by doing something and considering the action for knowing hidden things, and this is called divination by lots or sortilege (a. 3).

778. Divination is a mortal sin of superstition from its whole genus. - For the diviner, even if he acts without the mind of honoring a demon, in fact enters into a certain society with the enemy of God and ours, and implicitly subjects himself to him as teacher of truth (Lev. XX, 6, 27; Deut. XVIII, 10-12; Is. XXVIII, 15; Gal. IV, 10, 11). Whence divination is a sin.

It is a sin of superstition. For by divination divine worship is exhibited to a demon, since a) the hidden things which are investigated often are future free things or secrets of the heart, of which certain knowledge is proper to God; whence he who expects the manifestation of such things from a demon attributes to him a certain divine excellence;[1] b) even outside this case, because the demon, through society with men, intends to usurp something of the excellence of God and of the honor owed to Him by men; and therefore one consulting a demon consents to him and cooperates in the usurpation of divine excellence, and thus works superstitiously against religion (a. 2 and 4).

[1] It should be noted that demons cannot with certitude know future contingent things, nor even things wholly hidden, and especially the secrets of hearts, but nevertheless they know far more than men about future and other hidden things, for various reasons: 1. because the natural intellective power of spirits is much more perfect than the intellect of man; moreover this natural intellective power was not diminished in demons by sin; 2. because through the experience of ages they know sufficiently perfectly what is accustomed to happen in certain circumstances even from contingent causes; 3. because with wonderful speed they can pass from one place to another and transfer corporeal things, and thus predict effects from causes which they see placed in distant places; 4. because, God permitting, they can apply natural causes to effects, indeed also instigate free causes to producing certain effects, yet not with every kind of certitude.

Hence it is a grave sin from its whole genus: for that in a small matter a demon be summoned as friend is always gravely injurious to God.

Nevertheless, if it is done tacitly, in fact it will often be venial because of imperfection of the act, whether from ignorance and simplicity of the agent, or from play and levity by which it is performed rather than from serious intention, or from the fact that full faith is not employed.

779. Spiritism pertains to express divination. - Its origin is in rotating tables (1832), which soon gave answers. For when two sisters of the Fox family (1847-48), from mysterious noises heard at home, began to ask whether they proceeded from the souls of the dead, having received, as they said, an affirmative answer, they themselves established communication with spirits.1 Whence it happened that tables gave answers by distinct knocks even concerning unknown matters, indeed by a pen attached to one foot they wrote answers; from which arose dissensions among families through suspicions or defamations excited by the answers, unknown and distant things detected, etc. At last the dead were directly evoked and questioned by the help of persons commonly called mediums, that is, those functioning in the office of mediator, by whom the most astonishing things were produced, doubts against faith and revealed truths were excited, indeed new dogmas introduced.

Moreover effects of a threefold genus are attributed to Spiritism:

A. Mechanical, namely: 1. rotations of tables, which are touched by the extended fingers of those present and are moved by the command of the will alone; but the rotating table sometimes strikes one or another of those standing by;

2. noises of a table which strikes the ground with its foot and gives answers through pulsations or knocks;

3. motion at a distance or without apparent contact;

4. levitation, by which a body is lifted into the air without any apparent cause;

5. indeed transfer of bodies through the air and bringing of things from distant places, even with doors and windows closed.

B. Sensitive: 1. luminous, as in flashes and gleams suddenly appearing, flames, lights of various color;

2. auditory, for example, creakings and sounds heard, pulsations and noises, harmonic sounds imitating a human voice, and sounds of musical instruments which are moved by no hand;

3. touches exercised upon those present by an invisible being;

4. writing which seems as if automatic, or even direct, without the intervention of any human hand;

5. materializations of spirits or the formation of organs, a figure or face, and apparitions of a head, limbs, or the whole body of a person speaking with those present, which sometimes leaves photographic impressions. But many are persuaded that these spirits are nothing other than persons who are called mediums, clothed in special garments and masks; it has been ascertained that the matter is so in some cases;

6. ectoplasmy or the production and projection outside oneself of a material substance, which offers itself to be organized, and thus bilocation.

C. Physiological, namely, hyperesthesia, exaltation of the senses, of sight and perceptions, disturbance of vital functions:

1. clear intuition of hidden things, for example, behind the head, or through a membrane with eyelids, or of things concealed;

2. knowledge of distant things;

3. direct transmission or reading of thoughts and of the secrets of the heart;

4. warnings and premonitions and foretelling of future things;

5. communication of unknown science or language;

6. transposition of the senses;

7. exteriorization of sensibility.

1. One of the Fox sisters in the year 1888 openly declared that all things had been feigned; but this testimony was not accepted by Spiritists, and the use of Spiritism was widely diffused, so

that it even attracted physicians and cultivators of the natural sciences!

780. Judgment concerning the causes of the phenomena and concerning the morality of Spiritism. - Concerning Spiritism it should be observed:1

1. From the Second Council of Baltimore, n. 36: "It seems well established that many things which are said to be exhibited as marvelous phenomena in Spiritist circles are either altogether feigned and produced by fraudulent collusion of the operators among themselves, or are chiefly to be ascribed to the imagination of the persons who are called mediums (that is, mediators) and to the credulity of the spectators, or finally are to be attributed to a certain manual dexterity, such as is in use among conjurers. Nevertheless it seems scarcely to be doubted that at least certain of them are to be referred back to satanic intervention, since they can scarcely be explained sufficiently in another way." Moreover, Spiritist mediums generally do not permit others to study the phenomena produced by a scientific method.

2. Although someone may judge that demons rarely or in no way intervene, the practice of Spiritism is superstitious, because it attempts the evocation and consultation of spirits, since from Catholic doctrine it is clear that neither angels nor separated souls do such things (S. Off., 4 Aug. 1856 and 30 Mar. 1898).

For if by inept means someone seeks preternatural effects, a protestation against the intervention of a demon in this matter changes nothing, nor does it prevent that intervention from being implicitly sought.

3. Besides, adherents of Spiritism often constitute a heretical sect, which professes doctrines opposed to Catholic dogma and is adverse to true religion.

They more often favor Pantheism; they are accustomed to admit the permanence of human personality after death, and metempsychosis for all, and to deny the eternity of punishments. They affirm Christ and the prophets to be "mediators." In moral matters they favor philanthropic altruism, and therefore they attack Catholicism and proclaim indifferentism toward all religions.

4. Hence those sin gravely by superstition who presume or feign themselves to be mediators and, by exercising merely natural arts, invite others to true manifestations of spirits; who serve in Spiritist experiments as a medium; who consult mediators, even for health, or actively cooperate with them (S. Off., decree issued July 30, transmitted Aug. 4, 1856). Indeed those sin who without grave reason assist even merely passively, for the sake of experiment, curiosity, or levity, even with a protestation against the demon having been made beforehand, because to favor or cooperate with a thing intrinsically evil is illicit (S. Off., 27 Apr. 1917); which sin, if it includes a sense of approval or grave scandal or danger of perversion, is mortal, as ordinarily happens for those who habitually or rather often assist; otherwise it is probably only venial.

According to several, a grave reason is judged present for an upright and learned man, so that for the sake of experiment he may detect the true nature of Spiritism or manifest the error, yet scandal being

excluded. But at least it is to be advised that he first approach the bishop for the sake of opportune counsel, or institute a merely private examination in a laboratory.

5. Only the phenomenon of rotating tables through magnetism seems to be explained from natural forces, whether of nerves and muscles or of some fluid, excited in the bodies of those seated, by which the table can even be lifted and dropped repeatedly, and give answers by striking the ground with its foot or by writing with the help of a pen.

Yet the practice is dangerous, because vain, as being of no utility, and it easily provides an occasion of passing over to illicit things, such as answers which not rarely injure honesty or charity, or superstitious things, such as the attempt to divine or to communicate with spirits; whence the faithful are to be deterred from this practice. But if the answers are alien to the mind of those present, especially if they are malicious, impious, or turn upon unknowable things, likewise if effects certainly preternatural are produced, they cannot be ascribed to a natural cause; but to attribute them to divine or angelic operation would be blasphemous, since both the mode is ridiculous and the end dishonest or vain; therefore nothing is left except a diabolical cause.

6. Among entirely marvelous effects, a) some are from themselves entirely preternatural, such as more than human knowledge of future contingent things, of things altogether hidden or of the secrets of the heart, instantaneous acquisition of an unknown science or language, true materialization of a spirit. But these things are proved with certitude only with very great difficulty: for conjectural knowledge of future contingent things is possible to man in some way; small indications of the secrets of the heart can appear in the face or bearing of the body to persons of subtler and more vehement sensibility; knowledge of an unknown language or science is sometimes explained by the subconsciousness of one who has heard of the language or science or has looked at a book; materialization by hallucination or fiction, etc.

b) Others are effects of which no plausible natural explanation has been given up to this time, and which therefore generally have been held as preternatural, which nevertheless it is not altogether repugnant to explain naturally, indeed perhaps it can be hoped for from the progress of science, such as levitation, motion without apparent contact, transfer of bodies, clear vision of hidden things, knowledge of distant and unknown things, transposition of the senses, direct transmission and reading of thoughts, etc. These facts, nevertheless, have not yet been sufficiently proved by a scientific method. Hence although to produce and explain these things naturally could speculatively seem perhaps not impossible, nevertheless practically it is improbable, and therefore they cannot be safely sought, but one should rather abstain from them as from vain, inept, and dangerous inquiries into which the demon willingly inserts himself, unless there is a grave reason, such as scientific investigation, and scandal or cooperation in superstition is absent.[2]

[2] Concerning Spiritism, there can be consulted: among Spiritists, Allen Kardec, *Le livre des esprits*, 1864; *Le livre des mediums*, 1865; and two periodicals: *Annales des sciences psychiques*, edited at Paris; and *Proceedings of the Society for psychical Researches*, published at London; also Maxwell, *Les phenomenes psychiques*; Davis, *La fin du monde des esprits*. Besides: Meric, *Le merveilleux et la science*; *L'imagination et les prodiges*; Franco, *Le Spiritisme*; Helot, *Le Spiritisme*; *Nevroses et possessions diaboliques*; Lapponi, *Hypnotisme et Spiritisme*; Surbled, *Spiritualisme et Spiritisme*; *Spirites et mediums*; Gibier, *Le Spiritisme*; Wundt, *Das Spiritismus, eine sogenannte wissenschaftliche Frage*; de Munnynck, in *Echo religieux de Belgique*, 1911; Grasset, *Le Spiritisme devant la science*; *Idees medicales*; *Le psychisme inferieur*; *L'occultisme hier et aujourd'hui*; Castelein, *Les phenomenes de l'hypnotisme et le surnaturel*; Schneider, *Der Neuere Geistesglaube*; Thurston, *Spirit phenomena*, in *The Month*, 1917, 1920, 1924; Laenen, *Het Spiritisme*; Roure, *Le*

merveilleux spirite, *Le Spiritisme d'aujourd'hui et d'hier*; Richet, in *Rev. Phil.* 1922, and *Traite de metapsychisme*; Adj. Drieghe, *Over Gedachtenlezen*; *Spiritisme*; *Occultisme*; *Metapsychisme*, in *Ons Geloof*, 1914, 1919, 1926 and 1928; Charles, *A propos de Spiritisme*, in *N. R. Th.* 1921; Ludwig, *Okkultismus und Spiritismus*, 1921; Zacchi, *Le Spiritisme et la survivance de l'ame* (translated from the Italian); Heredia, *Spiritisme and common sense*; Mainage, *La religion spirite*; Leroux, *L'Antoinisme*; and various articles in *Rev. Eccl. de Liege*, 1921-1924; Van Roy, *Le Message des esprits*; Gatterer, *Der wissenschaftliche Okkultismus und seine Verhaltnis zur Philosophie*, 1927; Feldmann, *Okkulte Philosophie*, 1927 (Dutch adaptation by Van Dueren: *Occulte verschijnselen*, 1938); Mager, in *Stimmen der Zeit*, 1934. Among manuals of moral theology, Tanquerey, Prummer, and Vermeersch are more to be commended.

Namely, to direct oneself by improbable opinions and mere hypotheses without foundation is to act imprudently, and indeed in a matter of great moment, because the danger of superstition and scandal and therefore of graver sin is easy. But if at some time a truly probable demonstration or truly scientific explanation were found, then to seek those effects would not be sinful, provided someone consider them as natural effects and not intend the attempt of communicating with spirits.

1. Thus we understand the decrees (S. Off., 4 Aug. 1856; 23 June 1840; 31 Apr. 1841 [printed thus]; 28 July 1847; S. Poen. 1 July 1841) and the Ritual (tit. XI; c. 1, n. 3), when they are applied to these things. Conformably to the Council of Mechelen, n. 42, and to St. Alphonsus, l. III, n. 20.

781. Divination by the stars. - Astrology is distinguished as twofold: one natural, which from natural causes conjectures natural effects such as wind, storm, cold, etc., and this of itself is not illicit; the other judicial, which, namely, from the aspect of the stars judges concerning things depending upon man's free choice, or concerning events merely fortuitous or otherwise altogether hidden, for example, if from them are foreboded the days or mode of death, the course of life, health, honors, offspring, prosperity, etc.: but this astrology is altogether illicit, as manifestly superstitious. "Then it is vain and false," Cajetan notes, "when through them someone wishes to foreknow things which cannot be foreknown through heavenly bodies."

And indeed every corporeal sign is either an effect, or a cause, of that of which it is a sign, or proceeds from the same common cause with the thing signified, and thus, while it designates the cause, it also signifies the effect. But the stars a) are not effects of fortuitous events or of human actions; b) nor can they be reduced into a common cause except into divine providence; but the motions and positions of the stars and contingent events are diversely disposed by divine providence: the former according to the account of necessity, so that they always and in the same mode come about; the latter according to the account of contingency, so that they contingently happen variably; c) nor are they the cause of fortuitous and free effects: not of fortuitous effects, because fortuitous events are beings per accidens, since they are not simply a being, nor simply one but many, as that by a stone falling an earthquake happens, or that by a man digging a grave a treasure is found, does not have one determinate natural cause but several; nor also of free effects, because intellect and will, through which free acts proceed, are spiritual powers, into which bodies such as the stars cannot directly impress or act, and consequently cannot determine them (a. 5).

The same must be said of divinations through the observance of exterior things, such as auguries, physiognomy, etc. They can be natural signs of meteorological events, or of temperament, inclinations, health, etc.; but not of free acts or altogether fortuitous events (a. 7).

782. Divination of dreams. - "Dreams are signs of certain future events, insofar as they are reduced to some cause common to dreams and future events... Therefore it is to be considered what is the

cause of dreams, and whether it can be the cause of future events, or can know them" (a. 6). Now dreams are sometimes caused divinely: to which certainly faith is to be given insofar as their origin is established; sometimes diabolically: therefore if someone seeks to be instructed by a demon in such a mode, he is guilty of express divination through dreams; generally, however, naturally, from the habit of soul and body, the influence of the air, etc., and these dreams are certain natural signs of health, complexion, passions, occupations of the dreamer, but not of future events or free acts: whence he who gives faith to these common dreams, through which certainly God does not speak, interpretatively has recourse to the demon, who sometimes inserts himself into the phantasies and dreams of men.

783. Use of lots. - Divisory lots, which are employed for dividing or attributing goods, of themselves contain no superstition or other malice, but by positive law they are prohibited in elections to ecclesiastical offices and benefices. - Consultory lots, which are employed for knowing what one ought to do, if counsel is expected explicitly or implicitly from a demon, are superstitious. If the providence of God alone is implored, they are sometimes licit: when they are done either from divine command or instinct, or at least from urgent necessity and every defect of counsel, with due reverence; but regularly they are illicit because they contain a tempting of God. - Divinatory lots are generally illicit: for lots do not receive this power of laying open hidden truth divinely, outside most special circumstances, nor indeed do they have it from their own nature; whence he who inquires into truth through lots either tempts the Lord, or expects the intervention of a demon (a. 8).

784. Observation. - Concerning predictions by cards or by inspection of hands, face, or writing, note that such seers generally do not believe their own art, but conjecture certain things for deceiving the credulous and delighting the curious. But 1. if they pretend that they act seriously, they sin by deceiving unjustly and by cooperating with those by whom they are consulted superstitiously; 2. those who consult seriously sin gravely, unless they are excused by ignorance; but if it is done from jest, levity, vain curiosity, without employing faith, per se it is only venial; 3. if the seers and those consulting act from jest, no sin per se is present.

Question Four: On Vain Observance and Magic

S. Th. II-II, q. 96.

785. Vain observance and its various species. - Vain observance (ijdel of bijgeloovig gebruik) is defined: the employment of a thing for some effect, for obtaining which it has power neither from its own nature nor from divine or ecclesiastical institution (a. 2).

A. One kind is done without express invocation of a demon, and this is threefold: a) the notorious art or art of acquiring science without labor (not of hidden things), through inspection of certain figures or the utterance of certain words or other things of this sort, for example, fasts and prayers, by taking a potion or bolus; b) the art of healings or of healing or preventing diseases of men and animals by empty remedies; c) observance of events foreboding fortunate or unfortunate things, as if they were signs of future things. Moreover it differs from divination by intrinsic end, because divination is directly and principally ordered to knowledge of hidden things; but observance to directing one's own acts by employing vain things, and thus to an external effect, for example, to attaining favorable things or avoiding unfavorable things, to obtaining health or science by an infused mode.

B. Another kind is more often done with express invocation of a demon, and this is a) magic (tooverij), or the art of working marvels by the help of a demon, for display or for another advantage, one's own or another's, namely, the art of changing bodies or displaying marvelous effects; or b) malefice (hekserij), or the art of doing harm through his intervention; which is amatory (or philtre), by which carnal loves or hatreds are excited, and poisonous, by which diseases or other harms are inflicted upon a person or fortunes (a. 1-3).

786. Vain observance is a sin of superstition, for a reason similar to divination.

It is proved: Certain causes produce an effect by natural physical efficiency, as medicine produces health; certain signs are instituted by God which are valid for producing supernatural effects, namely, the sacraments; certain signs from the institution of the Church obtain a certain virtue, namely, sacramentals. Now to apply natural causes to their effects, or to use signs instituted by God or by the Church is not superstitious. But when someone employs means which do not have the aforesaid efficacy for natural effects, or signification and virtue from God or the Church for certain natural or supernatural effects, he tacitly invokes the help of a demon.

For if, for obtaining effects, things are employed which naturally do not seem able to cause such effects, it follows that they are not employed for producing these effects as causes, but only as signs. But not as signs instituted by God or the Church. Therefore as signs to be employed, from an express or tacit pact, by another intelligent being, which is nothing other than a demon. "Whence," says St. Thomas, a. 1, "it remains that they are superfluous signs and consequently pertain to certain pacts of significations entered into with a demon."

The various modes both of divination and of vain observance differ in physical and material species; but, according to many, they are of only one moral species, under the account of superstition, namely, of invocation of a demon; whence they are not to be explained in confession. But if a demon is expressly invoked, often there will be other sins against faith, religion, justice, for example, heresy, idolatry or adoration of a demon, apostasy, blasphemy, sacrilege, luxury, harm to one's neighbor, on account of which express invocation rather often must be accused.

787. Vain observance is a mortal sin from its whole genus, in the same way as divination, because the least invocation of a demon is per se a grave injury to God. But in practice it is often excused from mortal sin by a certain imperfection of the act:

1. Because of ignorance in a physical or religious matter, by which they unduly attribute natural or supernatural power to certain things.

This happens especially easily from credulity toward those things which they have received by tradition or by the authority of elders, and also sometimes if in a chance case a congruous event has been present, because they falsely infer that it proceeds from the virtue of things.

2. Because of inconsiderate fear or vain hope, by which they indulge in observances without giving certain faith to them.

Thus one who in illness, trying all remedies, also uses some inept means; one who, undertaking a great business, for calming his soul avoids an unlucky number or day; one who transfers a journey to the following day because he is terrified by an atrocious dream, is often excused from grave sin.

788. Corollary. - In doubt whether some cause is proportioned to producing an effect, if by a truly probable conjecture the effect can be attributed to a natural cause, it is not illicit to employ it, at least if a protestation, at least implicit, is made against the devil; but if the effect seems rather to be supernatural, the intervention of God is not to be presumed but must be proved, and with that proof lacking, the cause must be left aside as superstitious or involving danger of superstition. Thus St. Alphonsus, Th. M., l. III, n. 20.

Vain observance is chiefly recognized from three things:

1. chiefly from the insufficiency of the cause for producing the effect, for example, a brief prayer for health;

2. from the addition of a false or vain circumstance, as if necessarily required, as if a whipping ought to be done at a certain hour, time, hand; if unknown names are employed; if hairs are cut from the neck for recovering health;

3. from the infallibility which is attributed to means in no way infallible.

789. Observations. - 1. Formerly it was doubted whether hypnotism is vain observance; concerning which we have already said: the facts which per se pertain to hypnotism are natural (n. 347); those which sometimes accompany it are altogether marvelous, similar to the facts of Spiritism; whence concerning them the same holds as n. 780, under 5 and 6.

2. The use of sacred things for certain effects is licit and pious if it is done in reverence for God, and the agent clings to no vain circumstance, nor attributes to the sacred thing another or more certain effect than it has; otherwise it will be illicit, as containing superfluous worship, or sacrilege, or tempting of God, or even and chiefly vain observance. In particular:

a) To observe a certain number of prayers, days, etc., is licit on account of mystical signification or indulgences and privileges attached to it; but not if the effect of the work is attributed precisely to such a number.

b) To use certain formulas of praying or pious exercises because they are approved by the Church, or have a holy author, or procure devotion better, is licit; but not to expect efficacy from the words of the prayer rather than from their sense or from our affection, nor to place trust in inept little prayers containing fabulous sayings or deeds of Christ or of the saints, or empty names.

c) To hang divine words or relics, pious medals, Agnus Deis around the neck for reverence is licit, but not if hope is had in the mode of writing or tying, or in a vain circumstance, for example, that they be carried in such a box, for so many days, with such an herb, or if they contain something false.

d) By the use of sacred things it is licit to expect the effect for which they have been instituted; but not to turn them to a use for which they are not destined, nor to attribute to them some infallible power which they do not have (a. 4).

3. The use of a divining rod from hazel wood (coudrier) or willow for detecting waters or certain metals cannot be condemned per se: for the motion of this rod is quite easily explained from some unconscious influence of water or metals through magnetic or electric force; or from a

motion which the user unconsciously impresses upon it, because he suspects the presence of water or metal, or is endowed with special sensibility for perceiving their presence. Unless, however, vain and superstitious circumstances accede, or it is employed for detecting any things whatsoever, for example, a thief, a murderer, a treasure.

4. Concerning removing a malefice it should be noted: against malefices remedies are given, both supernatural, such as trust in God, prayer, fasting, the sign of the cross, exorcism, invocation of the names of Jesus and Mary, blessed water, relics; and natural, such as the use of medicines against an introduced disease, destruction of a magical sign by a licit means; nevertheless it is not licit to destroy the sign by another malefice. Hence it is never licit to ask a sorcerer to remove a malefice by a malefice; sometimes it is licit to ask that it be removed by him who can do it in a licit mode, although in fact he is going to remove it by another malefice.

5. Let preachers neither teach unknown superstitions, nor that they are diabolical, but rather that they are empty.

6. Diviners and magicians are to be admonished, says St. Alphonsus, l. c., n. 21, that they are held to abjure and dissolve an express pact or commerce with a demon, to burn all instruments of the art, and to repair harms inflicted.

Chapter II: On Irreligiosity

790. Irreligiosity posits something contrary to religion and is opposed to it by defect. To reverence toward God Himself are immediately opposed the tempting of God, blasphemy, and perjury; to the reverence due to sacred things and mediately to divine worship, sacrilege and simony are opposed.

Concerning blasphemy it has already been spoken in the treatise on Faith, because at the same time it is opposed to the confession of faith; concerning the four others it now remains to speak.

Question One: On the Tempting of God

S. Th. II-II, q. 97.

791. Sinful tempting of God (beproeving of proefstelling Gods) is a saying or deed by which someone rashly makes trial of God, so that something may be known concerning Him, or by which rashly and without utility he demands the intervention of God.

It is twofold:

1. Formal, when someone by express intention explores something in God and, by doubting, intends to prove either a) an absolute attribute (power, knowledge, goodness), and this is tempting strictly so called; or b) a relative attribute, namely, His good pleasure toward a creature, or His free operation, and this is less strict.

Examples are: to expose someone to beasts to see whether God can or wills to deliver him; not to cultivate a field as an experiment of God's providence toward oneself; to ask that Christ appear in the Eucharist, to see whether He is present or whether He wills to manifest His presence.

2. Interpretative or material, when someone intends to make no proof, but asks or does something which can be useful for nothing except for making an experiment concerning God. "As when someone makes a horse run in order to escape enemies, this is not to make an experiment concerning the horse; but if he makes a horse run without any utility, this seems to be nothing other than to make an experiment concerning the horse's speed." Thus he who rashly rejects ordinary means, or without cause puts himself into dangers, implicitly asks special or miraculous aid from God, and interpretatively tempts God.

Such were formerly the judgments of God; in such a way acts he who rejects medicine and asks health from God; or an unlearned cleric who, wishing to preach without preparation, hopes for thoughts from God; likewise he who exposes himself to danger of death or mutilation for bearing martyrdom without a just cause (a. 1).

792. Sinful tempting of God is a mortal sin from its genus. - It is proved:

a) From Scripture: Deut. VI, 16 together with Ex. XVII, 7; Ps. LXXVII, 18, 19, 56; Mt. IV, 7.

b) By reason: One tempting arises from doubt in a matter of faith and therefore is supremely injurious to God, and is always mortal (Mt. XXVII, 40); another arises from vain curiosity or presumption and temerity, and this provokes God to show His power uselessly or to foster curiosity; which is very injurious to God and therefore of itself mortal.

Yet often it will be venial because of imperfection of the act, even sometimes because of lightness of matter, that is, because of smallness of aid or danger, as if someone by excessive confidence expects a special aid of God but not a miraculous one. Thus if someone not prepared for praying hopes to obtain ordinary things, or if in a light illness he hopes for health without remedies and without a miracle (a. 2 and 3, and ad 2).

It is a sin against religion, because it includes irreverence toward God.

The various modes of tempting God seem to be of one species under the account of tempting; but they always have diverse adjoined sins of infidelity, curiosity, or presumption, and often sins against charity toward oneself or another, on account of which those circumstances must be declared in confession.

793. Corollaries. - A. The tempting of God is not sinful if someone, with due reverence and submission,

a) asks from God a special sign, while he inculpably doubts concerning a divine attribute, or a truth of faith, or divine goodness;

b) or from just necessity asks a sign for the instruction of others, for convincing infidels and confirming the faithful (a. 1, ad 2; a. 2);

c) or asks the manifestation of the divine good pleasure, when he altogether needs such knowledge and cannot gather it from elsewhere (a. 2, ad 3).

B. On the contrary, he who rashly seeks danger or rejects ordinary means, but expects no special aid from God and only commits himself to fortune, does not tempt God, although he sins. Thus one preaching or undergoing an examination without being prepared, or exposing his life without reason.

794. Observation. - Superstition is graver, other things being equal, than tempting God. For "in sins which are opposed to religion, something is so much the graver, the more it is opposed to divine reverence. But that someone doubt concerning divine excellence is less opposed to this than that he think the contrary with certitude. For just as he who is confirmed in error is more an unbeliever than he who doubts concerning the truth of faith, so also he who by his deed protests an error against divine excellence acts more against reverence for God than he who protests doubt. But the superstitious man protests error... But he who tempts God by words or deeds protests doubt concerning divine excellence... And therefore the sin of superstition is graver than the sin of tempting God" (a. 4).

Question Two: On Perjury

S. Th. II-II, q. 98.

795. Perjury (parjure; meineed) is a perverse or vicious oath.

One kind is 1. strictly and properly so called, which imports falsity and is maximally perverse, because it is directly opposed to the end of an oath, which is the confirmation of truth: namely, it is a false oath which essentially lacks formal truth, or a lie confirmed by oath (faux serment; valsche eed).

Another kind is 2. taken broadly and generally, and is every illicit oath, or one deprived of one of the three required conditions or companions, namely:

a) A vain and incautious oath, if only judgment of discretion is lacking (serment indiscret ou vain; onbezonnen eed).

b) Or an iniquitous or dishonest oath, if justice is lacking (serment malhonnete; oneerlijke eed).

These are indirectly opposed to the end of an oath and to truth: "for in whatever mode someone swears something illicit, from this he incurs a certain falsity, because he is obliged to do the contrary... and when he swears indiscreetly, by this very fact he commits himself to the danger of incurring falsity" (a. 1, ad 1).

c) Indeed also if truth of future execution is lacking in a promissory oath (violation de serment; eedschending): nevertheless this is rather a sin of omission than a sin contrary to the oath and a perverse oath.

But if the aforesaid conditions are lacking in a fictitious oath, there is simulated perjury, which is a sin of the same species because the external irreverence toward God is the same.

796. Perjury strictly so called, or a lying oath, is a mortal sin from its whole genus, as is clear from proposition 24 condemned by Innocent XI,[1] and from the nature of the thing, because it is directly contrary to the divine attribute of infinite truth: for always he who swears a lie, even the lightest, appeals to God Himself, infinite truth, as witness of falsehood, as if either He did not know the truth, or could lie and wished to testify to falsehood; whence he contemns God and, so far as in him lies, destroys infinite truth, and at the same time evacuates the end of an oath, of confirming truth (a. 2 and 3).

[1] "To call God as witness of a light lie is not so great an irreverence on account of which He would will or be able to damn a man."

Hence God punishes it most severely (Lev. XIX, 12; Zach. V, 3, 4; Prov. VI, 16-19; Eccli. XXIII, 11; Mt. V, 33), and the Code of law says that it is to be punished (can. 2323), whence in several places solemn perjury is a sin reserved to the Ordinary.

797. Perjury improperly so called from defect of judgment alone, or an incautious oath, that is, without due cause of swearing, is a sin (Ex. XX, 7; Deut. V, 11; Eccli. XXIII, 9, 16; Mt. V, 34), but, if the other conditions are present, it is only venial, scandal, contempt, and danger of another grave defect being excluded: for it is not directly to act against some divine attribute, but only to act irreverently with the divine majesty, by using His name in vain.

798. Perjury improperly so called from defect of justice, or an iniquitous oath:

1. If it is merely assertory, per se it is probably only venial, because the oath does not fall upon the assertion insofar as it is evil but insofar as it is true; whence it does not destroy the end of the oath, nor make God witness of a lie, but of a depraved or indecent thing, which per se does not appear to be a grave injury, unless the oath is employed as a means or instrument of sinning, for example, for conciliating greater faith to detraction, or in attestation of depraved love for seducing a girl: for this, so far as in itself lies, is to make God a cooperator of iniquity.

2. If the oath is promissory:

a) To swear a gravely illicit action, without doubt and with all consenting, is always a mortal sin.

b) Likewise to swear even a lightly illicit action is mortal from its whole genus, for it seems a grave irreverence to call God as witness and patron, so that by His authority He may confirm the purpose of committing any evil whatsoever, even the lightest, because it is directly repugnant to His infinite sanctity; nevertheless per accidens, because of ignorance, it will often be venial.

c) On the contrary, to swear an indifferent, vain, useless, or idle action, or one impeditive of a greater good, contempt being excluded, is only venial: it is to assume the name of God in vain.

799. Observations. - 1. In a promissory oath there is perjury strictly so called and always mortal sin if the one swearing is without the intention of fulfilling the promise; likewise one swearing an impossible thing, because he cannot have this intention of fulfilling, for example, a debtor who swears that he will pay the price within a month and knows certainly that he cannot.

2. A custom or habit of swearing is evil, because, as a proximate occasion, it inclines to sins, namely, false, dishonest, vain oaths. Whence there is an obligation of removing it (Eccli. XXIII, 9 sq.; Mt. V, 34), and he sins who voluntarily acquires such a habit, or neglects to eliminate it: interiorly and as to affection, as often as, adverting to the obligation of retracting the habit, he does not retract it; exteriorly and as to effect, as often as from the habit he utters sufficiently foreseen vicious oaths by morally interrupted acts. But he sins gravely if from custom he is disposed to swear anything indiscriminately, even false and gravely dishonest things; venially if he is disposed only to swear vain or lightly dishonest things.

He who swears from custom either a) attends to the act of swearing and to the defect of the conditions required for it, and then the vicious oath is voluntary in itself; or b) attends only to the act of swearing and not to its defect, and then the oath is gravely or lightly culpable in its cause, namely,

in the custom, as was said; or c) attends to nothing, and then properly he does not swear, because the intention of swearing is lacking, but the speech can be culpable in its cause, insofar as externally it sounds like an evil oath or at least a vain use of the name of God; d) but if he has retracted the custom, the oath will not be voluntary even in its cause.

3. To ask for an oath with defect of truth, justice, or judgment a) is not licit, if it cannot be furnished without such defect, because it would be directly to induce to sin, for example, to ask that someone swear falsely or by false gods. b) Nor is it licit if the other does not advert to the defect and sins only materially, or if he swears what he thinks is true, although in fact it is false, because the one asking is the true moral cause of the oath; but the ignorance of the one swearing cannot excuse him who knowingly asks that God be invoked as witness of a dishonest or false thing (Lev. V, 1). c) But it is licit, from a just and proportionate cause, to ask an oath from him who can swear well, but who probably or certainly will swear badly, for example, by false gods. But if the other is going to commit perjury strictly so called, there is easily a sufficient cause on account of the common good for a public person who from office ought to ask the oath, and besides "she does not seem to exact it, but he at whose instance she exacts it"; never or very rarely for private persons, because regularly it would be to give an occasion of sinning without hope of some good (a. 4, and ad 4).

Question Three: On Sacrilege

S. Th. II-II, q. 99.

800. Sacrilege is said of him who gathers or steals sacred things; whence etymologically it is the theft of a sacred thing, but by extension of signification it is every violation of the sacred (heiligschennis). It is called:

1. Violation, that is, any unworthy and irreverent treatment had in a quasi-violent mode; and thus it is distinguished from blasphemy, which is irreverent and contumelious speech. "But just as honor is in the one honoring, not in the one who is honored, so also irreverence is in him who bears himself irreverently, although it harms in no way him to whom he exhibits irreverence. Therefore, so far as concerns himself, he violates the sacred thing, although it is not violated in itself" (a. 1, ad 3).

2. Of the sacred, that is, of something ordered or deputed to divine worship, not indeed by private devotion, but by public rite or institution of God or of the Church (a. 1). Moreover these words are to be taken formally: not every violation of a thing which is sacred is sacrilege, but only that by which the sacred thing is violated in that in which it is sacred. Thus, for example, defamation or theft committed against a priest is not sacrilege, because it does not touch the sacred person insofar as he is sacred (a. 3, ad 3).

Therefore sacrilege is such irreverence committed against something sacred as is specially repugnant to its sanctity.

801. Sacrilege is a sin against religion. - "For just as from the fact that something is ordered to a good end it obtains the account of good, so also from this, that something is deputed to the worship of God, it becomes something divine; and thus a certain reverence is owed to it, which is referred to

God. And therefore everything which pertains to irreverence toward sacred things (as such) pertains to injury to God, and has the account of sacrilege" (a. 1).

Moreover it is a special sin, because in it "there is found a special account of deformity, by which, namely, a sacred thing is violated through some irreverence... And it is opposed to religion... for if someone violates a sacred thing, by this very fact he acts against reverence for God, and thus sins by irreligiosity" (a. 2).

This is the formal account which is proper to sacrilege, which namely constitutes it and distinguishes it from other sins, although it can be found in sins of diverse genus, homicide, luxury, theft, etc.; for "nothing prevents one special account of sin from being found in several genera of sins, according as diverse sins are ordered to the end of one sin,... and in this mode, in whatever genus of sin someone acts against the reverence due to sacred things, he formally commits sacrilege, although materially there are diverse genera of sins there" (ad 2).

802. Sacrilege is divided into personal, local, and real, by reason of the sacred object which is violated. - These differ in moral species, because a diverse account of sanctity is found in person, place, and sacred thing (a. 3 and ad 1), according as sanctity is in them subjectively and formally, or contentively and extrinsically, or effectively, at least by destination and ordination to the worship of God.

Probably they are lowest species which are not subdivided into other species, so that under the account of sacrilege it is the same sin in species to violate a nun by striking or by lying with her (ad 2); nevertheless often a sacrilegious action must be specified more because of other adjoined species, for example, of luxury, theft, etc.

803. Sacrilege is a mortal sin from its genus, because it is opposed to religion in a most grave matter, though sometimes in a light matter (Lev. X, 1; I Kings II, 17; IV, 11; Dan. V, 2; Jn. II, 14). Moreover it is so much the graver:

1. as the sacred thing against which one sins obtains greater sanctity.

Thus personal sacrilege is graver than local; likewise among real sacrileges, the gravest are those which are committed against the sacraments by which man is sanctified and which contain grace itself; then those which are done against consecrated vessels, against images and relics, against the ornament of the Church or of ministers, or finally against ecclesiastical goods. - The gravest of all is personal sacrilege against Christ in His proper species, but now it is real against the Eucharist which contains the body of Christ (III, q. 80, a. 5).

2. as the profanation is graver, that is, as the sacrilegious action contains greater irreverence and is more repugnant to the sanctity of the thing violated.

Whence the devastation of a church is graver than a small striking of a cleric; to break images of saints is greater than to approach the Eucharist without devotion or to touch it.

804. Personal sacrilege is the violation of a sacred person; but a person becomes sacred by reason of the clerical state, and by reason of vows of poverty, continence, and obedience emitted in an approved religion of either sex. Such sacrilege is committed:

1. By violent laying on of hands or real injury against a sacred person, namely, violation of the privilege which is called of the canon from Lateran Council II, can. 15; which is mortal if it brings grave harm to his body or liberty or dignity (can. 119 and 2343).

2. By injury to the privilege of the forum or ecclesiastical immunity, insofar as it exists in a region, for example, by drawing clerics to secular tribunals (can. 120-121 and 2341).

3. By lustful treatment, begun or consummated, internal or external, of a person who precisely according to chastity to be observed is consecrated to God, not indeed by a private vow but by public authority, whether by reception of sacred order or by admission to the religious state (can. 132 and 1308, § 1). But if the sin is committed between two persons, sacrilege is contracted by both, not only, namely, by the sacred person but also by the other accomplice;[1] but if both are sacred, the malice will be of twofold sacrilege; but if one is sacred by a twofold title, because it is from one motive of religion, one sacrilege is committed.

[1] Thus also a non-sacred person, desiring a sacred person, is guilty of sacrilege, not by reason of himself but by reason of the object; likewise if he is the cause that the sacred person commits sacrilege. On the contrary, a sacred person inducing a non-sacred person to luxury without delectation.

4. Likewise by violation of the other vows of religion, namely, poverty and obedience, by which, as by the vow of chastity, persons are consecrated to God.

As we have already noted, it is required that sacrilege affect the person formally as sacred: thus calumny uttered by a priest or against a priest, although it is aggravated by this circumstance, does not have the proper malice of sacrilege.

805. Local sacrilege is committed by violation of a place, not indeed consecrated by a private person, but by the authority of the Church or deputed by solemn blessing for performing public rites, namely, a church, a public oratory, and a blessed cemetery (can. 1154, 1191 and 1207):

1. By acts by which a sacred place is polluted, enumerated in the text of canon 1172 (cf. 1207), namely, a) by the delict of homicide; b) by injurious and grave shedding of blood; c) by impious or sordid uses to which the sacred place has been assigned, for example, dishonest dances, a grave brawl, stabling, or prostitution; d) by burial of an infidel, or of an excommunicated person after declaratory or condemnatory sentence. These acts, in order that a church be held juridically violated, must be certain, notorious, and placed in the church itself; but even if they are not notorious, they remain sacrilegious: for they are not sacrilegious because on account of them the Church is declared violated, but conversely. These are of themselves mortal.

2. By violation of ecclesiastical immunity, for example, unjust breaking in, devastation, spoliation, overturning of altars, violation of the right of asylum (can. 1179); and consequently by theft of a sacred thing or of a thing handed over to the custody of the Church, committed in a sacred place. These of themselves are mortal.

3. By acts which dishonor the sacred place: a) By all sins, not indeed internal sins, but external sins which, from the fact that they are perpetrated in a sacred place, contract a special malice of

sacrilege, even mortal, because of special repugnance with the sanctity of the place, such as worship of an idol or demon, sins of immodesty manifestly grave in the account of an external act, namely, consummated acts and those which proximately dispose to them.

b) By various external actions not sinful but profane, some of which are per se forbidden under grave obligation, such as profane judgments, public markets, profane games, dances, profane spectacles, banquets, public shoutings and runnings about, etc. (can. 1178); others per se under light obligation: conversation, private eating, a private pact entered into without commotion, walking about, etc., unless there is an excusing cause.

But since favors are to be broadened, odious things restricted, it follows that under the name of sacred place there are also comprehended cells, the cloister, sacristy, tower, church forecourts, if it is a question of the right of asylum; they are not comprehended if it is a question of acts which dishonor a sacred place or by which it is polluted.

806. Real sacrilege is constituted by violation of things which by public authority pertain to divine worship or are proximately referred to it:

1. By unworthy reception, ministration, treatment, simulation of sacraments; likewise by profanation of sacramentals. Concerning these things it will be spoken particularly in the treatise on the Sacraments.

2. By unworthy treatment of sacred vessels or blessed ornaments. This can be grave: thus it would be mortal to convert a chalice or pyx to profane uses (can. 1150 and 1296); to use a vessel, corporal, and ornaments altogether unclean; for a non-deacon to handle without necessity vessels immediately containing the holy Eucharist; or light: thus it would be venial without necessity to employ a blessed candle for profane use, to drink blessed water for thirst, to drive away flies with a blessed ornament, for one who does not have power to touch a chalice, sacred vessels, corporals (can. 1306). In doubt, the matter often depends upon the intention of the agent or common estimation.

3. By profanation of relics and images, for example, by treating them badly, breaking them, stealing them, deputing them to sordid uses, scattering or throwing away relics, painting or sculpting images indecorously.

4. By abuse of the Sacred Books (Council of Trent, sess. 4, at the end), which is only venial, unless it is done for shameful and lascivious things or for confirming errors.

5. Finally by destruction of a church, and by usurpation, theft, destruction, injury, alienation without permission, of ecclesiastical goods, namely, those which are deputed to the ornament of the temple, sacred ceremonies, or the sustenance of ministers as such; but not of those things which are personal to clerics, or which are destined for the church but have not yet come into its dominion.

807. Observations. - 1. If sacred things have been totally changed, their violation or employment for profane use is no longer sacrilege, for example, if a chalice is altogether broken or melted down, unless sometimes by reason of scandal; likewise if they are no longer sacred because they have lost

consecration or blessing, or because their form has now been perfectly changed (can. 1305): then they can freely be employed for profane uses, yet not for sordid uses (can. 1510).

2. Time is not consecrated to God in a special mode: he who violates a sacred day by sinning, although on this account he can sin more gravely, nevertheless does not commit sacrilege, because no special consecration is present; unless contempt or notable irreverence toward something sacred accedes, or scandal for the faithful, as on Good Friday to perform comedies or ludicrous spectacles.

3. When a church has been violated, the cemetery, even if contiguous, is not on this account judged violated, and conversely (can. 1172, § 2).

4. Penalties are inflicted in law for sacrilege; and indeed for sacrilege in general (can. 2325), real sacrilege (can. 2320-2322), local sacrilege (can. 2328-29), personal sacrilege (can. 2341 and 2343), sacrilege against ecclesiastical goods (can. 2345-47).

1. Hence in law it is said: sacrilege is committed by taking away either the sacred from the sacred (namely, real and local), or the non-sacred from the sacred (local sacrilege, if the thing has been entrusted to the Church), or the sacred from the non-sacred (real sacrilege).

Question Four: On Simony

S. Th. II-II, q. 100.

808. Simony, so called from Simon Magus, who (Acts VIII, 18) wished to buy from the Apostles the power of giving the Holy Spirit, so that he might sell it to others, is defined: the studious will of buying or selling for a temporal price something spiritual or annexed to the spiritual (can. 727). In this definition there is indicated:

1. The genus: studious will, that is, deliberate intention, not only because this is necessary as for any sin whatever, but also because for the essential malice of simony a mutual pact is not required; rather, a pact begun interiorly by one party suffices, namely, an interior affection or will of bargaining or obliging (a. 1, ad 1).

2. The proper act of simony: buying or selling, which is to be taken broadly of any onerous contract, whether of hiring, or of renunciation, or of exchange, by which a spiritual thing is appraised and compensated by a temporal thing, and the temporal is had as an equivalent compensation for the spiritual thing; whence is added, for a temporal price, that is, for money or some other thing estimable by price: for all such contracts are easily reduced to buying and selling, by force of which one intends to oblige another to give something spiritual for something temporal, or conversely (a. 1, ad 5). Hence from can. 728, there is every agreement, even tacit, although not brought into effect, in which the simoniacal mind is not expressly manifested but is gathered from the circumstances.

That temporal good is called in law a gift, and is threefold:

a) a gift from the hand, that is, money and anything else estimable by price, such as remission of debt, hiring, cession of right (a. 1441); b) a gift from the tongue, that is, patronage, such as

commendation with another, praise, favor, prayers, intercessions, vituperation, defense; c) a gift from service, that is, service or attendance in temporal matters, for example, to give a loan, to serve another, to assist, to teach, to instruct, in one word a work for the utility and advantage of another (a. 5).

3. The object by which it is distinguished, or the matter about which simony is concerned: something spiritual or annexed to the spiritual. That is, namely:

a) Something spiritual, insofar as it is spiritual; namely, something truly and intrinsically supernatural as such, that is, a spiritual thing ordered to eternal salvation (or proceeding from God as supernatural author and ordering to God as supernatural end), whether it is such formally, as grace, the gift of the Holy Spirit, or causally, as sacraments, sacramentals, prayers, a sermon, the power of order and jurisdiction, or effectively insofar as it is an effect or use of spiritual power, namely, an act of the power of order or jurisdiction, such as consecration, absolution, blessing, dispensation, election, presentation, collation of a benefice, confirmation, indulgence (a. ? [printed thus] and 3).

b) Or something annexed to the spiritual, insofar as it is annexed to the spiritual, namely, that which is not spiritual, but is ordered to it and is joined to it; namely in such a way that without the spiritual it cannot be (a. 1, ad 6; a. 4), for example, an ecclesiastical benefice, or the spiritual thing is at least a partial object of the contract, for example, consecration in the sale of a consecrated chalice (can. 727, § 1).

809. Simony is divided. - A. On the part of the matter:

1. One kind, properly so called, or of natural and divine law, is an intrinsically evil contract by which a thing truly spiritual, or annexed to the spiritual, is exchanged with a temporal thing, as was declared in the definition.

2. Another kind, improperly so called, or of ecclesiastical law, is a contract licit in itself, but prohibited by the Church from a motive of religion on account of the danger and appearance of simony properly so called: namely, "to give temporal things annexed to spiritual things for temporal things annexed to spiritual things, or spiritual things for spiritual things, or even temporal things for temporal things, if this is prohibited by the Church on account of the danger of irreverence toward spiritual things" (can. 727, § 2): thus the exchange of ecclesiastical benefices among themselves.

B. On the part of the act or pact:

1. It is mental, when it stays within the mind, manifested by no external sign, and is completed by the will alone without an agreement signified externally, for example, if someone furnishes his service to a bishop from the intention of obtaining a canonry for the service.

2. It is conventional, when there is an agreement or pact, express or tacit, but not yet completed or put into execution, either from neither party or at least from one party, for example, if one has sold or conferred a benefice, and the other has not paid, or if someone says: I give a benefice that you may give money, or: you give a benefice, I will be grateful to you with a temporal price.

3. It is real, when there is a pact fulfilled by each party at least inchoatively, or it has begun to be fulfilled so that it has been put into execution by each party totally or partially, for example, if one has conferred a benefice and the other has paid the price at least in part.

To the second and third pertains confidential simony, which obtains only in benefices, when someone procures a benefice for another with a confidential reservation, that is, under a confidential obligation that the other at some time, for example, after six months, resign that same benefice to him or to a third party, or furnish to him a part of the fruits from it.

810. Simony is a sin against religion, because, by buying or selling a spiritual thing, it exhibits irreverence to divine things and to God (Prov. III, 15; Acts VIII, 20): 1) because a spiritual thing exceeds every temporal price; 2) because we are not masters of spiritual things (I Cor. IV, 1); 3) because sale is repugnant to the origin of spiritual things, since they proceed from the gratuitous will of God, and therefore are to be granted gratis according as Christ commanded (Mt. X, 8): Freely you have received, freely give (a. 1).

Simony, which makes a sacred thing equal to profane things, differs from real sacrilege, by which a sacred thing is treated irreverently: for just as against justice someone can sin in diverse ways in voluntary commutation or contract, and by involuntary commutation, so also against religion, in voluntary commutation of a sacred thing through simony, and in involuntary commutation through sacrilege.[1]

[1] Thus Cajetan, on this place; Suarez, on the contrary, o. c., l. 3, c. 1, n. 4.

811. Simony properly so called, of natural law, is a mortal sin from its whole genus, both on the part of the spiritual thing, because it is always a grave irreverence to equate a temporal thing to a spiritual thing, even the least, which is above every price; and on the part of the price: for the less is given for a spiritual thing, the more the spiritual thing is cheapened, whence the vileness of the price offered for it more increases the malice. Hence Acts VIII, 20: Thy money be with thee unto perdition, because thou hast thought that the gift of God may be possessed by money.

Simony improperly so called, of ecclesiastical law, is a mortal sin from its genus, because the Church prohibits it under grave obligation, while nevertheless admitting lightness of matter: for by this there is not per se irreverence toward a sacred thing, because a temporal thing is not received as the price of a spiritual thing, but only a precept of the Church is violated, which prohibits the appearance and danger of simony, in which smallness of matter can be given.

812. Simony of natural law is also concerned with things annexed to spiritual things. - Something can be annexed to the spiritual in three ways:

a) Antecedently, when the temporal thing preexists, to which afterward the spiritual accedes, as are all consecrated or blessed things: sacred vessels, chalices, temples, sacred buildings, oil, sacred vestments, a rosary, altars, etc.; capsules or cases of relics; land or a building to which the right of patronage or of a benefice adheres; and to appraise these by price or to sell them is not simony, unless by appraising them more on account of the consecration or the connected spiritual thing, or unless the Church specially prohibits this: for the matter or temporal thing is estimable by price and has intrinsic value in itself, independent of the spiritual thing.

b) Concomitantly, if it exists together and in a quasi-parallel mode with the spiritual thing, so that each is joined together, as bodily labor in undertaking sacred functions. This can happen either intrinsically, if in the thing it is not separable from it, but per se and necessarily and inseparably is joined with it, as labor necessary in the celebration of Mass, administration of a sacrament, preaching; or extrinsically, if it is separable and is joined to it only per accidens, as inconvenience in celebration with chant, in a distant place, at a later hour, at the will of a person. To sell the first is simony, because it is inseparable from the spiritual thing, as an intrinsic part of the spiritual function: for it enters into it and constitutes a part of it and is one work with it; whence if it were sold, the spiritual thing itself would be considered sold; to sell the other is not simony, because it can be separated from the spiritual thing, whence independently of it it can be appraised by price and sold.

c) Consequently, if the temporal thing supposes the spiritual thing as cause and depends upon it, as an ecclesiastical benefice is annexed to an office, the right to the sustenance of life to the religious state. And to sell and appraise this by price, while such connection remains, is simony, because it depends upon the spiritual thing, since it supposes the spiritual thing and is related to it as an accessory; therefore if it is sold, necessarily that spiritual thing which is presupposed is sold (a. 4).

For thus it is connected with the spiritual thing so that with it in moral estimation it constitutes one thing, and therefore one without the other by private authority can in no way be bought or sold, for example, the right to the revenues of a benefice, which is founded in the spiritual right to pastoral offices as in its root and cannot be separated from it.

813. Simony of ecclesiastical law is committed in various ways:

1. By exchanging ecclesiastical benefices by one's own authority, or by resigning them in favor of another, by bargaining about them, compromising, reserving a pension, or deducting from the fruits of a benefice a compensation to be furnished in the act of provision (can. 1486-88, also 1441 and 1927).

2. By selling or buying offices for the administration of the temporal things of the Church, as of a steward, sacristan, procurator, defender, etc.

3. By giving or receiving gifts on the occasion of some sacred function, for example, of an examination for a parish (Council of Trent, sess. 24, c. 18 de ref.), of the conferral of orders or tonsure (sess. 21, c. 1), of admission to a religious order (sess. 25, c. 16), of dimissorial letters (can. 545).

4. By selling ecclesiastical burial itself or a part of a cemetery; but not only the right of burial in a determined more honored place, because thus human honor is sold, a utility estimable by price.

5. In the administration of sacraments or of other sacred things, by exacting or asking something beyond offerings according to lawfully admitted taxes (can. 1507, § 1 and 736).

6. By exercising a species of trading or commerce concerning Mass stipends (can. 827, 840 and 2324).

Let it be noted that to sell blessed things, if nothing is asked for the blessing, is not simony, although by this they lose indulgences.

814. Corollaries. - For simony of natural law it is required that the temporal thing be given precisely as the price of the spiritual thing in exchange for it, in whatever way this happens; hence:

A. There is simony 1) whether it is done explicitly by an express pact, or also by a tacit pact, which is implicitly contained in some fact, when namely one understands of the other that the temporal thing is given under the obligation of receiving the spiritual thing as due compensation (can. 728);

2. whether it is done formally in the act of express intention, or also virtually and in the exercised act, when namely the temporal thing is given directly and immediately without the intervention of another true and honest motive on account of which it is given: for in this act there is virtually included the intention of exchanging one with the other, and according to common estimation the temporal thing is then given as the price or just compensation of the spiritual thing; not so if the temporal thing were only a remote motive for obtaining the spiritual thing. The matter is established from the condemnation of propositions 45 and 46 by Innocent XI,[2] and from reason: for the will of a work to which deformity is annexed suffices for sin, even if this is not formally intended;

[2] "To give a temporal thing for a spiritual thing is not simony, when the temporal thing is not given as a price, but only as a motive for conferring or effecting the spiritual thing, or even when the temporal thing is only a gratuitous compensation for the spiritual thing, or conversely." "And this also has place, even if the temporal thing is the principal motive for giving the spiritual thing; indeed even if it is the end of the spiritual thing itself, so that it is esteemed more than the spiritual thing."

3. whether the temporal thing is given uniquely, or only principally, as the price or debt on account of the spiritual thing: for an added motive does not destroy the malice of the prior motive on account of which something is principally given;

4. whether the pact is made with an obligation of justice, or with an obligation of rendering from fidelity, gratitude, benevolence: for the contract obliges to this; but when a pact generates obligation, by that very fact the temporal thing is now given as a debt.

B. On the contrary, simony properly so called is not:

a) sincerely and not fictitiously, from mere gratitude, friendship, or benevolence, to give something spiritual, so that it is a wholly liberal and gratuitous gift;

b) to give something spiritual or annexed to the spiritual for something spiritual or annexed to the spiritual, for example, a Mass for a rosary, a chalice for a ciborium, to apply an indulgence or dispensation for a sacred relic, to serve a bishop in a spiritual matter for obtaining an ecclesiastical benefice;

c) to give a temporal thing on occasion of a spiritual thing: not indeed proximately and immediately on account of it, but on account of a temporal thing or from another honest motive, or on account of a title extrinsic to simony (cf. can. 730).

C. The titles extrinsic to simony on account of which a temporal thing can be given and accepted are customarily numbered:

1. Pure liberality of the giver or mere gratitude, for judging which attention must be paid to the quality of the persons, the quantity of the gift, and the time of donation: if gifts are made directly by a liberal man, if they are of modest price, in wine and similar things, if they are made when some necessity or opportunity demands in which it is fitting to show favor, they are presumed to be given liberally, not simoniacally; on the contrary, if the gifts are great comparatively to the donor, the presumption stands for simony.

2. Extrinsic labor, which is joined per accidens to a sacred action, as to celebrate Mass in a distant place, with chant, or at a later hour; which can be appraised by price.

3. Redemption of unjust vexation, or removal, by the offering of a temporal thing, of an unjust impediment concerning the spiritual thing, when other means are lacking; which is not given for the spiritual thing itself but for removing the impediment, not from a pact but on account of fear of damage or harm or disfavor.

4. Legitimate custom or disposition of a superior, by way of a tax for the expenses of worship or administration.

5. Sustenance of ministers (Mt. X, 10; I Cor. IX, 7 and 13; cf. Lk. X, 7; I Tim. V, 18), not as a price of wages but as a stipend of necessity: thus, for example, a beneficed cleric receives fruits, a pastor stole-fees, a priest Mass honoraria, the faithful alms that they may pray.

815. Penalties of simoniacs. - A. By ecclesiastical law every simoniacal contract is null. Hence can. 729: "With the penalties established in law against simoniacs remaining firm, the simoniacal contract itself and, if simony is committed concerning benefices, offices, dignities, the subsequent provision lack all force, although the simony was committed by a third person, even without the knowledge of the one provided, provided this is not done in fraud of the same one provided (for example, to impede his provision otherwise certain) or with him opposing. Therefore:

1. Before any sentence of a judge, the thing simoniacally given and accepted, if it is capable of restitution and the reverence due to the spiritual thing does not stand in the way, must be restored, and the benefice, office, dignity dismissed;

2. The one simoniacally provided does not make the fruits his own; but if he has received them in good faith, it is permitted to the prudence of the judge or Ordinary to remit the fruits received, in whole or in part, to the same person" (cf. can. 185, 1465 § 2 and 1470, 6°).

"No one," says St. Thomas, a. 6, "can licitly retain that which he has acquired against the will of the owner; for example, if some steward from the goods of his lord were to give something to someone against the will of his lord, he who received it could not licitly retain it. But the Lord, whose stewards and ministers the prelates of churches are, ordained that spiritual things be given gratis according to Mt. X, 8... And therefore he who obtains any spiritual things by the intervention of a gift cannot licitly retain them."

B. Besides, penalties are established in can. 2392: "With the prescription of can. 729 remaining firm, those perpetrating the delict of simony in any offices, benefices, or ecclesiastical dignities:

1. Incur excommunication latae sententiae simply reserved to the Apostolic See;

2. By the fact itself remain deprived in perpetuity of the right of electing, presenting, nominating, if they have any;

3. If they are clerics, besides, let them be suspended."

This is applied in can. 2371: "All, even those increased by episcopal dignity, who knowingly have promoted or have been promoted through simony to orders, or have administered or received other sacraments, are suspected of heresy; clerics besides incur suspension reserved to the Apostolic See." And can. 2327: "Those making profit from indulgences are punished by the fact itself with excommunication simply reserved to the Apostolic See."

But for those who make profit from Mass stipends, or who increase the customary taxes in ministering sacred things, ferendae sententiae penalties are foreseen, can. 2324 and 2408.

Section D: On Piety and Observance

Chapter I: On Piety

Question One: On Piety in Itself

S. Th. II-II, q. 101, a. 1 and 3.

816. Piety (filial piety; filial love and homage) is the virtue by which service and worship are given to parents and country. It is a virtue because it renders a debt. It is a special virtue because it has a special object: for just as we owe worship to God because He is for us the first principle of being and governing, so also to parents and country because they are the secondary principle of our being, education, and governance. But where there is a special account of debt, there is a special part of justice and a virtue. It is one virtue because it has one object: the secondary principle of our being, which belongs to parents and country, to whom piety first and principally extends;[1] it indeed honors blood-relatives, but insofar as the blood of the parents exists in them and therefore they represent them; also fellow-citizens and all friends of the country, because in them we behold the favor and helps of the country and therefore they represent it to us; it honors a spouse and children, insofar as they preserve the blood-relationship received from the parents; indeed even ourselves, insofar as we venerate in ourselves the image and blood of our parents, but piety reaches all these only secondarily.

[1] Although piety is owed more principally to parents than to country, because from the fact that we are born from parents, the country pertains to us (q. 122, a. 5, ad 2); nevertheless in the latter there is per se a title to piety, which demands our dependence, and not only on account of the sole relation to parents.

817. Object of piety. - The material object which it intends to exhibit is worship and service toward parents and country, namely, acts by which we render due honor to them and attest their excellence and our subjection.

The primary material object which principally, per se, and by reason of itself it intends to exhibit by service is the due equality between the honor exhibited and the right of parents to it, by which equality the honor is proportioned to the right which parents have to it.

The formal object by which, or proximate motive on account of which we exhibit worship to them, is the special honesty of the said equality.

818. Corollaries. - 1. The debt which piety attends to is a strict or legal debt, because parents have a true right that honor be exhibited to them. And nevertheless piety is not a species of justice properly so called: 1) because justice is toward another and is founded upon the personal distinction of one from another, while piety is founded upon the special conjunction of father and children: father and son as such are in some way one; 2) because piety does not render the whole debt, a) parents are for us the principle of being and have conferred on us the very faculty of honoring them, which we are not able to render back to them; b) besides, by ordinary services and in the same order of things, namely, of generation, education, and providence, we cannot render the debt to equality. But virtue regards that which is per se, and therefore piety falls short of strict justice and is only a potential part of it.

2. Legal justice is distinguished from piety. For piety regards the country according as it is the principle of our being; legal justice, according as it is the common good. Whence the preeminence above all human virtues which St. Thomas attributes to legal justice is not to be attributed to piety toward country.

3. God in a more excellent mode than parents is the principle of our being: for He is the primary and total principle, and is the cause of every created paternity, because no one can be a parent except through the force received from Him. Whence the virtue of piety does not order us to Him as Creator, but the virtue of religion, which is not formal but eminent piety. Besides, because God through grace has adopted us as sons, toward Him there is also formal piety: for from the virtue of piety there must be distinguished the gift of the Holy Spirit by which we venerate God as Father and other men as His sons (I Tim. IV, 8; q. 121, a. 1, ad 2).

4. Cajetan notes on a. 1: "The name of piety seems to have been extended to works of mercy (and to God) (on account of the likeness of the works). Namely, because works of mercy are similar to the works which from piety we exhibit to those joined by blood and to citizens and friends of the country, therefore works of mercy seem to have been called works of piety, and those who are occupied with them called pious. And hence it seems to have become usage that God is called pious, that divine piety does these and those things; since God most greatly exercises works of mercy. But, so far as the proposed matter is concerned, the offices of piety differ from the offices of mercy in this, that piety gives what it gives under the account of debt, while mercy does so under the account of gratuitous relief."

Question Two: On the Offices of Piety Toward Parents

819. Offices of piety in general. - By natural and divine law, under grave obligation, from piety we owe parents a) something per se, that is, that which befits parents insofar as they are parents: 1) the service of love, because they are more closely joined to us and indeed by a special conjunction, for after God they are the principles of our being and greatest benefactors; 2) honor and reverence, because they are our superiors, preeminent in dignity and excellence (Ex. XX, 12; Deut. XXVII, 16; Eccli. III, 1-18; VII, 29; Eph. VI, 2-3; Tob. IV, 3); 3) the service of submission, namely, obedience, because they are governors deputed by God for children (Prov. I, 8; Eph. VI, 1; Col. III, 20); b)

something per accidens, that is, by reason of a special circumstance: 4) spiritual and corporal assistance insofar as necessity requires it (Mt. XV, 4 sq.). These are owed respectively to parents by reason of cause, by reason of preeminence, by reason of governance, and by reason of necessity.

The first is an office of natural love and charity, which is presupposed to piety as a necessary foundation; the second and third are formally the proper offices of piety; the fourth is an office of each, which is built upon all the aforesaid.

From these things it follows: 1) hatred, malevolence, personal injury, contempt, which with respect to another would be light, are easily graver with respect to parents, because we owe them love, worship, and service more strictly than to others; 2) those who sin by hatred or injury against parents add to the sin a new species against the special love owed to parents or against piety.

820. The office of love and assistance. - Children are bound to pursue their parents with the highest love after God, and this both affective in the heart and effective in word and work, both internal, by willing them the greatest goods, and external, by praying for their salvation both corporal and spiritual and by exhibiting that love by exterior signs. Thus always and per se; but sometimes per accidens, by reason of necessity, they ought to manifest it by special corporal and spiritual support or help. Hence:

A. Children sin gravely 1) by defect of internal love, if they hate their parents or interiorly despise them; if they rejoice over their adversity or grieve over their prosperity; a fortiori, if they wish evil to them, even death itself, so that they may live more freely, or may possess their inheritance, or may be freed from care and custody;

2. by defect of external love, if they show signs of hatred toward them, seriously detract from them, greatly sadden them, especially even to tears, for example, by frequenting evil companions, neglecting studies, prolonging vigils outside the house.

B. They sin especially by defect of assistance: 1) by defect of corporal assistance, if they do not come to the aid of parents constituted in grave necessity, even if the parents could provide for themselves by some art, but one unbefitting their state; likewise if they do not visit them when sick, console them when sad, defend them when unjustly vexed. This obligation is so strict that, according to St. Thomas, a. 4, ad 3 and 4, offspring are bound to defer entrance into religion and the state of marriage, indeed even not to enter religion, if the parents are in grave necessity and they can help them by remaining in the world: the reason is that this obligation is of the law of nature, while the state of religion or of marriage is a work of liberty. But if the parents were in extreme necessity, a son would even be bound to leave religion, unless there were another means of helping them; but the case scarcely occurs, because extreme necessity does not usually endure;

2. by defect of spiritual assistance, if they do not come to the aid of parents in grave spiritual necessity, for instance, if they neglect to admonish them in danger of death or to provide for them the necessary sacraments; if by evil arts they impede them from making a testament or from making dispositions or legacies for the salvation of the soul; if after their death they do not take care that funeral rites and other offices be celebrated according to their will or condition.

They are not bound to pay a father's debts, unless a) they receive paternal goods: then they are bound from justice; or b) otherwise the honor of the father would be greatly injured: then they are bound from piety, but not with grave inconvenience.

821. The office of reverence and honor. - Reverence demands both that interiorly we acknowledge parents as superiors preeminent in dignity, excellence, and authority participated from God, and therefore conceive reverential fear toward them, and that exteriorly by words, signs, and deeds we demonstrate this reverence.

By defect of reverence, generally children sin gravely against piety:

1. By words, if they deliberately curse their parents, speak ill of them, or cast insults upon them and affect them with injuries or contumelious words by which they know they will be gravely offended; if they provoke them to grave anger, often address them with harsh words, so that they seem to have hatred for them.

Grave irreverence is not to be taken so much absolutely as relatively to the conditions of the family and the customs of the place: what is a lighter irreverence toward a plebeian parent can be most grave if committed against a noble or honored one.

2. By signs, if by laughter or gesture they mock or deride them, or ridicule them by imitating their acts, whether in their presence or in their absence, if they frequently look at them with stern eyes; likewise if they despise poor, miserable, badly dressed parents, or are ashamed of them, or refuse to acknowledge them.

Except if, contempt being excluded, for a grave cause they pretend that they do not know them, for instance, to avoid some grave inconvenience, because then the parents themselves are not considered gravely or reasonably unwilling.

3. By deeds, if they strike their parents, even only lightly; indeed, if with sufficient deliberation they merely raise a hand or seize a stick for striking, even without the intention of striking; likewise if they repel them from the house, from their company; all these, even if they are light in themselves, are gravely repugnant to the reverence owed to parents. Likewise if they omit signs of reverence, such as speaking to them, greeting them, rising, etc., with ostentation or habitually. Likewise if they accuse them of a crime in the external forum, unless another means is lacking for avoiding a common or divine evil.

822. The office of obedience. - Children ought to obey parents in all licit things which pertain to their care, as long as they exist under their power. To the care of parents pertains the governance of the house and the education of children; moreover, children by majority, emancipation, or marriage become persons of their own right, but as to domestic discipline they are subject to parents as long as they live in the paternal house.

Children sin gravely by not obeying parents who command by a serious and rigorous precept in grave matter; but grave matter is that whose omission causes grave harm to the child or the family, as if disobedience conduces gravely to depraved morals, or greatly leads away from salvation, or notably harms in temporal things or honor; especially:

1. In those things which regard the discipline of life: a) as to good morals, if often against the prohibition of parents they frequent depraved company, dances, or other dangerous places, seek forbidden games, have altogether illicit courtships or friendships;

b) as to matters of eternal salvation, if they omit sacraments or other offices of religion, Mass, attendance at catechism, sermons, and prayers in notable matter.

2. In those things which regard domestic governance, if they obstinately refuse to furnish imposed work; if they gravely neglect to apply themselves to the study of letters or to learn an art suited to their condition, with loss of time and expenses; if without grave cause they flee from the paternal house; if against the will of their parents they marry an unworthy wife or marry an unworthy man with disgrace to the family.

Since in the choice of state children are of their own right, because as to the preservation of the individual and of the species all men are equal, in this respect per se they are not bound to obey parents; nevertheless from reverence they ought to seek the counsel of those who naturally are counselors, and also per accidens to obey, in the case in which by reason of education, the honor of the family, etc., parents reasonably command or prohibit in this matter. For just as parents sin gravely per se who compel to a state, even indirectly, or unjustly draw one back from it, so children can sin if in special circumstances parents rightly induce them or turn them away.

823. Corollaries. - 1. When parents are lacking, offices of piety are owed to those who educate children in their place.

2. Similar offices are owed proportionately to other relatives, namely, love, reverence, and, if they hold the place of parents, also obedience; but one sins gravely against piety with difficulty toward them, grandparents excepted.

3. Parents, for instructing boys and youths, often substitute others for themselves, namely teachers, and communicate their authority to them. Wherefore pupils ought to exhibit love, reverence, and obedience to teachers in those things which pertain to studies and good morals according to the contract and received customs, almost as to parents.

Hence pupils, according to the account of the matter, also sin gravely against the debt of reverence or service:

a) If they mock teachers, speak irreverently of them, detract from them, afflict them with useless annoyances, conduct themselves insolently, or provoke others to irreverence and insolence; which in practice is often excused from grave sin because of the lightness of pupils, but if they are older, it will more easily be grave.

b) If they do not obey teachers strictly commanding in those things which pertain to studies, good morals, and the discipline of the school; in which younger pupils are more easily excused from grave sin because of lightness and inadvertence.

c) If at the time of lesson they do not attend and spend the time of study uselessly. To judge the gravity of this sin, there must be considered both the quantity of time which is spent inattentively and uselessly, and the object of instruction and study, and the condition of the persons: it will not be

a grave sin unless, in attaining those things which are necessary to state and condition, the pupils are notably impeded.

Let it be noted that for adolescents who are instructed and educated in colleges or boarding schools, strictly only the superiors of the house have directly the authority and power of commanding in place of parents, and therefore disobedience against those who furnish help to the superior, for example, monitors, is more easily excused from grave sin. Besides, by the very fact that someone, in his own name or in the name of his parents, enters a college or seminary, he makes a cession of his liberty in all those things which are contained explicitly or implicitly in the statutes of this house; nevertheless these statutes are regularly merely penal, for unless the contrary is declared by those who have authority, thus from custom, and provided nothing more is demanded than right order, it can be presumed, lest occasions of sinning be multiplied without necessity. But nothing prevents some of those statutes from obliging even to sin, when namely it is so determined either from the will of the immediate superior, or from the ordination of the superior authority on which the house depends. Finally, when the relation between pupil and teacher has been dissolved, the special offices cease, and therefore sins which afterward are committed against a teacher do not differ in species from sins which are done against another neighbor, except sometimes by reason of a certain ingratitude.

4. Domestic servants strictly so called, since they enter the family of the masters, have offices of piety to fulfill toward the members of this family, especially toward the masters themselves. Whence, besides the special offices of justice which are common to them with workers, and which were described above (n. 550), from piety they are bound toward masters as rulers of the family (I Tim. VI, 1; I Pet. II, 18).

Hence they owe:

a) Interior and exterior reverence, on account of which by a special reason they are to abstain from insults, mockeries, detractions.

b) Obedience in those things which regard service, and the governance of the family, good morals, and peace; and, if the servants are minors, also in those things which pertain to their education and instruction.

c) Discretion in preserving family secrets, which they know from their office, and whose revelation is apt to harm the honor or reputation of the family.

Question Three: On the Office of Parents Toward Children

824. Offices of parents in general. - By natural and divine law, under grave obligation, from piety parents are bound to exhibit to children 1) special love, on account of their special conjunction to them, and indeed always; 2) corporal and spiritual education, from the fact that they are a principle for children as to being and direction (Prov. XXIII, 13; Eccli. VII, 25; Eph. VI, 4; Col. III, 21); and 3) a certain paternal providence for rightly establishing life, until the children can provide for themselves.

825. The office of love. - Parents are bound to love their children with a special love, affective and effective, internal and external, natural and supernatural: natural indeed because children are something of themselves, but supernatural because they themselves are cooperators of God in sanctifying children as in procreating them.

Therefore let the love of parents toward children be:

1. Affective and internal, so that they sincerely will their good as to body and as to soul, for the present time and for the future. Hence they sin gravely per se who deliberately pursue children unjustly with hatred, malevolence, or another evil affection, who from the soul curse them or wish evil upon them, who call them by gravely contumelious names or provoke them to anger by very injurious words (Eph. VI, 4), who treat them too harshly, beat them without cause, or cast them out of the house; not, however, those who for a just cause severely rebuke children and moderately chastise them. In practice, parents who, moved by anger, have affected children with very injurious words or treated them too harshly are often excused from grave sin; unless, however, they have given grave scandal.

2. Moderate, so that it is regulated by reason and rests upon faith; hence let it not be:

a) Excessive: let them not love children with an almost idolatrous love, conceding all things to them, nor correcting them even minimally in vices; which is nothing except cruel kindness toward them.

b) Nor partial: let them not give all affection to one, while cold and indifferent toward the others; but let them love all equally and not make a distinction without a just cause, and even if a distinction can reasonably be made, let them not demonstrate it too much, so that envies, contentions, quarrels, which otherwise easily arise, may be avoided. A fortiori the children of a prior marriage cannot be abandoned; nor may those who are precisely less worthy be cherished with greater affection.

c) Nor egoistic: let parents not love for themselves, but for the children themselves and for God.

3. Effective and external, so that parents not only will good to children, but also do good to them as far as they can. Therefore not only those sin who wish evil to children, but also those who do not avert evil, whether corporal or spiritual, from them when they can; or who do not furnish what is necessary for their good or salvation. To this they ought especially to attend in educating children.

826. The office of education. - Education is the progressive and harmonious development of the faculties, by which infants are transformed into perfect men: progressive indeed, because man naturally can attain perfection only step by step and is impeded in this by many obstacles; but harmonious, by which all his faculties, whether corporal or spiritual and moral, are cultivated proportionately to their importance, so that the whole man is formed. Whence education ought to be chiefly spiritual, so that it eradicates evil inclinations, restrains untamed passions and directs them to good, strengthens good qualities and orders them to human perfection; but also corporal, so that the body is perfectly disposed for its proper operations, and is a fitting instrument of the soul: let there be a sound mind in a sound body. Moreover education ought to be manly, fitting, that is, proportioned to the disposition of the child and preparing him for his future condition, and Christian, ordered to the supernatural end.

A. Corporal education imports three things: for it intends the life, nourishment, and state of the children.

1. As to life, as soon as it is established that an infant has been conceived, parents are bound under grave obligation to avoid everything which probably could harm the life of the child; wherefore:

a) The mother ought to abstain from those dances, violent motions and actions, and all other things which induce more vehement shocks of the body, from immoderate labors, excitements, anxieties, drinks, lustful acts, angers, in one word from those things which can induce abortion of the fetus or a harmful influence upon it.

b) The husband also ought to avert from his pregnant wife all things which would be to her detriment; whence he himself, as all others, would sin if he treated a pregnant woman inhumanely, exasperated her, struck her, with danger to the fetus.

c) After the birth of offspring, parents ought carefully to watch that from it there be kept away whatever would induce danger of death; especially that they not keep the little one with themselves in bed with danger of suffocation.

2. As to nourishment, parents per se are bound under grave obligation to furnish sufficient nourishment and the other things necessary for sustenance, namely, food, clothing, and dwelling, until the children are able to provide for themselves: for they are bound to guard the life of those to whom they gave it. In particular:

a) The mother is bound to nourish children with her own milk, as often as this can be done, both because nature itself inclines to this, and because maternal milk is the most natural nourishment, indeed the only perfectly apt one, and also because on the part of a nurse there can not rarely be danger for the health or morals of the infant; wherefore a mother not nursing fails in an office imposed by nature. The office indeed is not always and necessarily grave, yet it would be grave in the case in which, from the defect of the mother and the use of another nurse, great future evils are probably foreseen; nevertheless mothers are excused from this office on account of scarcity of milk or weakness, their own infirmity, or another reasonable cause, such as labor for procuring food for themselves, but not on account of mere custom.

b) Afterward the father especially, and if he is lacking also the mother, are bound to furnish all things necessary for the honorable sustenance of children according to their condition, nor are they altogether immune from this obligation if the son has dissipated the part given to him; indeed the father ought to pay debts contracted by the son for procuring food for himself, but not other debts.

The office lasts until the age at which children are able to provide for themselves; but even afterward, if they are in extreme or grave necessity, parents are especially bound from piety to help them.

c) Parents sin against piety who do not apply moderate diligence to acquiring goods by which children may be fed. Likewise those who, without grave necessity, expose offspring in public ways or at the door of an orphanage, so that they may free themselves from the burden of feeding it, when they can easily provide for its education; also against justice, by harming the offspring whom they induce into suspicion of illegitimate origin, or even sometimes into danger of life. Nevertheless, in the case of illegitimate offspring, prudence can suggest this in certain circumstances, as we noted above (n. 388).

3. As to state, parents ought to take care that by corporal exercise and labor proportioned to age, children develop physical strength in an orderly way and establish health, so that the body may be a fitting instrument of the soul and they themselves may be apt for a becoming state. Let parents avoid an education that is too delicate, so that children may be strengthened against the inclemencies of weather and be content with substantial but simple and moderate food.

B. Spiritual education imports five things: religious and Christian instruction, the discipline of virtue, good example, vigilance, and correction.

1. As to instruction, parents are bound under grave obligation, either by themselves or partly through others, to hand on to their children Catholic doctrine concerning all things necessary for salvation and for Christian life; hence parents ought to take care:

a) that children be baptized as soon as possible, so that they may receive faith and grace, necessary for Christian instruction; notable delay of Baptism is a grave sin, and even a small delay, if danger for the life of the child is absent;

b) that children from tender years learn the principal truths of faith, and ordinary prayers; but if they are notably negligent in this, parents sin gravely.

2. As to the moral discipline of virtue, parents are bound to form children to the love of God and the practice of virtue, so that they keep the commandments of God and of the Church and be imbued with honorable and Christian morals; hence they ought to take care:

a) that children become accustomed to the exercises of Christian life which are common to all: morning and evening prayers, hearing Mass, frequenting the church and catechism, reception of the sacraments of Penance and Eucharist, etc.

b) that they avoid depraved companions and dangerous readings, and not be corrupted by impious or dishonest servants or companions;

c) that they learn to exercise virtues, especially those which more suit their age: piety, obedience, charity, justice and sincerity, chastity, meekness, etc.

3. As to good example, recalling the axiom, Examples move more efficaciously than words, they ought to furnish to children an example of honorable and Christian life, and a fortiori carefully to abstain from all things which can scandalize them, not only from sins, such as blasphemies, imprecations, immodest acts, but also from incautious ways of speaking and acting, especially regarding religion and chastity.

4. As to vigilance by which they ought to guard children, they must remove from them all things which can be harmful: companions, books, schools, spectacles, dangerous courtships, or things by which they may inflict harm on others; and procure that children fulfill their offices duly.

5. As to correction, parents are bound to correct delinquent children moderately, with kindness and discretion indeed, but also with firmness, not with harshness or passion, and as though reproving everything; namely, so that it may be manifest that this is done for the sake of necessary amendment, not from anger (Eph. VI, 4; Col. III, 21; Prov. XXIII, 13).

Parents who are very negligent in the office of vigilance or correction are gravely guilty toward their children.

827. Corollary on Catholic schools. - Parents who cannot provide by themselves for perfect education are bound to send them to honorable teachers and good schools. Concerning this canon 1374 says: "Catholic children are not to frequent non-Catholic, neutral, or mixed schools, namely, those which are open also to non-Catholics. But it belongs to the local Ordinary alone to decide, according to the norm of the instructions of the Apostolic See, in what circumstances and with what precautions employed, so that danger of perversion may be avoided, it can be tolerated that those schools be attended."

Therefore schools are distinguished: non-Catholic, which are destined for non-Catholics, and in which heresy, unbelief, or religious indifferentism, or even atheism, is positively taught; neutral, which in education negatively abstract from every religion, but teach nothing heretical or impious; mixed, which are open also to non-Catholics. Now not only 1) positively non-Catholic schools are to be condemned, as those which of themselves constitute a proximate danger of perversion, but 2) neutral or mixed schools also are very dangerous, because in them a) the dignity of religion is much diminished in the minds of adolescents, if they see it relegated within domestic walls; b) indifferentism is necessarily fostered, since they see teachers and fellow-students not much caring for religion or even openly attacking it, and since it can scarcely happen that abstraction be made altogether from religion, especially in historical and moral matters, but often, under the pretext of neutrality, Catholic doctrine is attacked or derided; c) finally, not rarely purity of morals is exposed to great dangers.

Hence 1) it is gravely illicit to send children to positively non-Catholic schools, in which proximate danger of perversion cannot be removed;

2. if, all circumstances having been considered, the danger can be removed with moral certainty, and, other schools of the same grade and kind being lacking, a grave reason urges attendance at such schools, this can be tolerated, provided the necessary precautions are employed, and a) outside school the students receive Christian instruction and education in religion and good morals, especially concerning those things which are attacked in the schools; b) parents watch solicitously lest children suffer detriment in religion or morals from lectures heard, depraved books, or association with depraved companions;

3. it is also regularly illicit to send children to neutral schools, on account of the danger which usually adheres to them; nevertheless it can more easily be permitted for a grave reason, and with the necessary precautions always employed.

To judge concerning the concrete circumstances in which attendance at the aforesaid schools can be tolerated, and concerning the precautions to be employed for this, belongs to the local Ordinary alone.

For practice it follows that parents cannot be absolved:

a) if they send children to non-Catholic schools for this reason, that they approve their principles, and therefore prefer them to Catholic schools;

b) generally, if they commit children to be instructed by positively non-Catholic schools, from which ordinarily the danger of perversion cannot be removed;

c) if they hand over children to a negatively non-Catholic or neutral school without at the same time taking care that the danger of perversion be removed;

d) besides, even if parents per se are excused by fitting motives, per accidens they can sin gravely and become unworthy of absolution by reason of scandal or cooperation in promoting depraved schools.

For that reason let Catholics not undertake the office of teaching in these schools, unless for a proportionately grave cause and scandal being excluded. And if priests teach Christian doctrine there, let the people prudently be warned that this is done so that the evils which flow from schools of this kind may be averted as far as possible, and that parents are not therefore excused from sending their children to truly Catholic schools.

These principles hold concerning schools of every grade: primary, secondary, and higher schools and universities.

828. The office of providence. - Parents ought to provide concerning the state of their children and help them, so that they may be able to embrace a state suited to their condition, disposition, and aptitude and to follow their vocation. Hence:

a) They ought to take care that boys and girls learn an art or letters, so that afterward they may be able to live honorably according to their condition. Nevertheless negligence of this office per se would not be grave if the children already had from elsewhere that from which they might live.

Therefore: 1) since at least elementary knowledge is usually required in our cultivated regions in almost any state of life, lest someone with disgrace be forced to occupy a place inferior to others, parents are rightly judged to be bound to procure that knowledge for all their children, unless they are excused by moral impossibility; which impossibility rarely exists, for even the poor find a means of suitable instruction;

2. but they are not bound to procure higher knowledge for children, unless this is commonly had in that social condition in which they are found; indeed parents of an inferior condition ought to beware lest thus they be a burden to themselves, to the family, and to the State.

b) They ought to furnish counsel to children concerning choosing a state of life according to their condition.

For since parents are strong with greater experience and know their children better, they can help incautious youths much in this matter, yet they cannot bring force or compel, as was noted above, n. 822.

c) They ought to furnish help, so that the children may be able to attain the state which they have chosen; hence:

1. If they are richer, parents are bound to help their children in some measure, so that more easily they may be able to attend to their art or industry and sustain themselves and their family, when they have married.

2. Where the custom has prevailed that daughters be given dowries so that they may be able to marry more easily according to their condition, parents are also bound to this; unless they justly dissent from a determinate marriage.

3. They ought to apply moderate diligence so that they may leave to children an inheritance suited to their state (II Cor. XII, 14); and they sin gravely if they squander goods, so that they render themselves unable to provide for children or leave them needy. The office of providence lasts until children have attained a state or have married; then per se it ceases. Yet if afterward children fall into temporal or spiritual necessity, before all others parents ought to bring help, not only from charity but also from the special debt of piety.

829. Remarks. - 1. When parents are lacking, guardians and sponsors are bound concerning the education of children.

2. Teachers owe instruction and education to pupils, both from piety, because in the place of parents they take this obligation upon themselves, and from justice, namely, by reason of the office undertaken and by reason of the stipend paid. Hence teachers sin, and if they gravely neglect, they must make restitution:

a) If they do not perfect themselves in letters, insofar as there is need, if they do not apply due diligence in instruction, if they teach pupils false and inept things; which is graver in proportion as the matter is of greater importance.

b) If they do not correct the evil morals of pupils or do not exclude from their schools boys imbued with evil morals, when this is necessary and possible: for in this the common good of the school ought to be preferred to the private good of some.

c) If they punish them unjustly or indiscreetly, or without sufficient inquiry.

d) If by evil example they harm their morals. But if they seduce pupils to sin, they themselves sin in a twofold way, namely, against the virtue which they positively violate, such as justice, chastity, religion, etc., and against piety, because they have taken upon themselves the care of the pupil in the place of parents.

3. Masters toward servants, besides the debts of justice which they have as toward workers, as was explained in n. 551, also have offices of piety toward those whom they have received into their family (Eccli. XXXIII, 31; Eph. VI, 9), and consequently they owe them love, education, especially if they are minors, and providence in temporal and spiritual matters.

Hence they ought:

a) to treat them kindly, to furnish them suitable nourishment, to have care for their bodily health, so also that in sickness or infirmity there be present for them an opportune remedy, which nevertheless they are not strictly bound to pay for, unless it has been otherwise agreed;

b) also to watch that they lead a Christian life, to warn the more negligent as may seem opportune, to furnish means of fulfilling religious offices, to ward off danger of perversion, to remove occasions

of sin, especially where there are younger persons of different sex, to take care that they be instructed in religion;

c) to beware lest they be a scandal to them and by depraved example, incautious speech, or solicitation move them to sinning, or permit them to be moved by children or other domestics;

d) also to correct them, prudently and gently indeed, but firmly, when by blasphemies, filthy speech, impious discourses, illicit familiarities they scandalize others.

Question Four: On the Offices of Spouses

830. Mutual offices of spouses. - Besides the offices of justice, which regard either the administration of goods, concerning which it was already spoken in n. 181-182, or the conjugal debt itself of intercourse to be rendered (I Cor. VII, 3) and conjugal fidelity to be preserved, concerning which it must be spoken in the treatise on matrimony, there are three things which spouses owe each other by natural and divine law from piety: mutual love, mutual help and consolation, and cohabitation.

1. Sincere and intense mutual love. For since they are as one flesh (Mt. XIX, 5), they ought also to be as one heart; for this reason St. Paul commands husbands to love their wives as Christ loved the Church (Eph. V, 25), and wives to love their husbands (Tit. II, 4; Col. III, 18; I Tim. II, 15). This love must be not only affective but also effective, so that spouses furnish help to each other, especially in necessities, and, says Prummer, Th. M. II, n. 590, "avoid disordered egoism, contumelious words, harshness, and especially jealousy, which is wont to be the sepulcher of conjugal love."

2. Mutual help and consolation: for in this they complete each other, because the gifts of one are the complement of the other. Whence God says: It is not good for man to be alone; let us make him a help like unto himself (Gen. II, 18). Hence matrimony is not only a union of bodies but also a union of souls, and a special friendly society by which spouses promise service and assistance to each other.

3. Cohabitation at one table and bed (can. 1128; C. C., a. 214); this is a corollary of the others, altogether required for attaining the ends of matrimony: the education of offspring and mutual help. Whence it is said: For this cause a man shall leave father and mother, and shall cleave to his wife, and they shall be two in one flesh (Gen. II, 24; Mt. XIX, 5).

831. Special offices of the husband. - The husband is the head of the wife and family; and therefore there belongs to him the power of governing not only the children and the family property, but also the wife, who nevertheless is not his handmaid but a worthy partner. Hence he is bound:

1. to furnish to the wife suitable sustenance according to his state, and support and protection;

2. to take care that the wife faithfully fulfill her duties;

3. also to correct her when delinquent; but correction ordinarily ought to consist in words brought forth without anger and hatred: for graver correction consisting in deeds or in moderate blows is rarely opportune or even legitimate.

Hence per se he sins gravely a) if he denies food to the wife, or, although he can, does not procure it, unless she has departed by her own fault;

b) if he treats his wife very harshly and roughly, or compels her to labors which altogether disgrace her condition;

c) if he affects his wife with contumelious or defamatory words;

d) if without cause he impedes her as to the practice of religion;

e) if he gravely beats her;

f) if he greatly afflicts her by his drunken excesses and other disordered passions;

g) if he is very negligent in the governance of family property.

832. Special offices of the wife. - The wife ought to reverence her husband as head and ruler, and furnish him due obedience; whence the Apostle warns: Women, be subject to husbands, as it behooves in the Lord (Col. III, 18; Eph. V, 33). For this reason she ought to expend diligent care in domestic affairs, as her condition demands; and to obey the husband in the governance of the house and in good morals.

Hence per se the wife sins gravely: a) if by quarrels or words she provokes her husband to grave anger or blasphemy;

b) if, despising her husband, she herself wishes to govern, or is notably disobedient, unless the husband commands irrationally;

c) if she gravely neglects domestic affairs, indulging idleness or amusements; or if, given to luxury, she exasperates her husband;

d) if she habitually injects herself into the administration of the house, not in the manner of one helping but of one dominating; unless there is a just cause, such as if the husband, as a spendthrift, squanders the goods of the family or is unfit for management: yet let her not think this last too easily.

Chapter II: On Observance

Question One: On Observance in General

S. Th. II-II, q. 102.

833. Observance (respect; reverence, high esteem) is the virtue by which men excelling in dignity are deemed worthy of a certain worship and honor. It is a virtue, because it renders a debt. For in superiors two things can be considered: 1) the excellence of state with a certain power over subjects (for that which moves to an end has excellence over that which is moved), by reason of which there is owed to them the simple worship of honor, which is testimony of excellence (a. 2), from which fear follows by reason of the power which they have for coercing (ad 3); 2) the very office of governance, by reason of which there is owed to them a special worship of service, by which someone obeys their command and repays a return for benefits (a. 2 and ad 3). But to those who excel in knowledge, virtue, and other gifts, although they do not govern actually, because nevertheless they are fit for governing, therefore honor is owed, which pertains reductively to the same virtue of observance (a. 1, ad 2). Hence this is divided into two parts or species: dulia and obedience.

834. Object of observance. - The material object which it intends to exhibit is worship and service toward superiors, namely, acts by which we render due honor to them and attest their excellence and our subjection.

The primary material object which principally, per se, and by reason of itself it intends to exhibit by worship, is the due equality between the honor exhibited and the right of superiors to it, by which equality the honor is proportioned to the right which superiors have to it.

The formal object by which, or proximate motive on account of which we exhibit worship to them, is the special honesty of the said equality.

835. Corollaries. - 1. Piety toward country differs from observance toward the prince: the former, even in the prince, wishes to honor the country as the principle of our origin, so that the term of the honor is not the prince himself but the community; the latter honors the prince in himself for his personal glory, so that the term is the prince himself, who is not the principle of origin but only the governor (a. 3).

2. Just as religion, which gives worship to God, surpasses piety, by which parents are honored (a. 3), and is more eminent piety; so piety surpasses observance, which exhibits worship to persons constituted in dignity, and is more eminent observance: for parents are joined to us more substantially, and therefore we are more obliged to them (a. 1, ad 1 and a. 3).

3. The debt which observance attends to is a strict or legal debt, because our superiors have a true right that they be honored; which is necessary to urge for the order of society. Yet since in the same order of things, namely, of governance, it cannot render that debt to equality, therefore it falls short of strict justice and is a virtue annexed to it (a. 2, ad 3). But if it is a question of superiors to whom we are not subject, honor is owed to them from a certain honesty only and a moral debt (a. 2, ad 2).

Question Two: On Dulia

S. Th. II-II, q. 103.

836. Dulia (service) is taken: a) in a very broad sense, insofar as it says reverence exhibited to any lord and subjection to him, and thus it includes religion, by which we are subjected to divine lordship and which is eminent dulia on account of the excellence of that lordship (a. 3);

b) in a stricter sense, insofar as it says reverence exhibited to the excellence of any man, and thus it is divided into various species according to the various excellence which is found in saints, father, king, commander, teacher, etc., for example, civil dulia, sacred dulia, natural, supernatural, etc.

This is distinguished from latria because service is owed to God and to man under a different account, just as lordship belongs to God under one account (universal through essence because He is creator) and to man under another (particular through participation). Among the various species the first and more perfect is hyperdulia, by which we exhibit worship to the Blessed Virgin Mary because of the affinity which she has to God, as Mother of God (a. 4, ad 2, and III, q. 25, a. 5).

c) in the strictest sense, insofar as it says the reverence which a servant exhibits to a lord, and thus it is only one species of observance (a. 4).

837. The honor of dulia supposes some superiority or excellence. - It is not indeed necessary that he who is honored be more excellent than the one honoring, but perhaps than certain others, or even than the one honoring himself in some respect and not simply. And thus equals can be honored by equals and inferiors by superiors (a. 2). Moreover due honor is internal and external at the same time, because it is not sufficient that we honor superiors before God, but it is also necessary that we honor them before others (a. 1).

838. Honor or worship of supernatural dulia is owed to the Blessed as friends of God, who have supernatural excellence, virtue, and merits, and are our intercessors. Whence we ought to revere them 1) as lords and esteem ourselves happy if they deign to receive us among their servants; 2) as intercessors on whom we are dependent (can. 1276).

Public worship of dulia is licitly exhibited only to Saints recognized for the universal Church by solemn decree, or common consent, or immemorial course of time; and to the Blessed, by special concession of the Roman Pontiff, only in those places or by those persons to whom it was conceded (can. 1256 and 1277).

Private worship is licitly exhibited to servants of God or venerable persons who have died with a reputation for sanctity or martyrdom, indeed even to baptized infants, for example, a private vow or fast in their honor.

The same holds concerning their images and relics (can. 1279, 1283, 1287). Thus, for example, images of servants of God can in no way be placed on altars; nor outside an altar be painted with halos, rays, or other signs of sanctity; likewise lamps cannot be lit at their tomb; yet they can be displayed on the walls of a church or in colored glass or in painted tablets, provided they carry before themselves no indication of worship or sanctity (S. C. R. 14 Aug. 1894); likewise private worship can be exhibited to relics of servants of God by carrying them with oneself, kissing them, applying them to the sick, etc.

Question Three: On Obedience and Inobedience

S. Th. II-II, q. 104 and 105.

839. Obedience (obedience) is twofold: one general, by which from any honorable intention whatever we furnish acts prescribed from any virtue whatever; the other special, formal, or strictly so called, which is a virtue inclining the will to fulfilling the precept of a superior from the motive of satisfying the precept, because it is good to obey a superior commanding. This is a virtue, because it renders a debt. It is a special virtue because it has a special object: the precept of a superior formally as precept; from which it follows that to do only the desire or will of a superior when not commanded does not pertain to obedience strictly so called (a. 2, ad 1 and 3). It is one virtue because it has one object: for it regards the authority of anyone commanding, not insofar as it belongs to such or such a person, but precisely insofar as it is sufficient for commanding (ad 4).

840. Object of obedience. - The material object of obedience which it intends to exhibit is the commanded acts; the primary or principal material object is the due equality between the acts executing the precept and the right of the superior to them, by which equality our acts are proportioned to the right of the one commanding to them. The formal object or proximate motive on account of which is the special honesty of this equality.

841. Perfection of obedience. - Obedience is less perfect than the theological virtues; if it is considered on the part of the object, it is not greatest among the moral virtues, for religion, for example, approaches more nearly to God; but if it is considered on the part of that which it contemns in order to adhere to God, thus it is greatest, because it contemns a greater good, namely, one's own will, than other moral virtues, which contemn lesser goods, whether of the soul, or of the body, or external goods (a. 3).

842. To whom obedience is to be given. - Obedience is to be given:

1. to God, in all things, because He is Lord of all and as to all things (a. 4; cf. Exod. XXIV, 7);

2. to human superiors, not indeed in those things which pertain only to the motion of the will, but in those things which are voluntarily to be done outwardly through bodies; not indeed as to those things which regard the nature of the human body (that is, the body's sustenance and generation), because in this way all are equal, but as to the disposition of human acts and things, according to the account of superiority (Rom. XIII, 2, 7; Tit. III, 1; I Pet. II, 13; Heb. XIII, 17).

An exception is made: a) if someone commands contrary to the command of a greater superior (Acts V, 29); b) if he commands something to which his power does not extend (a. 5). In doubt whether a superior can command this or that, one must stand by the command, because he cannot be deprived of his right of commanding which he possesses, on account of the doubt of subjects (n. 91, C).

Obedience from its genus obliges under grave obligation because it is altogether necessary for the good of society, for example, of the Church, State, community, family, etc. (q. 105, a. 1).

843. Remarks. - 1. Nothing prevents one and the same act from regarding several virtues, just as a soldier by defending the camp of the king fulfills a work of fortitude and of justice; in this mode the acts of all virtues pertain to obedience insofar as they are commanded, yet not all acts of the virtues, because not all are in precept. But if a work is altogether indifferent and pertains to no virtue, it will belong to obedience alone: thus if it is commanded precisely for proving obedience (q. 104, a. 2, ad 1).

2. Although obedience considered according to itself is of one account and one species, nevertheless it can proceed from causes diverse in species (q. 104, a. 2, ad 4). "And as to this it is contained under diverse virtues... Insofar as it proceeds from reverence for prelates, it is contained in a certain way under observance; but insofar as it proceeds from reverence for parents, under piety; but insofar as it proceeds from reverence for God, under religion and pertains to devotion, which is the principal act of religion" (a. 3, ad 1).

3. Since obedience is a moral virtue, it is in the mean, not indeed according to quantity: for the more obedient someone is, the more he is praised; but according to other circumstances, it can exceed, insofar as someone obeys either one whom he ought not, or in things in which he ought not (a. 2, ad 2).

4. A work is rendered virtuous and laudable and meritorious chiefly according as it proceeds from a free will; and therefore, although to obey is a debt, if someone obeys with prompt will (as if

there were no precept), his merit is not on this account diminished, especially before God, who sees not only external works, but also the internal will (ibid., ad 3).

5. For satisfying the precept of obedience, ordinarily it is not necessary that the enjoined work be done from the motive of obedience, but it is enough that the commanded work be placed from an honorable end; but if it is done for this reason, that it has been commanded, it will be an act of the special virtue of obedience.

844. Inobedience is taken either materially and broadly, for the transgression of every precept from any intention whatever, and thus it is not a special sin but a general circumstance of every sin; or formally and strictly, for transgression of a precept from contempt, whether of the precept, or of the one commanding as such, or of the authority itself (q. 104, a. 2, ad 1, and q. 105, a. 1, ad 1). This is a special sin, simply mortal from its genus: to refuse to be subject to a superior or to law directly conflicts with the ordination of God (a. 1); sometimes venial from indeliberation, or from imperfection of contempt, if someone refuses to be subject to a human superior in some light matter only, while being prepared to obey in others.

Yet it is not the gravest, for it is graver to contemn the one commanding than the precept, and thus blasphemy is a greater sin than inobedience toward God, and homicide of a superior is greater than inobedience toward him (a. 2).

Moreover inobedience is so much the graver 1) the more excellent is the one commanding whose commands someone transgresses; 2) the more gravely something is commanded (a. 2).

845. Remark. - If the thing commanded is contemned because it is esteemed little, or if someone does not obey from indignation against a superior, or if he contemns the superior insofar as he is a private person, for instance because he is unlearned, imprudent, austere, there is not formal contempt of authority; nevertheless such sins frequently induce dispositively to contempt.

Question Four: On the Offices of Rulers and Subjects

846. Offices of rulers and subjects in general. - By rulers here are understood not only those who in society hold supreme power, as emperors, kings, dukes, presidents of a republic, but all those upon whom the governance of the republic rests, as ministers, governors, magistrates, judges, even deputies who in modern societies partly enjoy legislative power. But subjects are those who are subjected to their governance. To all these there ought to be common love of country and of the community with its members; to rulers especially there belongs special love, governance, providence, and protection of subjects; but these owe to rulers fidelity, reverence, obedience, and the support of taxes.

These things hold not only concerning civil superiors, but also concerning ecclesiastical superiors, to whom likewise the faithful owe fidelity, reverence, obedience in spiritual matters, and support, as was said in n. 708; but ecclesiastical superiors have special obligations for governing the faithful in order to eternal life, but concerning this it is customary to speak where particular states are treated, or in canon law.

847. Special offices of superiors and rulers. - Legitimate civil rulers and superiors, in the governance of subjects, bear the place of God, whose power they participate in (Prov. VIII, 15; Rom.

XIII, 1 sq.); whence they ought to exercise it conformably to natural and divine law. By force of their office, under grave obligation they are bound primarily to intend and procure the temporal common good, in subordination to the good of eternal life, as legal justice prescribes (n. 265); hence they ought:

1. To know in what the material and spiritual common good consists, and diligently to investigate by what means it can be promoted, all circumstances of persons, things, and times being considered.

2. According to their powers, to avert temporal evils, such as wars, seditions, famines, contagious diseases, want, etc.

3. To protect justice: both commutative, by carefully protecting the rights of all citizens and legitimate associations and of society itself; and distributive, in the distribution of offices and burdens, every acceptance of persons being excluded (n. 616 sq.); and vindicative with respect to evildoers in inflicting punishments.

4. To protect and promote honesty of morals and religion, because the exercise of virtue pertains principally to temporal happiness. But since the Catholic religion is the only true one, they cannot impede it; indeed per se they ought positively to protect it.

5. To procure sufficient abundance of temporal goods and economic prosperity, which is required instrumentally for common happiness.

848. Special offices of subjects. - Subjects owe to legitimate superiors and rulers:

1. Fidelity, by which they acknowledge them as legitimate superiors and will to adhere and be subject to them.

They can do nothing unjust to withdraw themselves from the jurisdiction of superiors, nor unjustly contrive anything for thrusting a legitimate ruler down from power, nor excite rebellion or sedition against him, nor a fortiori kill him. Hence proposition 63 of the Syllabus was condemned: "It is licit to refuse obedience to legitimate rulers, indeed even to rebel."

2. Internal and external reverence, insofar as they participate in the authority and excellence of God, to whom honor is to be rendered (Rom. XIII, 7).

Subjects sin against due reverence who bring contumely upon the person or image of the ruler, who mock him by writings, words, pictures, who deny without just cause the signs of reverence due and exhibited by all, or exhibit contempt to him.

3. Obedience in all licit things which regard their governance (I Pet. II, 13 sq.), whether they command by laws, or by judicial sentences, or by administrative decrees, unless the precepts are certainly unjust.

In practice, the obedience due can be diverse. It must be considered which laws are merely penal, which preceptive; when an unjust law cannot be observed, and when it can, or even must, be

observed to avoid a greater evil. Here those things which we said concerning civil law (I, n. 286-287) come to be applied.

4. The support of taxes, under which name military service can also come; these things were already declared above (n. 624 sq.).

Section E: On Truth

Question One: On Truth in Itself

S. Th. II-II, q. 109.

849. Truth or veracity (waarachtigheid) is a moral virtue inclining one to say what is true conformably to the mind of the speaker; or, the virtue by which someone, in life and speech, shows himself to be such as he is (a. 1 and a. 3, ad 3). According to its essence it conforms words and signs to the mind; yet there pertain to it as integral parts, both:

1. simplicity, which makes the intention upright, by excluding duplicity by which someone shows one thing outwardly and has another in his mind (a. 2, ad 4; q. 111, a. 3, ad 2);

2. fidelity, which inclines the will to carrying out promises sincerely, and so conforms deeds to promises (q. 110, a. 3, ad 5; q. 89, a. 7; q. 98, a. 3, ad 1 and 3).

It is a virtue because its act, to say what is true, is good. It is a moral virtue: for although to know the true is an act of the intellect, the external manifestation of truth pertains to the will, which moves to the use of the external organs and members (a. 1, ad 3; a. 3, ad 2).

It is a special virtue because it has a special goodness, which consists in the order by which external words or deeds are duly ordered to signifying something (a. 2).

850. Object of truth. - The material object which truth exhibits is external signs (words or deeds) by which we manifest our mind to our neighbor; the primary material object which it principally intends to exhibit is equality, or conformity, due from honesty, by which external signs agree with the mind; the formal object or motive on account of which is the honesty of this equality.

851. Corollaries. - 1. The debt which truth considers of itself is not a legal or strict debt, but rather a moral debt, insofar as, namely, from honesty one man owes to another the manifestation of truth; and therefore of itself it does not oblige under grave obligation. Yet it is a debt necessary for honesty: for men could not live together with one another unless they believed one another, as manifesting truth to one another. "Because man," says St. Thomas, q. 114, a. 2, ad 1, "is naturally a social animal, from a certain honesty he owes the manifestation of truth to other men, without which the society of men could not endure." Cf. q. 109, a. 3, ad 1.

2. Hence truth is not justice strictly so called, but its potential part: for it is a) annexed to justice, because it is toward another and establishes equality; b) yet it falls short of justice, because of itself it is concerned with a moral debt, although one necessary to the social order, and only accidentally with a strict debt when there is added the obligation of fidelity, charity, religion, piety, or justice, as in contracts (a. 3).

3. Since truth is a moral virtue, it is in the mean, and indeed in a twofold way: a) on the part of the object, because the true imports equality of the intellect or of the sign to the thing understood or signified; moreover equality is a mean between more and less; b) on the part of the act, because it says what is true when it ought, and how and where it ought: it is superfluous to say what is true when one ought not, a defect not to say it when one ought (a. 1, ad 3).

4. Hence two vices are opposed to truth on the part of the act: by excess there is opposed every indiscreet manifestation of the true, but especially violation of a secret, which can also be injustice; by defect, lying with its various species. Of these we must now speak.

Question Two: On Violation of a Secret

852. A secret, subjectively taken, is knowledge of a thing hidden from others and to be hidden, or the knowledge and obligation of not manifesting some hidden thing; objectively, it is the hidden thing itself and to be hidden, which can be very diverse: an invention of art or science, or some fact, for example that an office is vacant, or an unknown crime. In the present matter, secret is chiefly taken subjectively. It is threefold:

a) Natural, whose obligation arises without contract from the very nature of the thing, because it cannot be manifested without harm or displeasure of the neighbor, and accordingly without his being reasonably unwilling. Thus if by chance or by effort you know another's money laid away, an invention, or a hidden crime, it is not licit to manifest it.

b) Promised, whose obligation arises from a gratuitous promise following upon knowledge of the matter, or because someone has promised to keep it, even if the matter from its nature does not induce an obligation of secrecy; for example, if someone concerning a thing previously known or now already received, spontaneously or at a friend's request, promises silence.

c) Committed or rigorous, whose obligation arises from an onerous promise antecedent to the reception of the secret, or because it is committed under an express or tacit pact of keeping it and is thus accepted by another.

Namely, first, expressly or tacitly, it is promised that it is not to be revealed: expressly indeed if someone says that he will not manifest the matter except under the express condition that the other keep silence about it (a private secret, which is required on account of a private good); tacitly when from some fact it is clear that the matter is committed under secrecy and that the other accepts it thus, as if it is committed to someone who by office, by force of the duty he bears, or by the special title of kinship or friendship, is bound not to manifest it (an officious or professional secret, which is required on account of the public good), for example, to a counselor, physician, midwife, advocate, theologian, confessor, visitor, parents, friends, etc., to whom a matter is manifested only because it is supposed to be faithfully guarded by them.

Consequently a committed secret obliges in varying degree: less when it was committed wholly freely, more if to a private person for the sake of counsel, still more if to one established in office, most of all when it is committed to a counselor in a public cause.

853. Principles. - Everyone has a strict right to his own secret. That right is proximately founded partly in dominion over one's own thoughts and the fruits of one's own genius or labor, partly in the right to reputation and external goods, insofar as, namely, from a violated secret there can be harm to reputation or fortune, or ceasing gain; ultimately it is founded in the common good. Hence the right of secrecy is relative and limited. Therefore of itself it is illicit, and indeed gravely, 1. to explore a secret; 2. to manifest a secret; 3. to use knowledge of a secret.

I. To explore a secret is illicit without legitimate authority or a just cause. For a secret is another's thing; therefore one who illegitimately explores it, for example by force, deceit, or fraud, usurps another's thing and takes it away from its owner. The gravity of this sin depends on the gravity of the thing which is extorted.

Hence a) of itself and generally it is illicit to listen at a wall or door, or to open letters, or to break open a chest, or to corrupt servants or workers in order to know another's secret, even an invention of art or science.[1]

[1] An invention of art or science can licitly be detected by art or study; but this properly is not directly to explore another's secret, but to devise a similar invention by one's own ingenuity, whereby another's secret indirectly becomes known.

b) From legitimate authority, superiors (bishops, magistrates, judges) sometimes can and ought to explore secrets on account of the common good, for example, for detecting crimes committed or to be committed; and parents can do so on account of the good of children and of the family.

c) From a just cause, for example to avoid unjust harm, whether proper, common, or of an innocent third party, it is licit to explore the secret of him from whom harm threatens, for example, a crime committed or probably to be committed against oneself or against an innocent third party, the forces and positions of enemies in a just war.

II. To manifest a secret of itself is illicit, as being against charity and at the same time against fidelity or justice, because it is apt to be done with harm or displeasure of another, or also violates a promise or pact.

III. To use knowledge of a secret for one's own advantage or that of a third party, against the owner's will, is illicit, especially if it is done with his harm; a fortiori it is illicit if someone has detected the secret unjustly, because it would be to continue injustice.

Unless, however, it is in those circumstances in which there is a sufficient just cause for exploring a secret. But one who by unjustly using another's secret, as by revealing it, has brought harm upon another, is bound to restitution.

854. What the obligation of secrecy is. - I. A natural secret obliges from justice, by reason of harm; and one who violates it without just cause commits a grave sin from its genus.

II. A merely promised secret of itself obliges from fidelity alone, by reason of a simple promise; and one who violates it without just cause commits a venial sin, unless he intended to bind himself from justice, or the secret is at the same time natural.

III. A committed secret obliges from justice, by reason of a special contract; and one who violates it without just cause therefore sins gravely, and indeed more gravely, other things being equal, than for a natural secret. Especially if the secret is officious, because the common good regularly demands that it be preserved inviolate: for it pertains to the common good that all may safely seek counsel or

help from those who by office or special title are able to furnish it. Hence such a secret ought not to be manifested to a judge or superior interrogating, and it also obliges if otherwise it would have had to be manifested; so that it is never to be revealed unless the common good demands it and by the law of nature it must altogether be revealed.[2]

[2] St. Thomas, II-II, q. 70, a. 1, ad 2.

855. There is a threefold just cause for manifesting a secret, on account of which the obligation of secrecy ceases:

1. The consent of him whose secret it is, at least reasonably presumed; for example, if a subject is denounced under secrecy, the superior can manifest, not indeed the denouncer, but the offense, in order to correct the delinquent.

2. Divulgation of the matter made from elsewhere; hence it is licit for him who had otherwise known a committed secret to speak about the secret, or to speak with a man who has knowledge of it.

3. The necessity of averting harm: generally it is licit to reveal a secret whenever this revelation is necessary for averting proportionately grave harm, public or private, proper or another's; indeed charity and legal justice sometimes require this manifestation. But a greater necessity is required the stricter and graver the obligation of keeping the secret is, which depends both on the nature of the secret and on the harm to be brought by manifestation.

But a fourfold necessity is given on account of which it is licit to manifest a secret as much as is sufficient for averting harm:

a) Grave common harm of civil society or of the Church: for the obligation of secrecy, which is principally introduced on account of the public good, ceases where the public good requires the manifestation of the secret, according to the adage: the safety of the republic is the supreme law. Therefore not just any harm to be avoided suffices, for example from the fact that otherwise some guilty man remains unpunished, but urgent necessity from a most grave impending harm.

Thus if someone under secrecy, even committed secrecy, has known another's purpose of greatly harming the city or the Church, from which he cannot otherwise be recalled, he can and ought to reveal the secret to authority. So also a physician is bound to denounce a sick person who could easily infect others gravely.

b) Grave harm of the very person committing the secret: for then he cannot be reasonably unwilling.

Thus, to prevent a marriage from being invalid, a hidden impediment which someone has known under secrecy must be revealed to the proper priest.

c) Grave harm of an innocent third party to be averted by revelation of the secret of the harmful person: for charity demands that we prevent grave harm of an innocent person, even with harm of the guilty person.

Yet if the matter concerns a committed secret, especially an officious one, it will not be able to be manifested unless the harm is still to be inflicted and by the very person who committed the secret about the harm to be inflicted. For the common good regularly requires that such a secret be kept,

except in the case in which the one committing it is himself an unjust aggressor, against whom the innocent person can be defended. Thus if someone from a committed secret should know Peter to be a murderer, he could not reveal the matter to free Paul unjustly accused; yet he could do so if the accusation had been made by Peter himself. Likewise a physician, knowing by professional secrecy that a bridegroom is infected with venereal disease, could manifest the matter to the deceived bride, indeed he ought to do so, if the bridegroom, having been warned, would not desist from marriage.

d) Grave proper harm, for example danger of death, even if similar grave harm threatened another: for no one is judged to have bound himself with so great an inconvenience, unless he has expressly promised it and the promise was valid.

Yet if the matter concerns a committed secret, it will not be able to be manifested with great harm (for example, of life) to the one committing it, unless the danger comes from him, because then he is an unjust aggressor; otherwise, however, it is illicit. But in practice, the one committing it can first be warned about taking precautions against the harm which threatens him from the revelation to be made. Thus one who is falsely accused of homicide, whose author he knows from a committed secret, if it is necessary, can reveal the name of the guilty person after he has warned him to protect himself by flight.

Let it be noted that a secret can never be manifested, even for averting a most grave harm of death, proper or another's, if the common good demands that the hidden matter be wholly kept, as if the custody of the secret is altogether necessary for the security of society or of an army. Thus the secret of the seal of the sacrament of Penance can never be violated, because the greater good of religion and the salvation of the faithful always demands that it be preserved inviolate.

856. Corollary: on the secrecy of letters. - To open another's letters, or to read those already opened and kept in a closed place, for example in a desk, or lost by chance, of itself is a sin grave from its genus against justice: for everyone has a strict right to his own secret; and one who explores it without the owner's consent acts after the manner of a thief.

1. Hence they sin gravely who intend to know in this way secrets of great importance (matters regarding family, business, or conscience), or expose themselves to the danger of knowing them.

2. Nevertheless the sin will be only slight: a) of itself, if it is morally certain or can reasonably be presumed that nothing is found in these letters except matters of lesser importance, such as greetings, narrations of lesser events, commercial notes, and that grave infamy or grave harm cannot arise therefrom; b) accidentally, if letters are read from levity of mind or without full advertence, for example, to know news, to laugh at a barbarous manner of writing, and the reading is interrupted as soon as it appears that the matter is grave.

3. There will be no sin: a) if the consent of the sender or recipient is present, express or tacit, which nevertheless is not easily presumed: thus if spouses or friends are accustomed to hand over to each other letters received from a common friend to be read; b) in communities, institutes, or colleges in which it has been established by law, rule, or custom that superiors can read the letters of inferiors; in which case, however, letters sent to higher superiors are exempted, and in other letters those parts which it is clear deal solely with secrets of

conscience; c) if on account of entirely grave motives someone judges that the letters contain injury, and the reading is necessary for averting harm threatening himself or others or the republic: nevertheless he will not be able to read more than the end requires. Thus in time of war it is licit for combatants to intercept the letters of enemies; likewise parents can read the letters of children, the rector of a college those of students, the rector of a prison those of the justly detained, a religious superior those of subjects; but not a master the letters of servants, nor a husband the letters of his wife, unless they judge with moral certainty that something harmful is contained in them.

4. Letters thrown away by the owner or knowingly left in a public place can be read without injustice, because he is deservedly judged not to vindicate his strict right; yet if something is contained there which, if revealed, would turn to the detriment of the owner, by reason of harm it must be kept hidden. But to read torn letters whose fragments are thrown away is not licit, at least if they are torn into pieces so small that the parts cannot be compared and the letter read except by an exquisite diligence which men are not accustomed to employ. For such tearing, by common estimation, is as it were destruction.

5. One who has acquired knowledge of a secret by unjustly opening letters nevertheless seems able to use it when circumstances have so changed that he now has the right of procuring for himself knowledge of that secret.

Question Three: On Lying

Article I: On Lying Itself

S. Th. II-II, q. 110.

857. A lie (mensonge; leugen) is directly opposed to truth by defect and therefore is speech against the mind. It is called:

1. Speech, and indeed external speech, which can be made by any external sign whatever, whether by word, writing, gesture, or deed; hence on the part of the act a lie is divided into a lie strictly so called, which is made by words or equivalent signs, and simulation, which is made by deeds, of which hypocrisy is a species, which chiefly is the simulation of holiness.

2. Against the mind, namely, that which proceeds from the intention of enunciating what is false; hence if someone enunciates what is false, erroneously thinking it to be true, falsity is not present except materially, nor is there a lie; in other words, he errs but does not lie. On the contrary, if someone enunciates what is true, erroneously thinking it to be false, he does not err but lies, because falsity is present formally, and accordingly a lie.

In this intention there is implicitly included the intention of deceiving, because the proper effect of a false enunciation is that another be deceived; but that someone explicitly intends to establish falsity in the opinion of another does not pertain to the species or essence of a lie, but to a certain perfection of it (a. 1).

858. Principle I. Every lie is a sin. - It is proved:

1. From the Scriptures (Ecclus. VII, 14; Prov. XIII, 5 and Col. III, 9; John VIII, 44; I John II, 21).

2. From the authority of St. Augustine and St. Thomas.

3. By reason, because a) it is essentially evil, as an act which falls upon undue matter. Namely, it is repugnant to the end of speech and of the faculty of speaking, which were established by the author of nature so that man might manifest his thoughts to man: for since voices by their nature are signs of concepts, it is unnatural and undue that someone signify by voice that which he does not have in his mind; from which disorder follows b) another, that a lie of itself by its nature induces the deception of the neighbor, and accordingly, once universal suspicion has arisen, brings harm to trust and security in social life and to the public good (a. 3).

859. A threefold lie: officious, jocose, pernicious. - On the part of the end (motive) or effect and fault, a lie is distinguished as officious, jocose, and pernicious, according as it is made for the sake of one's own or another's utility, of delight, or of inflicting special harm: the first is lighter than the second, and the second than the third; but the gravest of all is a lie which harms God in the matter of religion (a. 2 and 4).

An officious and jocose lie is venial from its genus, and is not mortal except accidentally, for example by reason of scandal, for a deception of small moment does not overthrow social life, but inconveniences it: for from deception of the neighbor about something of small moment concerning which it does not matter whether it be known, the neighbor is not harmed; but a pernicious lie is mortal from its genus on account of the evil joined to it, whether on the part of the matter, if it is made in doctrine of religion or of good morals or of some science, or in a contract, or on the part of the end, if it is said to the injury of God or to the notable detriment of the neighbor.

860. Principle II. Although it is never licit to lie, "nevertheless it is sometimes licit prudently to hide the truth under some dissimulation" (q. 110, a. 3, ad 4). - This is customarily done in a twofold way:

1. By amphibology or equivocation (dubbelzinnige uitdrukking), which is a speech having of itself a twofold sense: one, ordinarily more obvious and common, which the speaker foresees is to be perceived by the hearer; the other, less common, yet perceptible by the hearer from the circumstances, which the speaker intends to express, for example, I say no, I will, Peter is at home, this book belongs to Peter, etc.

2. By restriction (voorbehoud), which is a limitation made in the mind of some absolute affirmation or negation, or an act of the mind by which someone restricts or turns words in his mind to a sense other than the natural and obvious one. It is twofold: a) purely mental, when the limitation cannot appear externally, but the whole sense lies hidden in the mind and the truth can in no way be perceived, as if someone says that he has seen Rome, understanding in a picture, I did not break the vow, understanding in the previous year, I did not take your thing, thinking with the left hand, I did not do this, namely, that which I am now thinking, etc.; b) broadly mental or real, when the limitation can be gathered from the circumstances of things, persons, places, and received common usage, for example, if a priest or physician says: I know nothing about these things, understanding, which I can reveal; then by reason of the

circumstances the speech is now made equivocal, and rather there is restriction of the utterance than of the mind. Now then:

I. It is never licit to use a purely mental restriction, because it is simply a lie, for the words neither of themselves nor from the adjoining circumstances in any way outwardly manifest the internal concept of the mind. This is clear from the condemnation of propositions 26 and 27 by Innocent XI.[1]

[1] "If anyone, either alone or before others, whether interrogated, or of his own accord, whether for the sake of recreation, or for any other end whatever, swears that he did not do something which in reality he did, understanding within himself something else which he did not do, or another way from that in which he did it, or any other true addition whatever, he does not really lie nor is he perjured." - "A just cause for using these amphibologies is present whenever it is necessary or useful for safeguarding bodily health, honor, family goods, or for any other act of virtue, so that the hiding of truth is then judged expedient and studious."

II. It is licit to use real restriction and amphibology, provided that a just cause is present for hiding the truth, and another honest means is lacking, and deception of the neighbor is not intended.

It is proved: a) by the example of Christ. "But of that day no one knoweth... nor the Son," understanding: so as to manifest it (Mk. XIII, 32; Mt. XXIV, 36; cf. John XI, 11; VII, 8);

b) by reason: on the one hand, it is not a lie, because the words which are uttered, taken together with the circumstances of the speaker, the hearer, etc., which according to common estimation co-signify, signify the true sense which the speaker has in mind, although not clearly and distinctly; on the other hand, deception of the neighbor is not necessarily intended: for that speech has a twofold effect, one good, the hiding of truth which the speaker intends, the other evil, the deception of the neighbor which he only permits from a just cause. Hence the neighbor is not directly and necessarily deceived, but his deception is only permitted, which for a just cause is licit. For we are not bound to speak according to the mind of others if a just cause is present. But if this were not licit, there would not exist a way of licitly keeping secrets, which would be pernicious to human commerce, no less than lying, says St. Alphonsus, l. III, n. 152.[2]

[2] Real restriction is not something new, although the name is new. In ancient times it was known, although not so expressly; even by St. Thomas, as is clear from what he has concerning various sayings by Christ, and concerning the sacramental seal.

We said: from a just cause; for such utterances ordinarily are not licit, otherwise social life itself, which is founded upon mutual trust and mutual manifestation of truth, would totter. A just cause is an honorable end for preserving goods useful to the spirit or body; and this cause is required to be proportionate, that is, greater 1) the more the words furnish occasion of erring; 2) the graver the matter of error is; 3) the more numerous and greater are those to be deceived. A greater cause, for example, is required that someone use them publicly, or not interrogated, or asked by authority, than that he use them privately, or interrogated, especially if not by authority. But for swearing with real restriction or amphibology a greater and grave cause is required, out of reverence for the name of God.

861. Principle III. It is not always licit to hide the truth. - It is not licit to use any restriction or equivocation when some other special precept of faith, charity, justice, etc., demands the open confession of truth; in which case one who nevertheless used it would sin in two ways, both against truth and against the other virtue: a) when the precept of externally confessing the faith presses; b) when by reason of office we are bound to instruct someone and teach him true things lest he err,

especially if for a price or stipend; c) when a judge legitimately interrogates, having the right of knowing the truth (to this right of knowing some truth there corresponds in another the obligation of confessing it, and in such a way that the truth be known by the hearer), or a superior concerning those things which pertain to the governance of subjects, or a confessor concerning those things which he must know in order rightly to judge the penitent; d) in onerous and mutual contracts, on account of a similar motive: for justice requires that no injury be brought upon another.

One who uses amphibology without sufficient cause violates the affirmative precept of truth, by which, on account of the good of society, we are obliged not to hide the truth without cause, or at least not to furnish occasion for the deception of the neighbor: for if this were always done and without reason, no one could any longer believe another without suspicion of ambiguity, which would tend to the manifest detriment of society. Yet such a person does not make a lie, because the utterance in some signification is conformed to the internal judgment of the speaker, provided that it remains equivocal when all the circumstances are considered. Hence if he confirms it by oath, he makes an unjust assertory oath, which of itself is venial; yet it can be mortal, if another virtue is gravely injured, for example commutative or legal justice, as in contracts and judgments.

But one who uses restriction without sufficient cause, besides this, makes a lie, because if sufficient cause is lacking, the circumstances do not sufficiently indicate the restriction added in judgment by the mind; hence one who in this case confirms it by oath makes perjury strictly so called.

862. Remarks. - 1. Let proposition 28 be noted among those condemned by Innocent XI,[3] by which we know that all restrictions are illicit when an oath is required on account of the public good, whether by the Republic or by the Church, lest the unworthy be promoted, for example, in those to be promoted to sacred order (concerning birth, censures, irregularity), in those wishing to contract marriage (concerning a diriment impediment), in conditions for teaching in schools for an academic degree, etc.

[3] "One who by means of recommendation or a gift has been promoted to a magistracy or public office will be able, with mental restriction, to furnish the oath which by mandate of the king is customarily required from such persons, no regard being had to the intention of the one requiring it; because he is not bound to confess a hidden crime."

2. We note that Catholics commonly admit broadly mental restriction as a necessary means of hiding the truth. Nor is it to be admitted what certain moderns have said for this end: that false-speaking is licit, or a psychological lie which harms no one but benefits the speaker or another, distinguishing it from a moral lie, which denies truth when it ought to be affirmed, and thus perverting the definition of a lie.[4] Although practically in most cases broadly mental restriction and false-speaking return to the same thing as to the matter, nevertheless the doctrine must be held which says that every lie and false-speaking is illicit, both because it more easily excludes abuse, and because every false-speaking is against the essence of speech, and because broadly mental restriction, as being speech true in itself, can also be confirmed by oath, which is sometimes necessary. But false-speaking, even if it were said to be licit, cannot be confirmed by oath, because it is falsity.

[4] Thus not only Grotius and Pufendorf, Protestants, but also certain Catholics, such as Bolgeni, *Il possesso*, c. 48; Dubois, *Une théorie du mensonge*; and the author of the little work: *Étude sur la malice intrinsèque du mensonge par un professeur de théologie*. Against these especially Waffelaert, *Dissertation morale sur la malice du mensonge*; and Vermeersch, in the periodical *Gregorianum*, I, wrote very well.

3. The comparison cannot be admitted which some, such as Fr. Vermeersch, institute between homicide licit from just defense on account of a good effect, and false speech or a restriction which is not sufficiently indicated by the circumstances, licit from just defense of a secret which otherwise could not be defended. For homicide is not always and essentially evil, because it is not against the essence of things but only against their natural condition, and therefore it is not always an illicit means but only the homicide of an innocent person; on the contrary, lying is essentially and always evil against the very essence of speech (in the same way as lust against nature, because it is against the very essential order of the generative organs); and therefore it is always illicit even for just defense, because evil things, even the least, are not to be done for the sake of good things.

4. It must be noted that penitents sometimes affirm that they had to lie in order to keep a secret. Then the confessor would try in vain to explain to the simpler the distinction between a lie and broadly mental restriction, which in the case is licit. Therefore, having asked what utterance they had used, let him simply tell them that such things are not lies, but licit responses which can be given on account of necessity, and whose sense in those circumstances does not deceive an upright and prudent man (for example, in a merchant).

863. Corollary. - False testimony is of itself a grave sin, as being a pernicious lie. It is directly prohibited by the eighth precept of the decalogue (Ex. XX, 16), and is hateful to God (Prov. VI, 16, 19) and very harmful to the neighbor (Prov. XXV, 18).

It has a threefold deformity: a) against legal justice, because it does not obey the command of a judge or superior legitimately interrogating, and for that reason it is apt to harm the good of the community; b) against commutative justice, if besides it causes unjust harm to the neighbor; c) against religion, if, as is customary, it is done under oath, because then it is perjury strictly so called. From this last head it is always a mortal sin, even in a slight matter; from the first and the other it is mortal from its genus. Hence in law it is said (Decr. l. V, tit. 20, c. 1): "A false-speaking witness is liable to three persons: first to God, whose presence he contemns; then to the judge, whom he deceives by lying; lastly to the innocent person, whom he harms by false testimony."

From these things it is understood that this is accidentally venial: a) from some inadvertence or insufficient deliberation; b) also from lightness of matter, if it is not done under oath and brings only slight harm.

A false witness is bound:

1. to revoke the testimony, and indeed if he said it only materially or from error, he is bound when revocation is useful to another and does not bring grave harm to himself; but if he said it formally and knowingly, he is bound, when revocation is useful to another, even with equal or greater inconvenience to himself, therefore even with danger of life if he has thrown an innocent person into the same danger, for in equal harm favor is rather to be shown to the innocent;

2. to restitution of the harm already following, he is bound; and indeed if he knowingly said false testimony and thus effectively brought harm upon another, he is bound simply. But when in

good faith he gave false testimony, he is bound to restore if afterward he did not revoke it, although he could conveniently have done so and reparation would have been useful to another: for then he indirectly wills to be an efficacious cause.

Article II: On the Species of Lying

S. Th. II-II, q. 109, a. 4; q. 111, 112 and 113.

864. Diverse species of lying. - On the part of the act by which it is committed, lying is divided into lying strictly so called, which is made by spoken or written words, or equivalent signs, and simulation, which is made by deeds, of which hypocrisy is a species. - On the part of the very account of lying, it is divided into boasting, or a lie which transcends truth toward the greater and is opposed by excess on the part of the object, and irony, or a lie which falls short of truth toward the lesser and is opposed to truth by defect. Of these we must now speak specifically.

865. Simulation (veinzerij) properly so called or formal, is lying by deeds, by which someone through external actions intends to signify something other than what he has in mind, for example if someone displays signs of friendship from a hostile mind, as Judas did; from it is distinguished simulation improperly so called and material: it is dissimulation, or an ambiguous action for concealing the truth, which is licit from a just cause, whenever others can gather the mind of the one dissimulating from the circumstances. Thus Christ (Luke XXIV, 28) feigned that He was going farther, in order to excite the disciples to exercising hospitality.

Therefore not every fiction is simulation, but conversely every simulation is fiction.

866. Hypocrisy (huichelarij) is the simulation of another person, especially if a sinner simulates the person of a just man, and thus it is taken in the New Testament (Luke XIII, 15) and in theological speech, as the simulation of holiness which someone does not have (schijnheiligheid); from which differs the hiding of sin (or silence about it) by which someone, for example, is silent about it lest scandal be generated therefrom.

Hypocrisy is a mortal sin 1) when holiness is contemned, as in the Pharisees: for thus "that man is called a hypocrite whose intention is borne toward both, namely, that he does not care to have holiness, but only to appear holy" (q. 111, a. 4); therefore he contemns holiness, not wishing to acquire it but wishing to persevere in sin, and yet at the same time he strives to please men by simulating it; 2) also when it proceeds from a mortally evil end, for example, to dissemble or spread heresy, to acquire a benefice unjustly, to obtain seduction and fornication, etc.

But if the intended end is light, not repugnant to charity, it will be a venial sin, for example, when someone delights in the fiction itself, or if he simulates greater holiness.

Of itself hypocrisy is directly opposed to truth, yet indirectly and accidentally it can be contrary to many virtues according to the remote end, or according to the instrument or means of the act, or something else of this sort.

867. Boasting (snoeverij, grootspraak) is a lie by excess, by which someone through words extols himself above that which he really is. It is mortal if it is done with injury to God (Ezek. XXVIII, 2) or great injury or contumely of the neighbor (Luke XVIII, 11); hence 1. boasting about a good work is a sin of itself venial (IV Kings XVIII; Ezek. XXVIII, 15); 2. about an evil work (Prov. II), if it includes

approval of it (which often happens if the deed was done), it is mortal or venial according as the approved work is; hence there is a twofold sin: one of boasting (Jer. XLVIII), another of delight in evil, to which a third, scandal, is often added; 3. but if it includes only approval of a circumstance, for example dexterity, which often happens if the matter concerns a fictitious work, of itself it does not exceed venial sin.

868. Irony (zelfkleinering) is not taken here for the figurative speech by which something is said mockingly by the contrary, but is a lie by defect, by which someone asserts about himself some vile thing which he does not acknowledge in himself, or by which he denies about himself something great which nevertheless he perceives in himself. Although by reason of the matter they are equal, because they are concerned with the same thing, namely, with the condition of the person, nevertheless irony ordinarily is a lesser evil than boasting, which is accustomed to proceed from a baser motive, namely, from appetite for gain or honor; yet it is graver if it is done to deceive craftily with notable detriment.

Question Four: On Various Cases

in which one must at the same time speak truly, keep a secret, and avoid lying

Since there are many occasions in which one must speak, and accordingly say what is true, and yet at the same time a secret must be kept and lying avoided, it will be useful to apply the principles set forth above to various practical cases.

869. As regards usual locutions. - He does not lie: 1) who from jest says what he knows appears openly false to the hearers, because the words in these circumstances are not deceptive of the neighbor; likewise 2) he who uses tropic or hyperbolic locutions, or customary polite formulas of speaking or writing, because from common estimation they are only signs of politeness, or modes of speaking to which no one gives credence; 3) similarly, not a few locutions in certain circumstances from common usage itself now do not signify that which they sound, but have become ambiguous or less determinate, for example, he is not at home, he is not here, he has gone out of the house, he is outside, I do not know, I do not have it, *c'est le prix de facture*, etc. Thus one asked to lend money or to give alms, from a just cause of abuse or of an importunate petition, can respond: I do not have it, I wish I had it! that is, how easily and safely I could lend it.

870. As regards declarations or oaths unjustly extorted. - 1. One who promises under oath what is extorted by force, fear, or an unjust means can promise with restriction: insofar as the other has a right.

2. One who is not liable to a tax can deny that he has merchandise liable to such a tax.

3. To an incompetent judge interrogating, or one inquiring about a matter concerning which he cannot inquire, the person interrogated can keep silent about or deny the secret.

4. Likewise one bound to a secret can swear that he has manifested nothing, if he has manifested nothing of those things which he was bound to conceal.

871. As regards secrets to be kept. - All public persons interrogated about things committed to them can use restriction, such as ministers and legates of princes, secretaries, leaders of armies, magistrates, advocates, physicians, midwives, and whoever has an office or reason for hiding the truth. Hence it is licit to affirm, even under oath:

1. for a confessor, that he does not know a sin heard in confession, that he did not hear it, nor know it, namely, as a man and by communicable knowledge;

2. for anyone, that he does not know a natural, promised, or committed secret, to the knowing of which the questioner does not have a right;

3. for him who committed a delict, that he did not commit it, if he is interrogated by one to whom he is not bound to confess, because there is not simple proof or because he is innocent;

4. which also probably holds of a woman who has committed adultery and is interrogated by her husband.

872. As regards judgments. - When a witness is interrogated under oath: if he lies even lightly, he commits perjury strictly so called; but if he speaks equivocally or is silent, he violates the oath insofar as promissory of saying the whole truth (Belgian Code of Criminal Instruction, a. 75; 155; 317; Code of Civil Procedure, a. 262), which is a grave sin, unless the matter is light. Yet if that witness is interrogated illegitimately or without right, he can use amphibology and real restriction (in the sense of the one requiring, insofar as he has a right). Hence:

1. to a judge interrogating whether he has spoken with the accused, whether he has come to such a place, whether he has seen him, etc., if a just cause of concealing is present, he can respond according to the mind of the judge: by denying, that is, I did not hear or see things which pertain to instructing the cause; yet let him beware of scandal;

2. if from the testimony notable harm threatens the witness himself or his own, he will be able to conceal, unless public or another's harm prevails: for the law of responding does not ordinarily oblige with grave inconvenience. Thus one interrogated whether he comes from a place which is believed to be infected with plague can deny it if he does not suffer from plague: according to the mind of the one interrogating, who intends to know whether there is danger of infection (at least if common usage understands it thus);

3. a witness interrogated about fault, who knows that the accused committed the deed but certainly without fault (for example, by hidden compensation), can rightly deny that he knows the deed, that is, the culpable deed, unless he is interrogated about the material deed alone or about merely juridical fault, for example in civil causes;

4. one who is bound by a secret which is not to be revealed to the judge must respond that he does not know the matter.

873. As regards contracts. - It is licit to affirm, even under oath, from a grave cause:

1. for him who from substantial error entered an invalid contract, that it was not entered, for example, if an oath is deferred to someone concerning a lease entered verbally (Civil Code, a. 1715);

2. for him who is free from the obligation of a contracted debt for any reason whatever, whether because he has already satisfied it but cannot prove it, or because he needs hidden goods for sustenance, or because the other remitted it, that he did not contract the debt, namely, which is still to be paid, or that he has already paid: thus one who is compelled to swear that he paid the price of merchandise received (Civil Code, a. 2275), if the seller secretly remitted the debt which he then unjustly exacts in judgment;

3. for him who from the succession of another has withdrawn what was his own, or has hidden goods from which he is not bound to satisfy creditors, that he did not withdraw them, understanding, what is another's, or from which he is bound to satisfy. Thus for the oath in the placing of a seal (Code of Civil Procedure, a. 914) and to be furnished before a notary in the making of an inventory (ibid. a. 943), the matter concerns things of the deceased taken away from the succession, but not those of which he either did not have ownership, or had already transferred ownership to others.

874. As regards political oaths. - It is illicit: 1. to swear positive recognition, adherence, or assistance to an illegitimate superior, but not passive submission and obedience; 2. to swear the execution of an iniquitous law, indeed not even obedience if it is contrary to God or the laws of the Church, but only insofar as it is not repugnant to these; 3. to add a private restriction in political oaths: for these are to be furnished in the sense of the one requiring them; hence if a limitation is necessary, it must be expressly inserted, or at least be able to be understood from the declaration of authority or common estimation. A private person, namely, does not have the right of limiting the sense of authority, because law can define the sense of the act to be placed.

Thus in the year 1821 it was expressly declared by William I for the Holland-Belgian kingdom that the oath was not required except in a civil sense and as regards civil ordinances, and that it did not oblige to anything contrary to the laws of God and the Church; nor can this be judged to have been revoked by subsequent governments.

Section F: On Other Habits Annexed to Justice

Question One: On Gratitude and Ingratitude

S. Th. II-II, q. 106 and 107.

875. Gratitude (dankbaarheid) is taken: 1. generally for any virtue whatever by which in some way we compensate a debt from a benefit, whether by acknowledgment of a benefit received, by thanksgiving, or by another benefit; taken thus it includes religion toward God, piety toward parents, and observance toward superiors, to whom we also render thanks for benefits received, and indeed from a strict debt, so that these three virtues are eminent gratitude;

2. specially for a distinct and special virtue, which regards only particular benefactors, and which can be defined: the virtue recompensing the gratitude owed to benefactors.

For just as we owe special honor to God because He is the first principle of all goods, just as we owe special honor to parents and superiors because from them special or common benefits proceed, so also special honor is owed to benefactors, from whom we have received particular and private benefits. For where there is a special account of debt, there is a special virtue.

Hence concerning its material and formal object one must speak similarly as concerning piety or observance.

876. Recompense of a benefit can pertain to three things: 1) to justice, when recompense has the account of a legal debt, as in a loan, and then it must be considered according to the quantity of what was given; 2) to friendship, and 3) to gratitude, when recompense has the account of a moral debt, and then it considers more the affection of the giver, who from free and gratuitous choice granted friendship or a benefit, than the effect or gift. And therefore one who has received a benefit is bound to this from a debt of honesty, that he similarly expend something gratuitously.

But he would not seem to expend something gratuitously unless he exceeds the quantity of the benefit received; because so long as he recompenses less or equally, he does not seem to act gratuitously, but to render what he has received. Hence the recompense of gratitude always tends to repay something greater according to one's power.

Moreover, just as in giving a benefit two things are considered, first the affection, then the gift, so also in the recompense of it; hence gratitude is more in the affection or grateful soul than in the effect. Namely, it makes equality of wills. And as regards affection, recompense ought to be made at once; but as regards the gift, the time should be awaited at which the recompense is opportune for the benefactor: for if at once some gift is rendered for a gift, it does not seem to be virtuous recompense but unwilling.

877. Corollaries. - 1. Therefore the debt which gratitude considers is not a strict or legal debt; but to it pertains retribution which is made from the debt of honesty alone, which, namely, someone makes spontaneously. And therefore gratitude falls short of strict justice and is its potential part.

2. The offices of beneficence and gratitude toward a benefactor are: a) of themselves, special love, honor, and reverence, because the benefactor is a principle of benefits; b) accidentally, aid or assistance, if the benefactor is in need.

3. A benefit in the strict sense is an undue and useful furnishing, made gratuitously to someone from the affection of benevolence; hence one who gives help for sinning does not confer a benefit but rather harm; and therefore thanksgiving is not owed to him (q. 107, a. 1, ad 1).

878. Two vices are opposed to gratitude: one by excess, namely, recompense of a benefit made either for those things for which it ought not or sooner than it ought; but more opposed to it is the other by defect, which is called ingratitude, and is twofold:

1. material, when without contempt either the office of gratitude is omitted, or something is committed against the benefactor: this is not a special sin, but ingratitude toward God is a general circumstance of every sin; ingratitude toward man is a circumstance of the sin which is committed against him;

2. formal, when the benefit or the mind of the benefactor is contemned, so that you do not seem bound or a debtor to him by reason of the benefit: this is a special sin, directly opposed to the virtue of gratitude, of itself and ordinarily mortal, as was said concerning formal inobedience (n. 844).

Ingratitude is made in a twofold way: a) by omission, by omitting the office which gratitude requires. This is a sin (II Tim. III, 2), because it proceeds from negligence or from another indisposition to virtue; of itself only venial, because the obligation of gratitude does not arise from strict right or debt but from a debt of honesty; accidentally mortal from contempt of the benefactor or of a notable benefit, or if the benefactor is in grave necessity, or even from the omission is to be gravely offended: for then a mortal species against gratitude is added;

b) by commission, by doing something contrary to gratitude. This is a mortal or venial sin according to the condition of the work which is done against the benefactor.

879. There is a threefold grade of gratitude: the first is in the soul, namely, acknowledgment and grateful memory of the benefit; the second is in words, by praising and giving thanks; the third is in deeds, by repaying another benefit according to time and place and according to ability. From this it is clear that the poor can also be grateful, at least in the first and second way, also in the third according to affection.

Similarly there is a threefold grade of ingratitude, yet in inverse order, because what is last in generation is first in dissolution; hence the first is that a man not repay benefits; the second, that he dissimulate, not giving thanks nor showing that he has received benefits; the third and gravest is that he not acknowledge it, whether by voluntary forgetfulness or in another way. And because negation is understood in the opposite affirmation, therefore there are three grades of contrary ingratitude: the first, that someone repay evils for goods; the second, that he disparage benefits; the third, that he reckon a benefit as though it were a wrong.

880. Remark. - St. Thomas notes, q. 106, a. 2, that the innocent man is more bound to give thanks to God if the greatness of the grace conferred is considered according to itself, because, other things being equal, a greater gift is given to him by God, and more continuously; on the contrary, the penitent is more bound if the greatness of grace is considered comparatively to himself, because it is given to him more gratuitously, for when he was worthy of punishment, grace is given to him. Just as also a small gift given to a poor man is greater to him than a great one to a rich man. "And because acts concern singulars, in those things which are to be done that which is such here and now is considered more than that which is such simply"; hence the latter consideration preponderates.

Question Two: On Vindication

S. Th. II-II, q. 108.

881. Vindication (strafvaardigheid) in the strict sense is the infliction of some penal evil for sin. It is illicit if the intention of the one vindicating is principally borne toward the evil of him from whom he takes vengeance and rests there: for this is hatred; but if it is principally borne toward some good at which one arrives through the punishment of the sinner, for example, toward the amendment of the sinner, or his restraint and the quiet of others, and toward the preservation of justice and the honor of God, it can be licit, because punishment is deservedly assigned to the evildoer; nevertheless it will

not be licit in fact unless other due circumstances are observed, namely, that vindication be made by public authority and according to the measure of the delict.

882. A special virtue of vindication is given. - For to any natural inclination whatever which is to be duly ruled there is ordained a special virtue; but there is in man a natural inclination to defend himself against injuries, lest they be brought upon him, or to avenge injuries already brought upon him, not indeed with the intention of harming but of removing harms; therefore, that it may duly go forth into act, it must be directed by some virtue, by which man preserves due measure in vindicating.

Moreover this has a special object: for it seeks punishment precisely so that the order of justice may be preserved or restored, for example, so that there may be reparation of injury and satisfaction of the injured party. It has two acts: one principal, to avenge; the other secondary, to prevent injuries. Hence it is defined by St. Augustine, *De div. quaest.* 83, q. 31, from Tully: The virtue by which force or injury, and in general everything which is going to be, is repelled by defending or avenging.

Moreover that virtue is present not only in superiors but also in private persons: for although they cannot exercise vengeance by themselves, they ought nevertheless to desire it, not from hatred, but from an honorable end, not greater nor otherwise to be inflicted than is fitting.

But as Cajetan remarks, this is the difference between a public and a private person, that a public person is bound by a legal debt to vindicate injuries brought upon those committed to him, but a private person is bound only by a moral debt to vindicate an injury brought upon himself: for he cannot be compelled to avenge himself, but a judge can be compelled to exercise vindication.

Hence the virtue of vindication, which is also present in private persons, is not justice properly so called but its potential part. But insofar as it pertains to a public person, vindication is an act of justice itself. As it is exercised by a public person on account of the common good, it pertains to legal justice; by reason of form, insofar as it inflicts punishments proportionately to delicts, to distributive justice; by reason of matter, to commutative justice, while it renders an equal debt to someone according to quantity.

883. Two vices are opposed to vindication: one by excess, cruelty or savagery, which exceeds measure in punishing; the other by defect, when someone is too remiss in punishing (Prov. XIII, 24).

Question Three: On Liberality

S. Th. II-II, q. 117-119.

884. Liberality (vrijgevigheid) is a virtue moderating the love of riches and rendering a man prompt to disburse them when right reason dictates; but under the name of riches come all external goods insofar as they are useful to man and can be valued by money.

It is a virtue, because in distributing money it moderates affection and use according to the dictate of reason, and so makes one use well those things which we can use badly.

Immediately it is concerned with passions: the estimation and affection of money, by moderating these so that money is not esteemed more or less than it ought; mediately and consequently it is concerned with the use of riches: both indirectly, by removing the impediment of right use, namely, excessive love of them; and directly, by moving to their prompt distribution to others. As regards the

use of money toward oneself, nature sufficiently moves each person, but for distributing it to others when and how one ought, there is need of a special virtue added above nature. From this it follows that the poor can have the virtue of liberality as to its immediate object, when they have a right affection toward money, so that they are prepared to distribute what they would possess.

It is annexed to justice, because on the one hand it falls short of it, since it does not render to another what is his, but what is one's own; on the other hand it agrees with it, insofar as it is toward another and is concerned with external things as justice is: thus in some way it renders a debt according to the equality of that which is becoming.

Hence it differs a) from mercy and from the beneficence of charity: these also give to others what is one's own, but from diverse motives, because one has compassion for the needy or because one loves; but liberality does so because it does not esteem money more than it ought; hence it gives even to the unknown, not only to friends;

b) from magnificence: this uses riches under a special account, according as they are assumed for the completion of some great work; liberality is concerned with moderate disbursements. Hence magnificence is added above liberality.

885. Liberality is not the greatest of the virtues, because it is less to moderate affection concerning the use of riches than to moderate passions pertaining to one's own body, which temperance does; and than to procure the common good, which fortitude and justice do; and than to be concerned with the divine good, as the theological virtues are. Yet consequently it has a certain excellence and is useful for many things: for from the fact that a man is not too affected toward money, it follows that he easily uses it both for the utility of others and for the glory of God.

886. Avarice is opposed to liberality by defect. - Avarice is an inordinate appetite for riches, which is twofold:

a) an inordinate appetite in accepting and retaining unduly, which is opposed to justice and therefore from its genus is gravely evil;

b) an inordinate affection by which riches are loved too much, or desired, or are too pleasing to delight, which is opposed to liberality, and of itself is lightly evil, because it is only an excess in love of a thing indifferent and licit according to itself; unless on account of affection for riches someone is prepared to commit some mortal sin, or constitutes his last end in riches.

The sin of avarice in some respect is graver and baser than others, namely, on the part of the good to which the human appetite is inordinately subjected. For since it is baser to be inordinately subject to a lower good than to a higher one, the less is the good to which the appetite is inordinately subjected, so much the more deformed is the sin. But the good of external things, to which the avaricious man is subjected, is the lowest among all human goods, namely, less than the good of the body or of the soul. Therefore avarice in this respect is baser than other sins. - Yet simply it is not graver, namely, on the part of the good which it corrupts or of which it deprives: for according to this, a sin which is against God is graver, and under this is a sin against one's own or another man's person, and under this that which is only against external things, which are deputed for the use of man, as avarice is. But since the privation of good has itself formally in sin, while conversion to a created good has itself

materially, the consideration according to the formal element is weightier; therefore, speaking simply, avarice is not the greatest of all sins.

Yet it is a capital sin, indeed the root of all sins, as was explained in the treatise on Sins (I, n. 504 and 497).

887. Prodigality is opposed to liberality by excess. - Prodigality is called the superfluous disbursement of one's own things; it is against liberality, which places measure according to right reason in disbursing riches, which measure prodigality removes, not precisely because it exceeds in quantity, for the liberal man can give more than the prodigal, but because he does not disburse according to right reason, insofar as he gives where, when, what, and to whom he ought not give.

But it is opposed to avarice according to excess and defect at the same time: in affection for riches the avaricious man exceeds, the prodigal falls short; in the use of riches the prodigal exceeds in giving, falls short in retaining, whereas the avaricious man falls short in giving and exceeds in retaining. Hence someone can be at the same time avaricious and prodigal, avaricious in acquiring, prodigal in giving, as if he is avaricious so that he can be prodigal.

Yet prodigality is a lesser sin than avarice: a) by reason of the object, because the latter differs more from the opposite virtue: for giving, in which the prodigal abounds, pertains more to liberality than accepting or retaining, in which the avaricious man abounds; b) also by reason of the effect, because the prodigal man is useful to many, but the avaricious man to no one, not even to himself; c) by reason of duration, because prodigality is easily healed, by age or by the want which it causes, but avarice is not.

According to itself it is a venial sin, because it is only an excessive use of one's own goods, and indeed of the lowest goods. Yet it can be mortal: 1) by reason of a mortally evil end, as if riches are poured out for lust; 2) by reason of harm, as if someone thereby becomes unable to pay debts or to procure necessities for the family; 3) by reason of a special obligation of giving superfluous things to a determined cause, for example to pious causes, as concerning ecclesiastical goods (n. 195).

Question Four: On Affability

S. Th. II-II, q. 114-116.

888. Affability (minzaamheid) does not have the perfect account of friendship, which is mutual love, but a likeness of it, insofar as someone bears himself decently toward those with whom he converses as toward friends, not indeed precisely from benevolence, but because it thus agrees with social life. It is also called comity, honesty, urbanity, and sometimes friendship, and can be defined: the virtue effecting pleasant conversation with the neighbor in words and in deeds, so that a man bears himself toward each one according to what is becoming.

It is a virtue, for by it someone, from the debt of social life, bears himself decently toward others in common living, with consideration of the condition of persons and other circumstances, so that his conversation is reasonably pleasing and sweet to all when it ought, and unless reason dictates otherwise.

It is a special virtue, because it has a special object or special account of good, which is in this, that a man be ordered fittingly toward others in common conversation according as social life requires.

It is annexed to justice, because it agrees with it in this, that it is toward another, but it falls short of the account of debt, which in it is neither legal nor proceeding from a benefit received, but considers only the debt of honesty, because we are of a social nature; hence it holds itself more on the part of the one in whom affability is than on the part of the others to whom it is exhibited.

It is a necessary virtue, for without it we are little suited for social life: just as man cannot live in society without truth, so he cannot live well without affability.

889. Two opposite vices are opposed to affability. - Affability holds the mean so that a man bears himself neither too flatteringly nor too harshly in human company. Hence by excess there is opposed to it adulation or flattery; by defect, moroseness or contentiousness.

A. Adulation is when someone beyond the due measure of virtue wishes to delight others by words or deeds in common conversation: if he does this with the sole intention of pleasing, he is called placid; if with the intention of utility, he is a flatterer strictly so called. Adulation can be defined: excessive and unbecoming accommodation to men.

Of itself it is not a mortal sin, because it is a mere excess in the pursuit of pleasing and delighting, which is not repugnant to charity; yet it can become mortal: 1) by reason of matter, as if someone praises another's mortal sin; 2) by reason of the intention of inflicting notable harm; 3) by reason of the effect, or occasionally, as if someone without the express intention nevertheless notably harms, giving occasion of grave sin or grave scandal.

B. Moroseness or contentiousness is when someone presents himself as difficult in company, never acquiescing, always contradicting the words of another, not indeed from defect of love: that is discord, which is opposed to charity; nor from anger: this is opposed to meekness; but from the intention of not pleasing or of saddening, so that someone may comply with his own ways. By St. Thomas it is called contentiousness, because in this way the morose man easily excites quarrels; although these are strictly distinguished: moroseness is harshness of conversation, contentiousness rather is contradiction of the actions of others.

Contentiousness of itself is not a mortal sin, because it only brings some annoyance in company, which is not against charity: for although it harms social life somewhat, nevertheless it does not overturn it. Yet considered according to itself it is graver than adulation, because it is more contrary to affability, which tends more to delighting than to saddening. And although adulation existing with deceit seems baser, nevertheless for this reason it is not of itself graver; but if it is considered according to the final cause, adulation will often be graver, by reason of the end which is intended, as of obtaining undue gain or honor through deception.

Question Five: On Equity

S. Th. II-II, q. 80 and 120; I-II, q. 96, a. 6.

890. Equity (ἐπιείκεια, benignity, moderation; billijkheid) 1) in the general sense is natural justice, especially where it is opposed to human law, which it supplies or corrects; and thus it is not distinguished from justice, and it produces rights and offices strictly so called;

2. in the strict sense it is a) either a benign interpretation and observance of law, which against the words of the law follows the habitual mind of the legislator, and the moral virtue inclining

to acting thus; this is customarily called by the Greek name epikeia, as was explained in the treatise on Laws (I, n. 296). Thus the ancients and scholastics understand it especially, for example, St. Thomas, q. 120;

b) or a fitting moderation of right properly so called, which says a certain remission of right, and the virtue disposing to this; as if a creditor grants delay to a debtor, while it does not harm himself much, but helps the other, or if a master receives extraordinary profit from the labors of workers and therefore gives to them beyond the wage (n. 554). Thus the moderns more often understand it, but the sense was not unknown to the ancients, as is clear from St. Thomas, q. 80, ad 3.

These two equities differ: the first is in debtors, who must render right or observe law; the other is in creditors, who can exact right.

891. Epikeia, or equity inclining to benign observance of law, pertains to legal justice, of which it is a subjective part or species. - It can be defined, conformably to the sayings of Aristotle, *Eth.* V, c. 10, n. 6: the virtue directive of law, where it fails because of the universal; as St. Thomas shows, q. 120, a. 1:

"Because human acts, concerning which laws are given, consist in singular contingents, which can vary in infinite ways, it was not possible that some rule of law be established (or enunciated) which would fail in no case. But legislators attend to that which happens in the greater number of cases, making laws according to this; which law nevertheless in some cases it is against the equity of justice to observe, and against the common good which the law intends. Thus the law established that deposits be returned, because this is just in the greater number of cases. Yet it sometimes happens that this is harmful, for instance if a madman deposited a sword and asks it back while he is in madness; or if someone asks back a deposit for attacking the fatherland. Therefore in these and similar cases, it is evil to follow the positive law; but it is good, the words of the law having been passed over, to follow that which the account of justice and common utility demands. And to this epikeia is ordered, which among us is called equity. Hence it is clear that epikeia is a virtue."

Therefore 1. the object of this virtue is the common good, but to be sought in a special way beyond the common rules and words of the law in particular cases, in which the law itself would tend to evil because of its universality; which furnishes a special difficulty, for in this matter sometimes even the learned themselves, led by zeal for the law, stick fast when they follow its words too scrupulously; hence it needs a special virtue.

2. The cause of epikeia is not a defect of law, but its generality, which is adapted to most cases, yet can fail in a few.

3. It pertains to legal justice. For legal justice regards the common good to be procured; but this can be procured either according to the words of the law, or according to the higher and habitual intention of the legislator. In the first case there is legal justice more strictly so called; in the other, there is epikeia or equity. Therefore this is a species of legal justice. But since the intention of the legislator must especially be regarded, therefore epikeia is the stronger part of legal justice (a. 2, and ad 1).

892. Equity inclining the will to moderate use of right is a virtue annexed to particular justice or a potential part. - It can be defined: the virtue inclining to the humane use of right conformably to right reason.

It is a special virtue because it regards a special account of good or honesty, which consists in a certain remission of right and humane use, insofar as it is worthy of man that he thus act more mildly toward another man for the right way of living together and the fitting conversation of men among themselves. Hence in this account it has a certain affinity with affability.

It is annexed to justice, from which on the one hand it falls short, since there is not in another a right or strict debt founded in law or convention; but with which on the other hand it agrees, because it renders to another some debt of mere honesty, insofar as in the other there is as it were the beginning of a right, or some imperfect title of decency, which in some way demands a benign and mitigated use of right. Hence equity of itself obliges only under light obligation and not with grave inconvenience; and St. Thomas notes that it "has little of the account of debt" (q. 80).

Hence equity mediates between charity and justice, and is a certain mitigation and perfection of justice: justice, says St. Cyprian, tempered by the sweetness of mercy. Of it Aristotle says, *Eth.* V, c. 10: "He who does not too greatly press the highest right, nor to the worse part, but rather concedes from his own right, even if he could rely upon the aids of law, he is equitable and good; and this habit is called equity."

893. Remarks. - 1. Equity accepted in either sense, since it pertains to justice, is subjected in the will; and it is the execution of the virtue gnome, which is annexed to prudence and is in reason, so that it may be able to judge well how in unusual cases one must act beyond the common rules, and it directs equity. From this is understood the excellence of equity, since it is directed not by common prudence but by a higher prudence.

2. The adage, The highest right is the highest injury, is to be understood either a) of positive right which is pressed while it is opposed to natural justice; or b) of an interpretation of law which is wholly pressed after every epikeia has been rejected; but not c) of the use of right, only that equity being passed over which is a potential part of justice: for the omission of an imperfect debt cannot be the highest injury.

Question Six: On the Gift of Piety

S. Th. II-II, q. 121.

894. The gift of the Holy Spirit which corresponds to justice is piety toward God. - "The gifts of the Holy Spirit are certain habitual dispositions of the soul, by which it is promptly movable by the Holy Spirit (by a special motion). But among other things the Holy Spirit moves (by a special motion) to this, that we have a certain filial affection toward God, according to Rom. VIII, 15: You have received the spirit of adoption of sons, in which we cry: Abba, Father. And because it properly pertains to piety to exhibit office and worship to a father, it follows that piety, according to which we exhibit worship and office to God as Father, by the instinct of the Holy Spirit, is a gift of the Holy Spirit (a. 1)... Just as through piety which is a virtue, man exhibits office and worship not only to his carnal father, but also to all joined by blood, according as they pertain to the father; so also piety

according as it is a gift, exhibits worship and office not only to God, but also to all men insofar as they pertain to God" (ad 3).

Hence it is understood that it corresponds to justice, because it is toward another as justice is. Yet it is more excellent than justice, for it surpasses even religion, which is the chief among the parts of justice: for religion exhibits worship to God as first principle, but piety to God as father.

It is exercised in diverse degree.

"The first grade of the gift of piety is that by which we bear ourselves toward others so mercifully, liberally, or communicatively, as is required for salvation. For we are bound to communicate our spiritual and bodily goods to our neighbors for cause, place, and time. Therefore, when from that which abounds to us we give to others, and do not will to communicate so much that we ourselves sustain some want, then we have attained the first grade of piety.

But its second grade is to communicate even from our necessities to our brethren.

The third grade is when a man sometimes expends himself, as the Apostle says: I will most gladly spend and be spent myself for your souls."[1]

[1] Dionysius Carthusianus, *De donis*, tr. III, a. 40.

895. To the gift of piety there corresponds the second beatitude: Blessed are the meek, for they shall possess the earth.

If the agreement of the gifts and beatitudes is considered according to matter and acts, the fourth and fifth beatitudes correspond better to the gift of piety, namely, the desire of justice and mercy toward others on account of God the common father. But the beatitudes are perhaps more fittingly considered according to their motives and according to the order of enumeration; and then the second has some agreement with piety, insofar as through meekness the impediments of the acts of piety are removed.

Sixth Part: On the Precepts of Justice

Single Question: On the Precepts of the Decalogue and Other Precepts Pertaining to Justice

S. Th. II-II, q. 122; I-II, q. 100, a. 3-7.

896. All the precepts of the decalogue are precepts of justice. - The precepts of the decalogue are the first determined principles of law, to which natural reason at once assents with slight consideration, as to most manifest principles. But the account of debt, which is required for a precept, appears most manifestly in justice, which is toward another: for "in those things which are toward oneself, at first sight it seems that man is master of himself, and that it is licit for him to do anything whatever; but in those things which are toward another, it manifestly appears that man is obligated to another to render him what he owes." Therefore the precepts of the decalogue must pertain to justice (a. 1).

Hence the first three precepts are concerning acts of religion, which is the chief potential part of justice; the fourth is concerning acts of piety, which is second among these; the other six are concerning acts of justice commonly and strictly so called, which is among equals.

897. The ten precepts of the decalogue are fittingly ordered. - This, according to the doctrine of St. Thomas, Billuart proves nearly thus, *de virt. iust. adn.*, diss. 3, a. 11:

The precepts of the decalogue were established for forming man to virtue: for it pertains to law to make men good and virtuous; therefore the precepts of the decalogue had to be ordered according to the order of generation, by which, namely, man becomes good and virtuous. Moreover, in the order of generation two things must be considered:

A. First, that the first part be constituted, as in the generation of man the heart, in a house the foundation: thus in the moral good or goodness of the soul there is goodness of the will, from which someone uses well any other goodness; but the goodness of the will is considered according to its object, which is the end. And therefore in him who was to be instructed to virtue by law, first there had to be made, as it were, a certain foundation of religion, by which man is duly ordered unto God, who is the last end of the human will. I am the Lord thy God (Ex. XX, 2). But because in the order of generation, before the first part is constituted, contraries and impediments must be removed - for the farmer first cleanses the field before he scatters the seed - therefore before all things man had to be instructed in religion in such a way that he would exclude the impediments of true religion. Now then:

I. The chief impediment of true religion is that man adhere to a false god or worship the true God unduly, which constitutes superstition. And for excluding this the first precept is set down: Thou shalt not have strange gods; thou shalt not make for thyself a graven thing, etc.

II. After the first impediment has been excluded, which is opposed to true religion by excess and pertains to superstition, which prevents the true God from being received for worship, another is fittingly removed, which is opposed to religion by defect, and is irreligiosity, which prevents God, after He has been received, from being honored: for it is prior to receive God for worship than to honor Him once received. Therefore, after the precept by which superstition is prohibited has been set down, the second is fittingly set down, by which perjury, or every inordinate and irreverent assumption of the divine name, is prohibited: Thou shalt not take the name of the Lord thy God in vain.

III. The impediments of true religion having been removed through the first and second precepts, it followed that the third precept be set down, by which men would be founded in true religion. But to religion it pertains to exhibit the worship of God; hence the third precept is fittingly set down concerning the sanctification of the Sabbath: Remember that thou sanctify the Sabbath day (that is, of religious rest).

B. But the precepts of the decalogue are ordered not only to love of God but also to love of neighbor, as to an end; but among neighbors we are most obliged to parents, therefore:

IV. Immediately after the precepts ordering us to God, there is set down the fourth precept of piety, ordering us to parents, who are the particular principle of our being, as God is the universal principle: Honor thy father and thy mother; by the name of father and mother understanding also any superiors whatever.

C. Finally, just as by the aforesaid potential parts of justice, namely, religion and piety, a debt is rendered to certain determinate persons, to whom man is obligated from some special account, so by

justice itself properly so called someone renders a debt indiscriminately to all. And therefore after the first three precepts pertaining to religion, and after the fourth, which is of piety, by which a special debt is rendered to parents, it was necessary that there be set down consequently some precepts pertaining to justice properly so called, which renders a debt indifferently to all. And for this the last six precepts are set down, by which we are prohibited from inflicting harm upon the neighbor, namely:

V. In his person, which the fifth precept prohibits: Thou shalt not kill, where under homicide, as under the more principal thing, all personal harms are understood.

VI. In the person most conjoined to him through lust, which the sixth precept forbids: Thou shalt not commit adultery.

VII. In exterior bodily things, which the seventh precept prohibits: Thou shalt not steal.

VIII. In external incorporeal things, namely, reputation and honor, which the eighth precept prohibits: Thou shalt not speak false testimony against thy neighbor.

IX. In the very will of committing adultery, which the ninth precept prohibits: Thou shalt not desire thy neighbor's wife.

X. Finally, in the will of stealing, which the tenth forbids: Thou shalt not covet thy neighbor's house, etc.

Indeed by the sixth and seventh precepts, by which adultery and theft are prohibited, without doubt their will is also implicitly prohibited, just as by the fifth and eighth the will of homicide and false testimony is prohibited. Nevertheless, lest someone think that by these precepts only the external works of adultery and theft are prohibited, and not their will, as many among the carnal Jews were, and even now are among rude Christians, God willed to prohibit both of these concupiscences by special and distinct precepts. But He especially prohibited the concupiscence of adultery and theft rather than of homicide and false testimony because adultery has the account of a pleasurable good, theft the account of a useful good, and therefore they more strongly and more frequently allure the soul; but homicide according to itself, as also false testimony, are rather horrible than desirable: for the life of man, as also truth, is naturally loved.

898. Remarks. - 1. The ten precepts of the law have not been distinguished by all in the same manner or order; but this has no bearing on doctrine. We have followed the division which has now become common in the Catholic Church.

2. To the precepts of the decalogue in the Old Law there were added many ceremonial determinations of divine worship, insofar as they are ordered to God, and determinations of justice to be observed among men, insofar as they are ordered to the neighbor. But in the New Law they are abolished; and, certain broad ceremonial precepts having been given concerning sacrifice and the sacraments, the rest which regard religion and divine worship are left to be determined by ecclesiastical law, and those things which regard the manner of preserving justice are rather left to civil law.

3. Many establish a special treatise on the precepts of the decalogue, and not a few divide moral theology according to the precepts. But following the truly scientific method of St. Thomas,

who divides moral science according to the virtues, and thus sets it forth altogether completely, it is now useless to treat specially of the precepts, since those things which pertain to them have already been set forth in the present treatise on Justice, or are also going to receive the supplement of exposition from the treatise on Temperance.

Treatise: On the Cardinal Virtue of Fortitude and on the Annexed Virtues

Introduction

S. Th. II-II, q. 123, a. 1 and 2.

899. Object of the treatise. - Just as there are virtues, namely, one cardinal virtue, justice, and several others annexed to it, which according to right reason order our operations toward others, so virtues are required which according to reason order our passions as to ourselves. But some passions incline toward evil, which temperance restrains; others decline from good, against which fortitude strengthens the soul.

"In two ways," says St. Thomas, q. 123, a. 1, "the human will is hindered from following the rectitude of reason: in one way, by this, that it is drawn by some delectable thing toward something other than the rectitude of reason requires; and this impediment the virtue of temperance removes. In another way, by this, that the will is repelled from that which is according to reason, on account of some difficult thing which threatens it; and for removing this impediment there is required fortitude of mind, by which, namely, it resists difficulties of this sort; just as man through bodily strength overcomes and repels bodily impediments."

Hence just as for moderating and restraining the vehement delectations of the concupiscible appetite there must be the cardinal virtue of temperance, so also a cardinal virtue is necessary concerning difficulties to be tolerated and repelled: fortitude, which strengthens the soul against the repulses of the irascible appetite and overcomes them, so that notwithstanding these a man nevertheless does the good.

From these things it now follows that fortitude:

1. is necessary, namely, for strengthening the soul against difficulties;

2. is a virtue, because it makes man pursue the good of reason;

3. has as its subject the irascible appetite, to be strengthened by reason;

4. has as its object difficulties and dangers to be conquered, so that it constitutes a mean between fear and presumption.

900. Fortitude (ἀνδρεία = manliness; force; sterkte) imports firmness of soul, and therefore in the general sense indicates every firmness in honorable good, and thus is a condition of every virtue, because for virtue it is required to operate firmly and immovably; but in the strict sense it signifies firmness of soul in sustaining and repelling those things in which it is most difficult to have firmness, namely, in graver dangers, even of death, and thus by excellence it is called fortitude.

This is the virtue restraining the movements of the soul concerning any terrible things whatever, especially concerning dangers of death to be sustained and repelled, or the virtue by which the irascible appetite is so strengthened that it does not desist from pursuing the arduous good and last end even on account of the greatest dangers of bodily life (a. 2). It can be defined: the virtue

strengthening the appetite against the greatest dangers of bodily life so that it does not desist from pursuing the arduous good conformably to the due end. In this definition there is indicated:

1. the genus to which fortitude pertains: virtue, whether natural and acquired, or supernatural and infused;

2. the subject in which it is: appetite. For it is not in the will, which from its nature is an inclination conformed to reason, but in the sensitive appetite itself concerning passions, which must be moderated when they draw back from the good of reason: thus it is distinguished from prudence and the intellectual virtues;

3. the proper act by which it is distinguished from others: strengthening, so that it does not desist from pursuing the good of reason; and thus it is distinguished from temperance, which restrains the appetite;

4. the material object concerning which it is concerned: against the greatest dangers of bodily life; and thus it is distinguished from the virtues annexed to it, which are concerned with lesser dangers, and from justice, which is concerned with external operations toward another;

5. the formal object or proximate motive: conformably to the due end, which end will be natural in acquired fortitude, supernatural in infused fortitude.

901. Division of the treatise. - The treatise is divided into two parts:

The first is on fortitude itself, namely: 1) on fortitude according to itself; 2) on the act of fortitude; 3) on the vices opposed to fortitude.

The second is on the virtues annexed to fortitude: 1) on magnanimity; 2) on magnificence; 3) on patience; 4) on perseverance and constancy.

To these there is added a conclusion on the gift and precepts of fortitude.[1]

[1] On fortitude, these can usefully be compared: St. Thomas, II-II, q. 123-140, with the commentaries of Cajetan, Sylvius, and Billuart; Lessius, *De Iustitia et iure et ceteris virtutibus cardinalibus*; Waffelaert, *De Virtutibus cardinalibus*; Winkler, *Die Tugendlehre des H. Thomas von Aquin*; Janvier, *Conf. de N.-D.: La Force chrétienne*; Sertillanges, *La Morale de S. Thomas d'Aquin*; Gilson, *S. Thomas d'Aquin* in the collection *Les Moralistes chrétiens*; Leroux, in *Rev. Eccl. de Liège*, 1928.

First Part: On Fortitude Itself

Question One: On Fortitude According to Itself

S. Th. II-II, q. 123.

902. Fortitude is a virtue, because it strengthens the appetite against difficulties according to right reason, so that it does not recede from the good of reason on account of difficulties and dangers, but tolerates or repels them: thus it makes man to be according to reason.

It is a special virtue, as having a determinate matter and special honesty, and a special impediment to be overcome: for it strengthens the soul in graver dangers, even of death. But where there is special honesty and a special impediment of the good of reason to be overcome, there is a special object, and therefore a special virtue.

It is one virtue, because it has one object: the greatest dangers of death, and other things insofar as they can lead to danger of death; all of which are of the same account, even if some are greater than others.

903. The object of fortitude is the passions of fear and daring as to be restrained, so that the appetite is strengthened for sustaining or repelling the greatest dangers, according to the order of reason toward the due end, under the account of special honesty or rectitude which shines forth in it. In this one object three things are distinguished:

A. The immediate material object in which fortitude places rectitude, or the proximate and proper matter concerning which it is concerned, are the passions of fear and daring, arising from dangers and to be rectified according to reason; consequently, external acts, such as flight, aggression, movement of the body, not as they are toward another (thus they pertain to justice), but insofar as it is required that man be rightly disposed toward himself; but the mediate object or remote matter is dangers and labors, especially dangers of death, but as to be honorably undertaken or sustained, otherwise it would not be a virtue (a. 3).

It is proved: Dangers do not draw back the will from the good of reason except because they are feared; therefore fortitude is immediately concerned with fears and restrains them lest someone fear too much and from fear recede from the good of reason. Yet because sometimes it is necessary not only firmly to tolerate those dangers but also by attacking to repel them, in order to have security afterward, therefore consequently fortitude is also concerned with daring, so that it may hold it within the limits of reason.

But dangers are especially dangers of death. For virtue is the ultimate perfection by which man operates well in all circumstances; but fortitude would not be perfect unless it firmly held back the will of man in the good of reason against the greatest evils; and one who stands firm against greater things consequently also stands firm against lesser things, but not vice versa. Therefore. - But if it did not strengthen against the greatest dangers of death, but only against lesser things, man would not be brave simply, but in a qualified respect (a. 4).

B. The primary material object which fortitude principally and by reason of itself touches is precisely that the passions of fear and daring are to be restrained so that the soul is strengthened according to the order of reason, or are to be ruled conformably to the due end.

C. The formal object, or motive on account of which, of fortitude, is the special honesty and rectitude which consists in strengthening the appetite according to right reason against dangers even the greatest, whether to be sustained with fear or repelled by moderate daring, as is fitting in order to the due end: for fortitude strengthens the appetite because this is right and honorable.

And this is the special and proper motive of the virtue of fortitude, on account of which it is a special virtue distinct from all others: for thus it acts from the very affection or love of the good of fortitude, insofar as it is fitting to reason that fears and daring be restrained in such a way as befits a brave man. It especially agrees with the dignity of man not to be removed from doing by fear of danger, nor to yield to daring rashly hurrying into danger. But if someone from love of faith, chastity, piety, charity, or justice should undergo dangers of death, the act would be regulatively and commandingly from these virtues, but elicitively from fortitude (a. 3).

904. The act proper to fortitude is twofold: the first and principal is to sustain, or to repress fears and stand immovably in dangers; the secondary is to attack, or to moderate daring. For fortitude is more concerned with restraining fears than with moderating daring, and it is more difficult to restrain fear than moderately to attack and moderate daring, because the danger itself of itself contributes something to the repression of daring, but operates toward the increase of fear (a. 6).

And indeed: "1) because someone seems to sustain when invaded by someone stronger; but he who attacks invades after the manner of one stronger; moreover it is more difficult to fight with one stronger than with one weaker; 2) because he who sustains already feels imminent dangers; but he who attacks has them as future. But it is more difficult not to be moved by things present than by things future; 3) because sustaining imports duration of time, but someone can attack from a sudden movement. But it is more difficult to remain immovable for a long time than to be moved by a sudden movement toward something arduous" (ad 1).

905. Fortitude is a cardinal virtue, because there is in it excellently one of the conditions common to every virtue: to operate firmly. For by it the soul is strengthened not only against pleasures, but also against evils and dangers, and not just any, but the greatest, namely, of death. Therefore[1] (a. 11). And thus "even according as it is a special virtue having determinate matter, it helps to resist the assaults of all vices. For one who can stand firmly in those things which are most difficult to sustain is consequently suitable for resisting other things which are less difficult" (a. 3, ad 2).

[1] Cf. I-II, q. 61, a. 3 and 4.

Yet it is not the greatest virtue, for the good of reason pertains essentially to prudence, effectively to justice, because it places that good in human affairs, and only conservatively to fortitude and temperance; yet it is greater to be firm against dangers of death than against pleasures. Therefore fortitude is less perfect than prudence and justice, but more perfect than temperance (a. 12).

906. Corollaries. - From the foregoing it is easily concluded:

1. dangers are not the matter of fortitude unless they are such that they can be honorably sustained or undertaken; otherwise they are not matter of virtue: for the brave man operates proximately so that the will may be strengthened in the good, remotely on account of the end of legal justice, because every good of virtue is ordered to the common good, or also on account of the last end, God (a. 7);

2. fortitude is most and directly concerned with dangers which threaten in just war, whether common on account of the necessity of the republic and the common good, or particular where virtue is attacked (justice, faith, chastity, religion), as if death is threatened to a judge unless he give an unjust sentence, to a virgin unless she consent to the ravisher, to the faithful unless he deny the faith; but secondarily and indirectly it is concerned with other dangers from another cause: sickness, storm, attack of robbers, etc. For although these according to themselves and immediately do not seem to threaten someone from this, that he pursues honorable good, nevertheless from the intention of the one acting they can be undertaken or sustained on account of the motive of virtue (at least on account of the good of fortitude, because they befit a brave man), as one who serves a friend infected with plague, who does not

refuse to journey for some pious business on account of fear of shipwreck or robbers, etc. (a. 5);

3. those do not have the virtue of fortitude, but a false likeness of it, who expose themselves to death from vanity, robbers, those waging unjust war, duelists, etc., who are rash and cruel rather than brave, because they do not undergo danger on account of the good of virtue.

907. Remarks. - 1. The brave man delights on one side animally or spiritually (a. 8), that is, from sensitive or intellective apprehension, in the very work of virtue and its end (both remote and proximate); on the other side he has whence he may grieve, also animally, while he apprehends the loss of his own life, and corporally, while he sustains torments (pains, lashes, wounds). Yet the sensible pain of the body is greater than the spiritual delight of virtue, unless sometimes the grace of God infuses a special divine delight (a. 8).

2. Fortitude consists especially in sudden things, not indeed as regards the choice of the one acting, because the brave man rather chooses to premeditate dangers so that he can resist or bear them more easily; but as regards manifestation, because in such cases the virtue of fortitude is especially evident if, without present premeditation, as if naturally from long premeditation, he acts bravely (a. 9).

3. The brave man uses anger as an instrument for his act, not for sustaining, but for attacking; not every anger, but anger moderated by reason (a. 10).

Question Two: On the Act of Fortitude or On Martyrdom

S. Th. II-II, q. 124.

908. Martyrdom is the real testimony of Christian truth attacked, through the tolerance of bodily death. For this three conditions are required:

1. That someone truly suffer bodily death. For the martyr is the most perfect witness, who professes that all visible things are to be contemned on account of Christ (Heb. XI); but he who still remains in bodily life has not yet shown that he despises all earthly things on account of Christ (a. 4).

Hence a) the desire of martyrdom does not suffice, although it participates in its merit; b) those who have crucified their flesh through graver penances are not true martyrs; c) and those upon whom a sufficient cause of death was inflicted but who were miraculously preserved from death are not martyrs in the perfect and complete sense, although they have the merit of martyrdom; d) and the Blessed Virgin is not called martyr properly, but according to likeness (a. 4, ad 1): for no cause of bodily death was inflicted on her, but only a most vehement torment of soul, although she thus suffered more than martyrs and thus is eminently queen of martyrs.

2. That someone undergo death inflicted by an enemy in hatred of Christian truth, whether directly for the faith to be believed, or indirectly and implicitly for the faith to be enacted, or for every Christian virtue to be exercised or sin to be avoided, but on account of God. St. Thomas shows this thus, a. 5:

"Martyrs are so called as witnesses, because, namely, by their bodily sufferings even unto death they bear testimony to truth, not to any truth whatever, but to the truth which is according to piety, which has become known to us through Christ; hence martyrs are also called, as it were, witnesses of Him. But truth of this sort is the truth of faith. And therefore the cause of any martyrdom is the truth of faith. But to the truth of faith there pertains not only the very belief of the heart, but also exterior protestation; which indeed is made not only by words, by which someone confesses the faith, but also by deeds, by which someone shows that he has faith... And therefore the works of all virtues, according as they are referred to God, are certain protestations of faith, through which it becomes known to us that God requires works of this sort from us and rewards us for them, and according to this they can be the cause of martyrdom. Hence also the martyrdom of Blessed John the Baptist is celebrated in the Church, who sustained death not for denying the faith but for reproving adultery."

Hence they are not martyrs in the strict sense:

a) those who tolerate death on account of sickness contracted from the care of lepers or of those infected with plague, undertaken on account of love of God; b) those who underwent death on account of natural truths, for example, of geometry or of another profane science; c) those who underwent death on account of heresy, as J. Hus; d) those who are killed for the fatherland in a war, even a just one, which they must undergo, even if they intend to die on account of love of virtue, because death is not inflicted on them in hatred of virtue, at least ordinarily; e) those who killed themselves for preserving Christian virtue: for suicide is a sin, unless they are excused by good faith or by a special instinct of the Holy Spirit (a. 1, ad 2).

3. That death be accepted voluntarily from the motive of faith or of the virtue attacked. Hence if an adult is killed in sleep for the cause of faith, without having thought about martyrdom, he does not seem to be a martyr, whatever Cajetan may have said (in a. 2).

Infants who are killed in hatred of faith or of Christ are called martyrs, because in them the will is supplied by the special grace of Baptism: "It must be said," says St. Thomas, a. 1, ad 1, "that the glory of martyrdom which in others their own will merits, those little ones killed attained through the grace of God. For the pouring out of blood on account of Christ takes the place of baptism. Hence just as in baptized children the merit of Christ operates through baptismal grace for obtaining glory, so also in those killed on account of Christ the merit of the martyrdom of Christ operates for obtaining the palm of martyrdom."

909. Martyrdom is an act of the virtue of fortitude. - It is an act of virtue, because it pertains to the account of martyrdom to stand firmly against the attacks of persecutors in truth and virtue, which is the good of reason; but it belongs to virtue to strengthen in the good of reason. Hence to it is promised the reward of beatitude, which is not owed except to acts of virtue, Mt. V, 10: Blessed are they who suffer persecution for justice, for theirs is the kingdom of heaven (a. 1).

It is properly an act of fortitude. For it pertains to fortitude to confirm man in the good of virtue against dangers of death, especially that death which is in war (n. 906, 2). But it is manifest that in martyrdom man is firmly confirmed in the good of virtue, while he does not desert faith and virtue on account of dangers of death which threaten from persecutors in a certain particular combat. Hence it is manifest that martyrdom is an act of fortitude; and therefore concerning martyrs the Church sings: They were made strong in war (a. 2).

Hence a) it is an act elicited by fortitude, but commanded by the virtue on account of whose motive, or for which, it is sustained as an end: by faith, religion, justice, chastity, etc., or also by charity toward God, by which it is most apt to be commanded, insofar as it is the greatest sign of love, according to the words of Christ, John XV, 13: Greater love than this no man hath, that a man lay down his life for his friends; b) it is not an act of the greatest perfection if it is considered according to its proper species, respectively to the virtue by which it is elicited, because fortitude is not the greatest of the virtues; yet in the case in which it is commanded by charity of God, it can be called an act of the greatest perfection, insofar as it is the greatest sign of love toward God (a. 3).

910. Efficacy of martyrdom. - Martyrdom, because it is an imitation of the very passion of Christ, justifies the sinner, whether baptized or not baptized, whether adult or little child, as is clear from the perpetual doctrine of the Church.

Its efficacy is as if from the work worked: namely, martyrdom is as it were baptism, whence it is called baptism of blood. Hence for obtaining justification from martyrdom, no disposition is required in children; in adults that disposition suffices which is necessary with the sacrament, namely, sincere attrition for sins committed, which lays aside every affection for sin and retracts sin.

Hence 1. mere death on account of Christ does not suffice, for it can be with an obstacle to justification, or with affection for sin; hence in I Cor. XIII, 3 it is said: "If I should deliver my body, so that I burn, and have not charity, it profiteth me nothing";

2. nevertheless perfect contrition or an act of charity is not required, because thus man is justified from the work of the worker even without martyrdom; hence if it were required, no special efficacy would belong to martyrdom; yet the influx of charity is necessary that martyrdom also have merit;

3. but imperfect contrition suffices, in the same way as is explained in the treatise on Penance; because by such contrition every obstacle to justification is removed; hence, it being given, in martyrdom charity is infused into the sinner. And so martyrdom:

a) deletes all mortal sins, because the obstacle of affection for sin was removed by attrition;

b) also deletes every venial fault and every temporal punishment; and this effect, if an obstacle is present on account of affection for venial sin, is produced in the first instant after death, when the obstacle is removed by an act of perfect charity. Hence Innocent III: "He does injury to a martyr who prays for a martyr";

c) also confers in heaven a special crown or aureole, that is, a special joy concerning the most excellent and most difficult victory carried off from the world, in the same way as it is given to confessors and virgins on account of their special victory over the devil or over carnal pleasure; yet the aureole of martyrdom is superior to these.

Yet in infants there is not a proper battle and therefore not victory; hence in them there is not an aureole properly so called; nevertheless they participate in it in some way, insofar as they especially rejoice that they were killed in the service of Christ.

Question Three: On the Vices Opposed to Fortitude

S. Th. II-II, q. 125-127.

911. The virtue of fortitude is in the mean. - Fortitude effects that man hold the mean between two extremes, into which one who is exposed to the greatest dangers is prone to fall, namely, between immense fear by which we are excited to flight from evil, and excessive daring by which we are stimulated to face dangers rashly. These two extremes, says Lessius, by alternating movements beat against the soul lacking true fortitude and, as it were, conflict with each other.

Hence to fortitude there is opposed by defect timidity, and by excess fearlessness and daring rashness.

912. The vice opposed by defect. - To fortitude by defect and primarily there is opposed timidity. By this name is not signified the passion of fear (which is indifferent to good and evil), but inordinate fear of temporal evils and especially of dangers of death: it consists, namely, in fearing what, when, where, how one ought not, or more than one ought.

In any sin there is inordinate fear, for example, of losing money, pleasure, esteem, etc.; but the chief fear is of dangers of death, and such fear is opposed to fortitude.

Inordinate fear is excess in fearing and defect in daring. From the first head it is called timidity, from the other sloth or cowardice, but on account of affinity both are called by the common word timidity. Of itself it is a venial sin; but mortal if it is the cause of grave transgression. For fear diminishes the voluntary to some extent, but does not take it away.

913. Vices opposed by excess. - To fortitude by excess and secondarily two vices are opposed:

1. Fearlessness is the vice which does not fear dangers of life when they are to be feared: it is in not fearing what, when, where, how one ought, or as much as one ought, or a defect in fearing. This vice arises from contempt of life, which man makes little of, or from pride by attributing too much strength to himself, or from stupidity of soul.

2. Daring or rashness, as it is taken here, is excess in attacking dangers: it consists in daring or attacking what, when, where one ought not, or more than one ought; hence it is excess in daring. It arises from the same causes as fearlessness, with which it is intimately connected, but chiefly from vain boasting.

They are sins insofar as they cause other sins, or insofar as they act against man's charity toward himself. In a duel the vices of rashness and fearlessness are customarily involved, while someone exposes himself to danger of life or mutilation.

Second Part: On the Virtues Annexed to Fortitude

S. Th. II-II, q. 128.

914. Parts of fortitude. - Fortitude:

A. Does not have subjective parts, or several species, because it is concerned with a very special and altogether determinate matter.

B. Has four integral parts, or conditions which concur for its act. For there is required:

a) for attacking: 1) with respect to the hoped-for end, magnanimity or confidence, which prepares for undergoing danger, so that, namely, someone has a prompt soul for attacking; and 2) with respect to the means, magnificence or strenuousness in the execution of the work, lest, namely, someone fail in the execution of those things which he has confidently begun;

b) for sustaining: 3) patience and longanimity in the undertaking of danger, lest by the difficulty of threatening evils the soul be broken through sadness and fall from its greatness; and 4) perseverance and constancy in execution, so that from the long suffering of difficulties man is not wearied to the point that he desists.

C. It also has the same four potential parts. For if they are restricted to the matter of fortitude and are concerned with dangers of death, they are integral parts without which fortitude cannot exist; but beyond this they are potential parts or annexed virtues if they are exercised in overcoming lesser dangers, and thus they imitate fortitude in secondary and less difficult matters, for example, magnificence concerning great expenditures, magnanimity concerning great honors.

Of these under this respect we must chiefly speak.

Question One: On Magnanimity

Article I: On Magnanimity Itself According to Itself

S. Th. II-II, q. 129.

915. Magnanimity (groot- of edelmoedigheid) is a virtue inclining to great or excellent works in every genus of virtues, worthy of great honor. It is immediately concerned with hope and the arduous good, and therefore is in the irascible appetite; mediately it is concerned with great honors. Yet it does not tend to great things on account of honor, but on account of their excellence under the special account of the great and arduous, because it is good to do great and arduous things with generosity; secondarily, however, it also rightly uses honor according to right reason.

Hence 1. it differs from ambition, which attacks great things on account of honors: for the magnanimous man wills to perform things which are great before God, because it befits a rational creature to intend not only things which are common, but also things which are excellent.

2. It is a special virtue, because it has a special object: for it places the mode of reason concerning great honors and excellent works to be attacked; hence it is annexed to fortitude, because like fortitude it strengthens the soul concerning something arduous, but it falls short of it because great goods to be hoped for or obtained have less of the arduous and of difficulty than the very dangers of death.

3. The object which it seeks is great and true honors, for concerning small honors there is another unnamed virtue, which by some is called philotimy; hence true magnanimity despises riches, pleasures, and the honors of this world, as things which in reality are of little moment, but aspires to great honors before God. "And therefore he is not lifted up by great honors, because he does not reckon them above himself, but rather contemns them, and much more

moderate or small honors. And likewise he is not broken by dishonors, but contemns them, as things which he judges to be brought against him unworthily," a. 2, ad 3.

4. Therefore true magnanimity is not opposed to humility: "In man there is found something great, which he possesses from the gift of God; and some defect, which belongs to him from the infirmity of nature. Therefore magnanimity makes a man dignify himself with great things according to consideration of the gifts which he possesses from God; as, if he has great virtue of soul, magnanimity makes him intend perfect works of virtue... But humility makes a man esteem himself little, according to consideration of his own defect. - Likewise also magnanimity contemns others according as they fall short of the gifts of God: for he does not esteem others so much that he would do something unbecoming for them. But humility honors others and esteems them superior, insofar as it beholds something in them of the gifts of God... And thus it is clear that magnanimity and humility are not contrary, although they seem to tend toward contraries, because they proceed according to diverse considerations" (a. 3, ad 4).

916. Properties of magnanimity. - St. Thomas, from Aristotle, *Eth.* IV, enumerates several properties of magnanimity, among which the following are the more principal:[1] 1) the magnanimous man is moderately delighted by honors offered to him, even great ones; 2) in prosperity and in adversity he shows himself moderate; 3) he willingly furnishes help to others, but he himself asks no one, or scarcely anyone, for help for himself; 4) with great men he shows himself truly great, that is, he does not flatter them nor allow his liberty to be oppressed by their authority; but with mediocre men he shows himself mediocre; 5) he is not ambitious and accordingly does not thrust himself into more honorable places or functions; 6) he openly states his opinion if it is necessary: for he does not fear men nor desires to flatter anyone; 7) he does not remember injuries received, for this belongs to a base soul; 8) he does not speak greedily about men, nor is he a flatterer of others or an evil-speaker; 9) in his exterior gestures of body he is slow: for he does not act precipitously, because he involves himself only in great affairs, which do not occur so often, and when they occur, must be handled with serious deliberation; 10) according to Aristotle he often uses irony, that is, fiction of the lesser (not mockery), by which someone feigns lesser or base things about himself. The magnanimous man is not accustomed to demonstrate his whole greatness, because this seems to be boasting.

[1] Cf. St. Thomas, q. 129, a. 3, ad 3 and 5; a. 4, ad 2; Billuart, diss. II, art. 2; Prummer, *Th. M.* II, n. 629.

917. Remarks. - 1. The virtue of magnanimity according to the disposition of the soul is among all the just; but as to acts it belongs only to great men (a. 3, ad 2).

2. Virtue is required for repressing passions which have great force in resisting reason. But some passions not only have great force in resisting reason on the part of the passion because of vehemence, but also "from the external things themselves which are the objects of the passions, such as love or desire either of money or of honor. And in these things there must be virtue not only concerning that which is greatest in them, but also concerning moderate or lesser things, because existing external things, even if they are small, are very appetible, as being necessary for the life of man. And therefore concerning the appetite for money there are two virtues: one indeed concerning moderate or measured sums, namely, liberality; another concerning great sums of money, namely, magnificence... Similarly also concerning honors

there are two virtues: one indeed concerning moderate honors, which is unnamed (it could be called philotimy)... but concerning great honors there is magnanimity" (a. 2).

3. To magnanimity there contribute and pertain: a) directly indeed confidence (zelfvertrouwen), which imports strength of hope, proceeding from a firm and vehement opinion concerning the good to be obtained; but because hope causes daring, which pertains to fortitude, hence confidence consequently pertains to fortitude (a. 6);

b) security (gerustheid), or perfect rest of the soul from fear: this directly pertains to fortitude; but because, just as hope is the cause of daring, so fear is the cause of desperation, therefore "just as confidence consequently pertains to fortitude, insofar as it uses daring, so also security consequently pertains to magnanimity, insofar as it repels desperation" (a. 7);

c) goods of fortune, which help instrumentally toward the end of magnanimity, because through them, namely, through riches and powers and friends, the faculty of doing great things is given to us (a. 8).

Article II: On Sins Opposed to Magnanimity

S. Th. II-II, q. 130-133.

918. To magnanimity by excess there are opposed: presumption, ambition, and vainglory, which inordinately seek excellence in works, in honor, or in reputation and estimation. Presumption regards the proximate matter: acts worthy of honor; ambition the remote matter: honors; vainglory the natural effect of honor: praise.

1. Presumption (verwaandheid) or overconfidence is the inordinate appetite of attacking something above one's powers. It is excessive hope. But in the present matter the question is not about presumption opposed to theological or divine hope, which rashly expects beatitude through means not ordained by God and rejects or perverts the divine help from which it is to be hoped for (of which we spoke in the treatise on hope, I, 833), but about presumption or excessive hope in one's own powers: this, namely, is opposed to magnanimity, which is concerned with the passion of hope.

It arises from culpable error concerning one's own powers. Concerning these, error can be committed in two ways: in one way according to quantity, as when someone judges himself to have greater virtue or knowledge or something of this sort than he has, for example, those who without sufficient capacity undertake the office of judge, physician, advocate, confessor, etc., who usurp power which they do not have, who by their own authority without long study interpret the Scriptures...; in another way concerning the genus of the thing from which someone dignifies himself, as when someone esteems himself great and more worthy from that from which he is not great nor worthy, for example, on account of riches or some goods of fortune.

It is of itself a venial sin, because it is not against charity; accidentally it becomes mortal by reason of the cause, as if it proceeded from culpable error in faith, or by reason of the effect, as if it is done with great danger or notable harm, proper or another's, as can happen in physicians, confessors, advocates, who presume without skill to undertake an office or to exercise it in such a way, and in those who without a reasonable cause thrust themselves into the proximate occasion of sinning.

2. Ambition (eerzucht) is an inordinate appetite for honor.

It happens in four ways: by seeking honor for excellence which is not possessed, as if an ignorant man wishes to be honored as learned; or for a blameworthy thing, as for sin or for a thing acquired by sin; or by not referring honor to God, to whom honor is owed principally on account of excellent goods; or by not referring it to the utility of others, but resting in honor: for that in which man excels is given to man by God so that from it he may benefit others.

It is of itself a venial sin, because it is not against charity; accidentally it becomes mortal either by reason of the cause, as if it comes from culpable error in faith, or if someone seeks honor from affection for mortal sin, or abuses honor for that sin; or by reason of the effect, as if someone commits mortal sin to seize honor, prepared for all things on account of honor, or constitutes his last end in honor, or if it is done with grave harm or injury of the neighbor.

3. Vainglory (roemzucht, ijdelheid) is an inordinate appetite for glory and reputation, that is, an appetite for vain glory, or for vain manifestation and estimation among others concerning one's own excellence, whether true or fictitious; an excessive desire for human esteem and praise. This is also a capital sin, as was set forth in the treatise on Sins (I, n. 502).

Glory is clear knowledge with the praise of others; and it is the natural effect and end of honor, since from honor someone is rendered clear in the knowledge of others. For from the fact that testimonies of honor are exhibited to someone, his excellence is clear among others. Hence honor is sought because glory from honor is sought. Whence consequently magnanimity is also concerned with glory, and the inordinate appetite for glory is opposed to magnanimity.

It happens in three ways: a) by seeking glory from that which is not worthy of glory, or of so much glory, as from an evil, false, fictitious, fragile thing, from riches, trifles, etc.; b) by seeking it from those who are not able to discern what is worthy of glory, for example, from one whose judgment is not certain; c) by seeking and not referring glory to the due end, namely, to the honor of God or proper or another's utility. For glory of itself is an indifferent thing, and accordingly to stand in it as in an end and to seek it for its own sake is illicit: for to seek an indifferent thing is not good unless it is done for a good end extrinsic to the thing; therefore to seek glory is illicit except insofar as it is useful for something, otherwise it would be an idle and vain act and accordingly sinful (q. 132, a. 3; cf. Q. D. *De Malo* 9, a. 2).

Vainglory of itself is a venial sin: for of itself it does not say anything against charity, but is only an inordination of the appetite of a thing indifferent according to itself. Yet accidentally, that is, by reason of another thing or something joined to it, it becomes mortal: 1. on the part of the one glorying himself: a) by reason of the effect, for example, if someone is prepared to sin mortally in order to acquire glory, or constitutes his last end in glory, or grave harm to the neighbor follows from it, as if on account of it a physician is unwilling to employ a colleague, with grave danger of health in the sick person, or a teacher is unwilling to retract a great error which he taught; b) by reason of the end, as if he seeks glory from affection for a mortal sin. 2. Also on the part of the matter about which someone glories: a) if someone glories concerning a good, but falsely, which is against reverence for God (for example, to seek divine honors for oneself), or concerning goods as if they were not from God, or concerning a temporal good loved more than God, or concerning the testimony of men which

he prefers to divine testimony; b) if he glories concerning evil, namely, concerning a mortal sin committed (q. 132, a. 3; cf. Q. D. *De Malo* 9, a. 2).

919. Remarks. - Let the words of St. Thomas be noted (q. 132, a. 1, ad 3): "It pertains to the perfection of man that he know himself; but that he be known by others does not pertain to his perfection; and therefore it is not to be sought for its own sake. Yet it can be sought insofar as it is useful for something, either for this, that God be glorified by men, or for this, that men profit from the good which they know in another, or for this, that the man himself, from the goods which he knows in himself, through the testimony of another's praise, may strive to persevere in them and to advance to better things. And according to this it is praiseworthy that someone have care for a good name and that he provide good things before God and men; but not that he be vainly delighted in the praise of men."

920. To magnanimity by defect there is opposed pusillanimity. - This is a disposition of soul by which someone flees as though too great and exceeding his powers those things which, all circumstances considered, he could and ought to do, since in reality they do not exceed them. Thus one who, terrified by difficulties and not sufficiently trusting in divine help, flees offices proposed to him by superiors, or does not fulfill the offices of his own state, from empty fear.

It arises from culpable ignorance. It is a mortal sin if it draws one back from a grave precept.

Question Two: On Magnificence

S. Th. II-II, q. 134-135.

921. Magnificence (grootdadigheid) is inadequately distinguished from magnanimity, as a species from a genus. Magnanimity tends to all great things to be done, in every genus, or to the great as virtuous; magnificence tends only to great things able to be made, namely, to great external works as such, for example, it is in splendid temples being built, or colleges, universities, hospitals, monasteries being erected, according to right reason, when the good of the Church or of the fatherland demands this (a. 2, ad 2 and 3). For this great expenses of money are necessary; hence it is a virtue moderating the love of money, lest the great expenses be impeded by which great external works ought to be done (q. 134, a. 3).

Hence 1) its matter is great expenses to be made for great external works, and the love of money to be moderated. Hence according to affection it can be in the poor, not according to effect;

2. its special object is a great work and great expenses proportioned to it: thus it tends to the arduous and therefore is in the irascible appetite; but it falls short of fortitude because the difficulty is lesser, namely, only on account of spending things, not on account of danger of life;

3. it differs from liberality: the latter is concerned with all operations and uses concerning monies; magnificence concerns expenses alone, that is, expenditures, and indeed great ones, for liberality is also concerned with moderate ones (q. 134, a. 1, ad 1; a. 3, ad 2; q. 135, a. 1, ad 3).

922. Two vices are opposed to magnificence:

a) Consumption (profusion), or excessive sumptuousness, when someone makes great expenses in things of little moment (which do not deserve them), more than the dignity of the work demands; and this indeed is irrational, especially if works very necessary for the honor of God and the good of the faithful (or of men) are neglected.

b) Parvificence (mesquinerie), which in great matters wills to make only small expenses, so that the works undertaken remain very unbecoming. This intends first small expenses, while magnificence first regards the great work and consequently the expenses.

Of themselves they are venial sins, unless they withdraw from a grave precept.

Question Three: On Patience and Longanimity

S. Th. II-II, q. 136.

923. Patience (geduld) is a virtue which so moderates sadness, arisen from present evils, that on account of it the will is not moved away from the good, but rather is strengthened in it. Thus someone bears himself well in suffering things which presently harm him, especially things inflicted by others, namely, so that he is not inordinately saddened in them. It is in the concupiscible appetite, because it is concerned with sadness, but it imitates the mode of fortitude, because it restrains sadness which holds one back from the good of reason, in the same way in which fortitude restrains fear of death (a. 4, ad 2).

Hence 1) it is not insensibility or apathy, of which the Stoics boasted, and which in reality is a vice. For just as fortitude is not fearlessness, but the brave man feels fear of death and restrains it within the limits of reason, so the patient man feels pain in the body and sadness in the soul, but restrains both and does not allow them to proceed beyond the limits of reason, recalling the words of Paul (Rom. V, 3-5): "Tribulation works patience..."

2. This he does from an affection for honesty which is found in the restraining of sadness, and therefore it is a special virtue.

3. It is necessary (Hebr. X, 32-36; Rom. V, 3; Lk. XXI, 19), because inordinate sadness is a great evil and an impediment of many goods (Eccli. XIV, 2; XXX, 25; Prov. XXV, 20); on the contrary, through patience man radically roots out the passions of adversities by which the soul is disquieted (a. 2, ad 2), as will be shown more in the following number.

4. This can be done in various degrees, whence various degrees are distinguished in patience:[1] a) to tolerate without murmuring, or with an equal soul to bear the loss of riches, reputation, health, parents, and friends; b) to tolerate without lamentation and complaint before others, or to bear those things which happen to us without our fault; c) to tolerate with joy, or to sustain all those things not only patiently but with a joyful soul, as the Apostles did (Acts V, 41).

[1] Thus from the part of the mode. For from the part of the evils which someone suffers, the first degree is patiently to bear damages of fortune; the second, detriments of reputation; the third, detriments of body and life. From the part of the cause, the first degree is to tolerate things inflicted as punishment for fault; the second, those things which happen without fault; the third, those things which are inflicted by the ungrateful.

924. Patience is not the greatest of the virtues. - For "those virtues which are constitutive of good order more directly to good than those which are impeditive of things which lead away from good. And just as among those which are constitutive of good some virtue is more powerful to the extent that it establishes man in a greater good (such as faith, hope, and charity, than prudence and justice); so also among those which are impeditive of things withdrawing from good, some virtue is more powerful when that which is impeded by it withdraws more from good. But dangers of death, concerning which there is fortitude, or pleasures of touch, concerning which there is temperance, withdraw more from good than any adversities whatsoever, concerning which there is patience. And therefore patience is not the greatest of the virtues; but it falls short not only of the theological virtues, and prudence, and justice, which directly establish man in good, but also of fortitude and temperance, which draw back from greater impediments" (a. 2).

Nevertheless 1) in some respect it is more perfect according to a certain aspect. For "it is said to have a perfect work (Jas. I, 4) in tolerating adversities; from which first proceeds sadness, which patience moderates; secondly anger, which meekness moderates; thirdly hatred, which charity takes away; fourthly unjust harm, which justice prohibits" (ad 1). But patience "not only excludes unjust vengeance which justice also excludes; nor only hatred, which charity does; nor only anger, which meekness does; but it also excludes inordinate sadness, which is the root of all the aforesaid. And therefore in this it is more perfect and greater, because in this matter it extirpates the root" (I-II, q. 66, a. 4, ad 2). "But to remove the principle of each thing is more perfect. Nor yet does it follow, if in this patience is more perfect, that it is more perfect simply" (a. 2, ad 1).

2. Hence also, because "possession imports quiet dominion, therefore through patience man is said to possess his soul (Lk. XXI, 19), insofar as he radically roots out the passions by which the soul is disquieted" (ad 2).

3. Indeed "patience is said to be the root and guardian of all virtues, not as though directly causing and conserving them, but only by removing what prohibits," namely, the impeding causes or passions (ad 3).

925. Means for obtaining patience, which is very necessary to the Christian man, are enumerated by Billuart, diss. 2, a. 5: "It helps to consider 1. the patience of God tolerating sinners; 2. the patience of Christ dying for us; 3. the patience of the saints; 4. the fruits of patience in both lives: satisfaction for sins in the present life, eternal glory in the future; 5. redemption from the pains of hell and of purgatory; 6. the evils of impatience: for by this the merit of patience is lost, the evil is not diminished, but rather is increased; indeed impatience itself is an evil tormenting more than the original evil whence it is caused; finally it impels to many sins."

926. Two vices are opposed to patience:

a) By excess, hardness, when someone is in no way touched or saddened by any evils, whether his own or another's; which is consonant neither with human nature nor with social life.

b) By defect, impatience, by which someone grieves too much, and from grief withdraws from the good, for example, bitterly complaining about God and men, and on that account seeking consolation in pleasures or in idleness.

Of themselves they are venial, but mortal by reason of the effect or by reason of scandal, for example, if someone deliberately murmurs gravely against God and the divine ordinations, or from this commits lethal sins such as blasphemies, woundings, etc.

927. Longanimity (lankmoedigheid), by which someone tends toward some good to be obtained after a long time, partly differs from patience, partly agrees with it. It differs because the object of patience is evil, the object of longanimity is good; it agrees because from the delay of the good hoped for there is caused sadness, which longanimity restrains, and sadness is the object of patience. And therefore longanimity is comprehended under patience (a. 5).

Question Four: On Perseverance and Constancy

S. Th. II-II, q. 137 and 138.

928. Perseverance (volharding) in the present matter is not taken for the great gift of perseverance, by which someone remains in the state of grace until the end of life and dies in it: this is not a virtue but a special help of divine grace, which we cannot merit; but it is taken for the habit of continuation in a good work unto the end, and thus it is a virtue strengthening the soul for overcoming the difficulties which arise from prolonged exercise of virtue, or a virtue inclining one to persist in the exercise of virtues according as right reason dictates, notwithstanding the weariness which may arise from the duration of the work. [The original prints "918" here.]

Hence a) it regards future difficulties, while patience looks at present evils. b) Moreover it is ordained to overcoming that special difficulty which very often proceeds from prolonged practice of virtues: for many experience a certain weariness and tedium from the fact that the same efforts must often be repeated; to conquer this the special virtue of perseverance is given, which from this motive strengthens the appetite because to persevere against tedium is good, from the intention of persisting, and by reason of the special honesty which is in this, that it overcomes weariness arising from duration. c) It imitates fortitude because it sustains a lesser difficulty, just as fortitude sustains danger of death. d) It is in the irascible appetite because it restrains fear of fatigue and tedium or of defect arising from the duration of the work (a. 2, ad 2).

929. Two vices are opposed to perseverance: a) by defect, softness of soul, which easily recedes from a good proposal on account of difficulties occurring in the continuation of the work or from the tedium of duration: this disposition arises partly from natural temperament, partly from the custom of indulging pleasures and from horror of difficulties; b) by excess or abuse, obstinacy (entetement), or an inclination to persist in a proposal when right reason dictates that one must desist. For, if we ought to persevere in a proposal as long as the good appears to right reason, one must recede from it when it is certainly detected to have been undertaken from erroneous judgment, or when circumstances change in such a way that what before was good and opportune now becomes evil or at least less good.

They are grave or light sins according to the matter.

930. Constancy (standvastigheid) is a habit by which we firmly persist in the good against difficulties which arise from any exterior impediments whatsoever. It partly agrees with perseverance and partly differs. They agree in the end, because each firmly persists in good; they differ according to those things which bring difficulty to this persistence: the virtue of perseverance is against the

difficulty which arises from the very duration of the act and which is more essential to the act of virtue; constancy is against difficulty from any extrinsic impediments whatsoever which bring sadness. Hence, although according to matter it agrees with patience, according to the end it pertains to perseverance; and because the end is more powerful, therefore constancy pertains more to perseverance than to patience.

Constancy (Aristotle calls it perseverance) is not a virtue strictly so called, because it does not render man perfect, since it makes him persist in good notwithstanding impediments arising from an inordinate and superabundant passion; but perfection exists if the sensitive appetite is perfectly subjected and conformed to reason. Hence it is in the will, which resists passions, especially the sadnesses which withdraw from good, particularly those which arise from the privation of pleasures of touch, just as continence resists pleasures and concupiscences which entice toward evil.[1]

[1] Cf. q. 137, a. 1, ad 1; a. 2, ad 1 and 2; q. 53, a. 5, ad 3; I-II, q. 58, a. 3, ad 2.

Conclusion — On the Gift and Precepts of Fortitude

S. Th. II-II, q. 139 and 140.

931. The gift of fortitude. - A special gift of the Holy Spirit is necessary for conferring supernatural fortitude, because the virtue of fortitude does not suffice.

This indeed confers firmness of soul in doing goods and bearing evils, especially in arduous goods or evils, so that man according to his proper and connatural mode may sustain dangers, and not fail from the good because of the difficulty either of fulfilling some arduous work or of bearing some grave evil; but it does not suffice to give confidence of escaping any imminent dangers whatsoever, which exceeds human nature. This, however, is precisely what the gift of fortitude supplies.

To the gift of fortitude there fittingly corresponds the fourth beatitude: Blessed are they who hunger and thirst for justice. For "fortitude consists in arduous things. But it is very arduous that someone not only do virtuous works, which commonly are called works of justice, but do them with a certain insatiable desire, which can be signified by hunger and thirst for justice" (a. 2).[2]

[2] Dionysius the Carthusian, *De donis*, tr. III, a. 18.

Justice therefore is not to be taken in the strict sense as a particular virtue, but in the broad and universal sense which consists in the works of all the virtues, in which fortitude, which is a gift, intends the arduous (ad 1). To this gift correspond two among the fruits of the Holy Spirit, namely, patience, which regards the sustaining of evils, and longanimity, which can regard the long expectation and operation of goods (ad 3).

932. Precepts of fortitude. - Since fortitude is very necessary for firmly and constantly persisting in the way of salvation, of faith, justice, and virtue, even when great difficulties of this life or the very danger of death stand in the way, therefore it was necessary to give explicit precepts concerning fortitude. And indeed:

1. The end of divine law is that man cleave to God; and therefore the precepts of divine law concerning fortitude are given according as it agrees with the order of the mind toward God. Hence in Deut. XX, 3, it is said: "Do not fear,... because the Lord your God is in the midst of you, and will fight for you against your adversaries" (cf. Jos. VIII, 1; Is. VII, 4; q. 140, a. 1).

But since "the Old Testament has temporal promises, but the New has spiritual and eternal ones,... therefore it was necessary that in the old law the people be instructed how they ought to fight even corporeally, in order to acquire an earthly possession. But in the New Testament men had to be instructed how by fighting spiritually they might arrive at possession of eternal life, according to that saying of Mt. XI, 12: The kingdom of heaven suffers violence, and the violent bear it away. Hence also Peter commands, I Pet. V, 8: Your adversary the devil, as a roaring lion, goes about seeking whom he may devour; resist him, strong in faith; and James IV, 7: Resist the devil, and he will flee from you. Yet because men tending toward spiritual goods could be withdrawn from them by corporeal dangers, precepts of fortitude also had to be given in the new law for sustaining temporal evils bravely, according to that saying of Mt. X, 28: Fear not those who kill the body" (ad 1).

But the precepts had rather to be given negatively, because "law in its precepts has common instruction. But those things which are to be done in dangers cannot be reduced to some common good, as those things which are to be avoided can. And therefore the precepts of fortitude are given more negatively than affirmatively" (ad 2).

2. "Divine law perfectly informs man concerning those things which are necessary for living rightly. But man needs for living rightly not only principal virtues, but also secondary and annexed virtues; and therefore in divine law, just as fitting precepts are given concerning the acts of the principal virtues, so also fitting precepts are given concerning the acts of the secondary and annexed virtues" (a. 1).

These precepts concern patience (Eccli. II, 4; Rom. XII, 12; Jas. V, 7; Hebr. X, 36) and perseverance (Hebr. XII, 7; I Cor. XV, 58), which respectively are concerned with the afflictions and labors of the present life, and therefore pertain to all; but not with magnanimity or magnificence, which have a certain excellence of greatness, and therefore fall more under counsels of perfection than under precepts of necessity (ad 1).

3. Human laws are ordained to some temporal goods, and therefore according to the fittingness of these goods precepts of fortitude are found in human laws (a. 1), for example, concerning labor not to be deserted or concerning the defense of the republic even with danger of life.

But the means for acquiring fortitude must be diligently employed, the more so because there is less occasion for exercising it than for the virtues of justice and temperance or their annexed virtues. The timidity of the just in external and public life is to be lamented, which harms the common good much; and a defect of fortitude brings many disasters in individual and domestic life. The principal means are customarily enumerated:

a) Frequent meditation on the fragility and vileness of temporal goods, when they are compared with eternal goods; from which it will come about that a good man does not fear evils but rather desires them as means of acquiring and increasing eternal happiness, contemns pleasures and honors, and is moved neither by human threats nor flatteries.

b) Foresight of evils, so that against them we may strengthen the will lest we be overcome by them, but may be able to overcome them.

c) The custom of acting strenuously in lesser things occurring daily, so that we may already be prepared to sustain graver things bravely and to approach them manfully: thus like a good soldier giving himself to daily exercise of arms. Wherefore let educators provide a virile formation for young people and propose noble and brave actions to them as an example.

d) Great esteem and love of fortitude on account of its own proper excellence.

e) Fervent love of God, which adds the greatest strength to the will: love is strong as death (Cant. VIII, 6); love joined to the imitation of Christ in heroic fortitude, and to fervent prayer with full confidence in the help of the Holy Spirit, who will grant the gift of fortitude, for we have promised to us the Holy Spirit himself, "the spirit of counsel and fortitude."

Fortified by these things, we can conclude with the Apostle, Rom. VIII, 35 sq.: "Who then shall separate us from the charity of Christ? tribulation? or distress? or hunger? or nakedness? or danger? or persecution? or the sword?... But in all these things we overcome because of him who loved us. For I am certain that neither death, nor life, nor angels, nor principalities, nor virtues, nor things present, nor things future, nor fortitude, nor height, nor depth, nor any other creature will be able to separate us from the charity of God, which is in Christ Jesus our Lord."

Treatise: On the Cardinal Virtue of Temperance and On the Virtues Annexed to It

Introduction

S. Th. II-II, q. 141, a. 1-4.

933b. Object of the treatise. - Just as the virtue of fortitude rules and restrains the repulsions of the irascible appetite, strengthening the soul against them lest it decline from pursuing the arduous good which reason dictates on account of sensible and corporeal evils joined to it, so it is necessary that there be a virtue which moderates and restrains the concupiscible appetite, lest it impel too much toward delectable good, against the good of reason or more than reason dictates, and this is temperance. Therefore, just as the virtue of fortitude chiefly consists concerning fear of corporeal evils, and consequently concerning daring, which attacks them under hope of some good (n. 903), so also temperance chiefly consists concerning corporeal concupiscences and pleasures, and consequently concerning sadnesses which occur from the absence of such pleasures. Hence just as fortitude removes the impediments of the rectitude of reason in the irascible appetite, so temperance removes them in the concupiscible appetite. Therefore by these two cardinal virtues with their annexed virtues all the passions are rectified, so that the whole man is perfectly disposed in order toward himself (a. 3).

From these things it follows: a) that temperance is necessary, namely, for restraining the passions of the concupiscible appetite;

b) that it is a virtue, because it moderates them according to reason;

c) that its subject is the concupiscible appetite, to be restrained by reason;

d) that its object primarily is the concupiscences and pleasures of the concupiscible appetite to be moderated.

934. Temperance etymologically signifies a certain tempering, that is, moderation; hence in the most general sense it indicates the moderation of reason in any matter whatsoever, whether of operations or of passions, and thus it is a condition of every virtue, because it belongs to every virtue to moderate or to act according to the mode of reason; in the strict sense it signifies moderation in a matter which by immoderation most greatly rises up against reason, and therefore needs special moderation, and this by excellence is called temperance (sophrosyne; matigheid).

Temperance strictly so called is customarily defined: a virtue moderating the appetite concerning the principal concupiscences and pleasures of touch conformably to the due end; or, mediocrity in corporeal pleasures. In this definition there is indicated:

1. the genus: virtue, whether natural and acquired, or supernatural and infused;

2. the subject in which it is: the appetite. For it is not in the will, which from its nature is an inclination conforming to reason, but in the sensitive appetite itself, concerning passions,

which are to be moderated when they rise up against reason: thus it is distinguished from prudence and the intellectual virtues;

3. the proper act by which it is distinguished from others: moderating or restraining according to right reason, and thus it is distinguished from fortitude, which strengthens the appetite;

4. the material object concerning which it is exercised: concerning the principal concupiscences and pleasures of touch, and thus it is distinguished from the virtues annexed to it, which concern other pleasures, and from justice, which is concerned with exterior operations;

5. the formal object or proximate motive: according to right reason, or conformably to the due end, which end will be natural in acquired temperance, supernatural in infused temperance.

That this definition is real the whole treatise will show.

935. Division of the treatise. - The treatise is divided into five parts: 1. on temperance in general; 2. on abstinence; 3. on sobriety; 4. on chastity and pudicity; 5. on the virtues annexed to temperance.

The first Part is on temperance in general: 1. on temperance in itself; 2. on the vices opposed to temperance; 3. on the parts of temperance.

The second Part is on abstinence: 1. on fasting in general; 2. on ecclesiastical fasting; 3. on abstinence from meats; 4. on the subject of fasting and abstinence, where a) on an excusing cause or impotence, b) on an exempting cause or dispensation; 5. on the violation of fasting and abstinence; 6. on the sin opposed to abstinence, or on gluttony.

The third Part is on sobriety: 1. on sobriety in itself; 2. on the opposed sin, or drunkenness: a) on drunkenness itself, b) on sins committed on the occasion of drunkenness.

The fourth Part is on chastity and pudicity: 1. on chastity and pudicity in themselves; 2. on the opposed sin, or lust in general; 3. on the species of lust, namely, a) on lust according to nature, b) on lust against nature; 4. on internal lust; 5. on immodesty.

The fifth Part is on the virtues annexed to temperance: 1. on continence; 2. on meekness and clemency; 3. on humility; 4. on studiousness; 5. on modesty of exterior movements; 6. on modesty of external equipment.[1]

[1] Usefully one can compare: St. Thomas, II-II, q. 141-170 with the commentaries of Cajetan, Sylvius, Billuart; Lessius, *De Iustitia et Iure et de ceteris virtutibus cardinalibus*; Waffelaert, *De Virtutibus cardinalibus*; Janvier, *Conf. de N.-D.: La Temperance*; besides, for practical questions, St. Alphonsus and the modern manuals which everywhere are in use.

Nothing special occurs to be said concerning the precepts of temperance and concerning the gift of the Holy Spirit corresponding to it. For this is the fear of the Lord, which already corresponds to hope and was explained in the treatise on Hope (I, n. 828); but the precepts are the sixth and ninth of the decalogue, as we said when treating of the decalogue (n. 897).

First Part: On Temperance in General

Question One: On Temperance in Itself

S. Th. II-II, q. 141.

936. Temperance is a virtue because, by inclining toward the good of reason, it renders man perfect: for it places the moderation or tempering which reason makes, that is, the order of reason in the passions, and indeed in those which are more difficult to restrain; but it is the good of man that his appetite be subjected to reason, and that this be done in the more difficult matter is best (a. 1).

It is a special virtue, because it has a special object: the principal pleasures of touch to be moderated by reason, which most greatly entice man (a. 2). Yet it is not perfectly one, for it is divided into several species.

937. The object of temperance is the principal pleasures of touch - as to be moderated and regulated according to the order of reason toward the due end - under the account of honesty or special rectitude which shines forth in it. In this one object three things are distinguished:

1. The material object which temperance attains is the principal pleasures of touch, namely, the pleasures of food and drink for the preservation of the individual, and the pleasures of venereal things for the preservation of the human species.[1] This object can be distinguished as proximate and remote: the remote object is foods, drinks, venereal acts, to which the pleasures are referred; the proximate object is concupiscences of pleasures and the pleasures which follow operations more natural and more necessary, and therefore before others are most vehement.[2] Hence a special virtue is required for moderating them. But other pleasures of touch, or pleasures of the other senses, even of taste, which is nearer to touch, of themselves are the matter of virtues annexed to temperance, and do not pertain to temperance strictly so called, except insofar as they are ordained to those principal pleasures, both that the acts to which they are connected may be better known, and that they may be more pleasurable, for example, contact with soft and tender flesh, the beauty and adornment of a woman, a delectable taste in food and odor, etc.

[1] The pleasure of these things is according to the sense of touch, because their use is in touching.

[2] In the former, concerning food, there is greater necessity and lesser inclination; in the latter, venereal things, lesser necessity and greater inclination.

2. The primary material object which temperance principally and by reason of itself attains is precisely that these pleasures are to be moderated according to the order of reason, or regulated so that they may be done for the due end.

3. The formal object or proximate motive on account of which temperance exists is the special rectitude proper to this order toward the due end: for temperance moderates pleasures because this is right and honest (a. 4 and 5).

938. Fundamental principle. The due end according to which the pleasures of touch are to be regulated is the necessity of the present life, both absolute necessity, without which the individual or the species cannot be preserved, and necessity of fittingness, without which, all circumstances of person, body, health, office, dignity, wealth, honesty, received usage, fittingness of those with whom one must live, etc., being attended to, it cannot fittingly be done. St. Thomas shows this:

"The good of moral virtue chiefly consists in the order of reason... But the principal order of reason consists in this, that some things be ordered to an end: and in this order the good of reason chiefly

consists; for good has the account of end, and the end itself is the rule of those things which are for the end. But all pleasurable things which come into the use of man are ordered to some necessity of this life as to an end. And therefore temperance takes the necessity of this life as the rule of the pleasurable things which it uses, namely, so that it uses them only as much as the necessity of this life requires" (a. 6).

"The necessity of human life can be attended to in two ways: in one way according as that is called necessary without which a thing can in no way exist, as food is necessary to an animal; in another way according as that is called necessary without which a thing cannot fittingly exist. But temperance attends not only to the first necessity, but also to the second... But other things which are not necessary for this can have themselves in two ways. For some are impediments to health or good disposition; and the temperate man in no way uses these: for this would be a sin against temperance. But some are not impediments to these; and he uses these moderately according to place and time and the fittingness of those with whom he lives..." (ad 2).

Therefore "temperance regards necessity with respect to the fittingness of life, which indeed is attended to not only according to the fittingness of the body, but also according to the fittingness of exterior things, for example, riches and offices, and much more according to the fittingness of honesty. And therefore the Philosopher... adds that in the pleasurable things which temperance uses, it considers not only that they not be impeditive of health and good bodily disposition, but also that they not be beyond the good, that is, against honesty, and that they not be above substance, that is, above the capacity of riches. And Augustine says... that the temperate man regards not only the necessity of this life, but also of offices" (ad 3).

Hence: 1) The proximate end of the pleasures of touch, and the proper rule of temperance, is taken from the necessities of this life. And because the end of venereal acts is one thing, and the end of foods and drinks another, so also the rule is diverse.

a) The rule of temperance, insofar as it is concerned with venereal things, is to abstain from them altogether outside marriage; but in marriage to use them only for the sake of an act which of itself is capable of generating offspring, because generation is the end of the use of venereal things.

b) But the rule of temperance, insofar as it is concerned with food and drink, is good bodily health and a suitable disposition of the mind for its functions, and therefore neither more nor less should be taken than for this end.

Hence it is against temperance a) positively: to place an impediment or to harm the end, namely, due generation of offspring and good health and the functions of the mind; b) negatively: to act for pleasure and delight alone exclusively, or principally on account of it, not on account of the honest good:[3] pleasure is not a motive of itself conforming to reason and honest, but common to beasts; nor are food or venereal acts of themselves from their nature instituted for the sake of pleasure, but pleasure for the sake of them. We are not indeed forbidden to seek pleasure, but temperance demands that this be desired not for its own sake, but for the due end, and in the manner in which it ought, and consequently without any excess just as without defect (I, n. 158).

[3] Hence Innocent XI condemned propositions under nn. 8 and 9: "To eat and drink even to satiety for pleasure alone is not a sin, provided it does not harm health; because the natural appetite can licitly enjoy its acts." - "The work of marriage exercised for pleasure alone is wholly without any fault and venial defect."

2. Yet the proximate end must be subordinated to the ultimate end, which in fact is supernatural, and the proper rule of temperance to higher rules, so that pleasures do not impede the spiritual and supernatural good of the soul, but so that one abstains from them as much as is necessary or useful for the supernatural end.

Thus, for example, for totally subjecting the body and vicious propensities, for better exercising Christian virtues, for greater conformity with Christ, for satisfying for sins, for more freely devoting oneself wholly to God and divine things, or for another supernatural end. Hence natural and infused temperance differ in species: for infused temperance has a higher end, a higher motive known by faith, or also a diverse mean, namely, conformity to the higher, divine rule; as was explained in the treatise on Virtues in general (I, n. 628).

939. Temperance is a cardinal virtue, because it is concerned with a principal and more difficult matter: concupiscences more difficult to moderate; yet it is not the greatest: for justice and fortitude directly pertain to the common good, temperance to the good of one; prudence to the good of all the virtues; the theological virtues to the divine good (a. 7 and 8; cf. treatise on Virtues I, n. 599 and 608).

*940. Corollaries.** - 1. Merely spiritual pleasures[4] are not the object of temperance, because they do not move the sensitive appetite so vehemently against reason; indeed of themselves they are according to reason, whence they are not to be restrained except accidentally, insofar as one withdraws from another which is more powerful and more due (a. 4, ad 4).

[4] Decorum and beauty, although they agree with any virtue, are nevertheless excellently attributed to temperance: a) by reason of form, by force of the reason which is indicated by the name of temperance: for it makes a moderate and fitting proportion, in which beauty consists; b) by reason of matter: for it restrains those things which are lower in man, agreeing with him according to bestial nature, by which man is especially apt to be defiled; hence beauty is especially attributed to temperance, which chiefly removes the ugliness of man1 (a. 2, ad 3).

1. It is not, however, required that the honest end be explicitly intended, but it suffices implicitly and virtually in the object which appears honest: for he who wills an act which he knows to be conformable to reason thereby wills implicitly and virtually the honest good, the due end.

2. Merely spiritual, by reason of subject and object at once, so that they are in the mind and concerning a spiritual thing.

1. Cf. q. 145, a. 2.

Question Two: On the Vices Opposed to Temperance

S. Th. II-II, q. 142.

941. To temperance by defect in pleasure there is opposed insensibility or stupor. - Insensibility is a very rare vice which turns away from pleasures of touch in an undue way, so that one does not will to use them when, where, how, how much, etc., right reason dictates they are to be used.

It is a sin and vice, because it is contrary to the natural order and to the Creator, who set pleasures upon actions necessary for the life of man; whence right reason dictates that these are to be used as much as is necessary for preserving human life and the power for due offices, whether of the individual or of the species. Of itself it is venial; but mortal if from it someone omits something to

which he is held under mortal sin, such as to render the conjugal debt, to take food necessary for life, etc.

It is no sin to abstain from these for an honest end, for example, health, penance, contemplation of divine things, etc., but according to right reason and without excess, so that it does not harm the fulfillment of duties (a. 1).

942. To temperance by excess in pleasure there is opposed intemperance. - Intemperance is a vice by which someone seeks pleasures of touch in an undue way and beyond measure, namely, where, when, how, etc., right reason does not dictate or more than it dictates (a. 2).

It is a sin, because it is opposed to virtue, insofar as it exceeds the mean of reason which temperance establishes in pleasures. Indeed it is most disgraceful: a) because it is concerned with pleasures common to us and the beasts, and therefore is most repugnant to the excellence of man; b) because in those pleasures less appears of the light of reason from which the beauty of virtue comes, and therefore it is more repugnant to the beauty of man (a. 4).[1]

[1] Cf. q. 145, a. 2.

943. Observation. - Intemperance is a graver sin than timidity, because it is more voluntary (a. 3), or than insensibility, because it recedes more from temperance.

Question Three: On the Parts of Temperance

S. Th. II-II, q. 143, 144, 145, 160.

944. The integral parts of temperance, or the dispositions or conditions without which the act of temperance is not perfect, are two:

1. Shamefacedness (pudeur; schaamte), which is a certain laudable passion of fear by which someone flees the turpitude contrary to temperance, which consists in this, that someone seeks pleasure in those things which are lowest in man and agree with him according to bestial nature, where there is nothing of the light of reason.

2. Special honesty (eerbaarheid), by which someone loves the beauty or decorum of temperance, which it has from this, that reason restrains the bestial concupiscences, which are most base, and reduces them to due proportion.

For the whole office of temperance consists in two things: in flight from turpitude and in love of decorum.

Hence it is especially fitting that they be cultivated, especially in the education of children: for they are the guardians of sobriety and chastity.[1]

[1] Shamefacedness is fear of reproach. It is an imperfection consisting in fear of blame on account of those things which are held by men as base, for example, concerning poverty, defect of hair, etc.: thus it is not a virtue. But if it is according to reason, because someone has committed a base thing or because he fears lest something truly base happen to him, then it is truly good and a disposition to virtue, because it casts horror of turpitude into one; yet it is not a virtue, because one who is perfect does not apprehend what is base as possible for himself or as though difficult to avoid. Hence, according to St. Thomas, it is not a part entering the essence of virtue, but disposing itself toward it: it lays the foundations of temperance. - But honesty is a condition of temperance.

945. The subjective parts or species of temperance are three. - For temperance is concerned with pleasures of touch, of which some are ordained to nourishment, and in these, with respect to food and common drink, there is abstinence, and with respect to intoxicating drink there is sobriety; some are ordained to the generative power, and concerning these there is chastity, which is also concerned with the pleasure of the act of generation itself, to which pudicity is reduced, which properly concerns certain surrounding pleasures.

To these three vices of intemperance are opposed: gluttony - drunkenness - lust, to which is reduced immodesty, which is imperfect lust.

946. The potential parts of temperance are annexed habits which are concerned with a less principal or secondary matter, namely, pleasures less difficult to moderate. By a general name they are called modesty.

Modesty is named from mode or moderation; therefore it is a virtue moderative of those things which have a middling difficulty. For where there is a special virtue concerning something greatest, there must be virtues concerning those things which hold themselves moderately, because human life ought to be regulated by virtue as to all things. Temperance applies moderation concerning the more difficult pleasures of touch; therefore there must be a virtue which applies moderation in other things which are not so difficult to moderate, especially concerning smallest things, such as gestures, garments, movements of the body, and exterior things. Therefore in a general way "it is a virtue by which someone contains himself within the mode and limits of his state, character, and fortune, as to internal movements, external gestures, and every apparatus of his things"; or, a moderation by which someone, content with his own measure, restrains his internal and external movements and every apparatus of his things within the measure congruent to him.

There are several modesties, of which the principal ones have obtained a special name. For according to right reason there can be tempered:

1. pleasures in the internal movements of the soul:

a) the movement of the will stirred by the impulse of passion, concerning pleasures of touch, and this continence moderates, from which it comes about that although man suffers immoderate concupiscences, nevertheless the will is not conquered;

b) or the movement of anger tending both toward vengeance, which meekness moderates, and toward external punishment, concerning which clemency is exercised;

c) or the movement of hope (and daring) tending toward a certain excellence, and this humility moderates;

d) or the movement of desire tending toward knowledge, and this studiousness moderates;

2. pleasures in exterior movements, which modesty of exterior movements moderates, so that they may be done decently and honestly:

a) either in those things which are done seriously, to which eutaxia pertains, which includes decency through fittingness to the agent according to himself, and good ordering through fittingness toward others;

b) or in those things which are done in play, to which eutrapelia belongs, or according to others austerity;

3. pleasures in exterior things, concerning which there is modesty of external equipment or apparatus, to which are reduced thrift or self-sufficiency, and moderation and simplicity.

Second Part: On the Virtue of Abstinence

S. Th. II-II, q. 146.

947. Abstinence sometimes signifies the mere withdrawal of food, and thus it is something indifferent, which from circumstance can become good or evil, for example, if it is done from vanity; but here it is taken insofar as it is regulated by reason, and thus it is a virtue moderating according to the dictate of reason the concupiscences and pleasures, or the affection and use, of foods, that is, of common food and drink, "so that man abstains from foods as he ought according to the fittingness of the men with whom he lives, and of his own person, and according to the necessity of his health" (a. 1).

It is a virtue, because it conserves the good of reason against the impetus of passions, namely, against the pleasures of foods. To moderate foods solely on account of health belongs to the art of medicine; to moderate the passions and pleasures of foods on account of the good of reason or the moral good belongs to temperance. - It is a special virtue: for where there is a special impediment to the good of reason, there must be a special virtue for conserving it. But the pleasures of foods are apt to draw man away from the good of reason, both on account of their greatness and on account of the necessity of foods, which man needs for the preservation of life, which man most greatly desires. - It is one virtue, because it has one object: the pleasures of foods to be moderated by reason, with due measure preserved. It can be defined: a moral virtue inclining to the moderated use of foods according as right reason has determined for the moral good.

948. The act of abstinence is threefold, diverse in degree:

1. moderate use of foods, or abstinence from excess: this is altogether due and of precept, by which it comes about that pleasure in the use of foods does not repugn to reason, and therefore it rather retains the general name of temperance;

2. greater but partial abstinence, from a motive of virtue, by which man's appetite inclines less toward food and deprives itself of a certain quality of food, for example, meats, either always or for a time: it is abstinence in a determined degree, greater than moral abstinence demands, which degree nevertheless can be prescribed by positive law: it is called abstinence in the strict sense (abstinence; onthouding);

3. perfect or total abstinence according to quantity, namely, from all food, but for a time: it is called fasting (jeune; vasten).

Hence we shall speak: 1. on fasting according to itself; 2. on the precept of ecclesiastical fasting; 3. on the precept of abstinence from meats; 4. on the subject of fasting; 5. on the violation of fasting; 6. on gluttony.

Question One: On Fasting According to Itself

S. Th. II-II, q. 147, a. 1, 2, 3, 6.

949. Notion of fasting. - Fasting is one thing when it is natural, which consists in abstinence from food and drink from some hour: this of itself is not an act of virtue; nevertheless it can be ordained to virtue, and thus it is prescribed by the Church before the reception of the Eucharist, in which case it pertains to religion because it is prescribed in reverence for the sacrament, and is customarily called eucharistic. But the fasting concerning which we speak in the present matter can be called moral, and consists in abstinence from food and drink according to reason, that is, according to the proper ends of the virtue of abstinence, whether on account of human reasons, for example, on account of bodily health, a good disposition of the mind for studying, and then it is philosophical, or on account of supernatural reasons, for example, on account of restraining concupiscence and subjection of the body to the mind so that we may better exercise supernatural virtue, and then it is Christian. This, having been prescribed by the Church according to a special mode to be observed at a determined time, is then called ecclesiastical.

Hence moralists customarily distinguish threefold fasting: eucharistic - moral - ecclesiastical.

950. Fasting is an act of virtue, because it is ordained to some honest good, namely, 1) to repressing concupiscences of the flesh (II Cor. VI, 5-6); 2) to this, that the mind may be more freely elevated to contemplating sublime things (Dan. X); 3) to satisfying for sins (Joel II, 12); moreover it has the power of impetrating spiritual and temporal benefits, especially when it is joined to prayer. Hence the Church praises God who "by bodily fasting represses vices, elevates the mind, grants virtue and rewards"; and the Scriptures and Fathers, by the warnings and examples of Christ, the Apostles, and the first faithful, commend fasting (Acts XIII, 3; XIV, 22; II Cor. VI, 5; Joel II, 12; Aug., 7 serm. on fasting; Jerome, book 1 against Jovinian).

But in order that it be an act of virtue, it must be conformed to right reason, which commands two things to be observed in temperance, namely, the preservation of life and of the power for due works. Hence a) if from evil intention someone abstains, for example, so that he may die or be weakened, or be incapable of carrying out due offices, it is an act directly opposed to the virtue of temperance, and gravely so whenever notable harm or impotence for a gravely intended office follows; likewise, if it is done from the intention of singularity, it will be a venial sin of vainglory or boasting; b) if it is done not from an evil intention but from a motive of virtue, yet in such a way that someone renders himself incapable for a due work, it will be a grave or light sin as was said; but if it only shortens life or contracts infirmity without impotence for due offices, it is done licitly, provided the reason for abstaining is so great that it is equivalent to the harm brought about; otherwise illicitly.

951. Fasting is per se an act elicited by the virtue of abstinence. - For every act of virtue belongs to that virtue which establishes the mean in that matter. But fasting is concerned with foods, in which the virtue of abstinence finds the mean. Therefore.

Yet it can be done also for other ends and be commanded by other virtues: by charity, religion, penance, chastity, etc., for example, that we may love God better, that we may satisfy for sin, that we may flee lust. Hence it will not always be an act of abstinence formally, but then only if also, at least partially, it is done from the proper motive of abstinence, namely, that the mind may be more suitable for its functions and for virtue.

952. The precept of fasting. - Fasting is a useful good and therefore is not prescribed per se, but only in order to the end for which it is useful. Now the utilities of fasting enumerated can ordinarily be obtained otherwise, and therefore by the law of nature it is not prescribed absolutely for all, but only relatively for those for whom it is necessary and insofar as it is necessary for them. Yet because generally it is very useful for all, therefore the Church determined the law of nature and established the time and mode of fasting to be observed commonly by all.[1]

[1] On the history of ecclesiastical fasting, cf. Tanquerey, *Th. M. fundamentalis*, nn. 1108-1110; Prummer, *Th. M.*, II, n. 652; and Vermeersch, *Th. M.*, III, in the appendix.

Therefore ecclesiastical fasting is that which is done according to the mode prescribed by the Church, introduced by custom.

The mode consisted in three things, namely, in taking a single meal in the day, to be held at a fitting hour, without forbidden foods, namely, meats and sometimes also eggs and dairy products which have their origin from flesh. Thus it includes several very diverse parts, and indeed three principal ones: one essential, without which fasting is not even conceived, a single meal in the day; and two integral parts, the hour at which the meal is to be held, and abstinence in the meal from a certain quality of foods. From these things it is established that the precept of fasting is virtually multiple and divisible; whence one part can be prescribed by the Church without the others, for example, abstinence from flesh without fasting; and also one part can be dispensed without the others, for example, in abstinence and not in fasting, or conversely; and one must be observed when the other becomes impossible to observe.[2]

[2] Benedict XIV, *Non ambigimus*, 30 May 1741.

In fact the Church imposes abstinence upon those who are not bound to fast, as a distinct precept, so to speak; and fasting remains prescribed for those who are dispensed in abstinence. Hence the new Code of law already considers these as a twofold precept: fasting strictly so called and abstinence, so that not only is abstinence prescribed without fasting, but now sometimes fasting is prescribed without abstinence, which formerly did not happen.

953. The time of fasting is indicated by can. 1252: "The law of abstinence and fasting together is to be observed on Ash Wednesday, on Fridays and Saturdays[3] of Lent, and on the ember days, on the vigils of Pentecost, of the Mother of God assumed into heaven, of All Saints, and of the Nativity of the Lord.

[3] In Belgium, by indult, Wednesday in place of Saturday.

"The law of fasting alone is to be observed on all the remaining days of Lent.

"On Sundays or feasts of precept the law of abstinence, or of abstinence and fasting, or of fasting alone ceases, except for a feast in the time of Lent, nor are vigils anticipated."

The faculty of dispensing from the aforesaid law was granted to Ordinaries. Yet that faculty by the Decree of the Congregation of the Council of 28 January 1949 was restricted in such a way:

1. that abstinence be observed on each Friday;

2. that the law of abstinence and fasting together be observed on Ash Wednesday, on Friday of Great Week, and on the vigils of the Assumption of the Blessed Virgin Mary and of the Nativity

of Our Lord Jesus Christ.

Further, however, the obligation of ecclesiastical abstinence and fasting on the vigil of the Assumption was transferred to the vigil of the Feast of the Immaculate Conception of the Blessed Virgin Mary, on 7 December (S. C. Conc., 25 July 1957), and moreover the grace was granted of anticipating the obligation of abstinence and fasting from the twenty-fourth day, the vigil of the Nativity of Our Lord Jesus Christ, to the twenty-third day of the month of December, and this for all the faithful of the Catholic world (S. Congr. Conc., 3 Dec. 1959).

It should especially be noted that the final words of can. 1252: "likewise it ceases (the law of abstinence and fasting) on Holy Saturday after noon," no longer have force. For the liturgical order of Holy Week having been changed by decree of the S. C. of Rites (16 Nov. 1955), the law of fasting and abstinence ceases only at midnight on Holy Saturday.

Thus according to the universal law; besides this, a particular obligation can exist:

a) An Ordinary can impose a day of fasting by way of act (can. 1244, § 2).

b) Before the consecration of a church, the consecrating Pontiff and those who ask that the church be consecrated to them must fast through the day which precedes the consecration (can. 1166, § 2): thus among others the pastor, but not the people, unless the people itself had built the church at its own expense or had asked that it be consecrated to itself (S. C. C., 3 July 1909).

c) From a vow a physical or moral person can be obligated: thus, for example, at Rome fasting is to be observed on the vigil of the Purification of the Blessed Virgin Mary (S. C. C., 18 Feb. 1911; 25 Feb. 1912).

d) The constitutions and rules of a religion or approved institute can prescribe fasting for its members.

In all these things nothing was changed by the new code of law (can. 1253); whence if someone is exempted from the obligation of the universal law, he is not thereby yet exempted from a precept by which he would be bound particularly: thus, for example, religious can be bound before the twenty-first year and after the sixtieth.

Question Two: On Ecclesiastical Fasting

S. Th. II-II, q. 147, a. 6 and 7.

954. The object of ecclesiastical fasting is indicated by can. 1251: "The law of fasting prescribes that only one meal be made in the day; but it does not forbid taking some food in the morning and evening, while preserving, however, the approved custom of places concerning the quantity and quality of foods." Therefore the Code did not change the law of fasting as to the object, but ratified it, which wholly depends upon legitimate custom, just as custom introduced it and through the course of centuries somewhat modified it, and thus confirmed it. Whence it follows that the law is to be interpreted in the same way as before the Code.[1]

[1] This is very much to be noted. Many, after the Code was promulgated, were frustrated in their hope, since they were expecting from it a certain mitigation of the law. Nevertheless, desiring a milder mode of fasting, they proposed to introduce it, as may be seen in the periodical *Ami du Clerge*, 1921, and *Ephemerides Theologicae Lovanienses*, 1927, and thus they attempted to attenuate the law of fasting. But the Code confirmed the custom as it existed; after the Code was

promulgated, however, mitigation could not yet have been introduced by a new custom because sufficient time for this was lacking.

The essence of fasting, or the essential part without which fasting is not conceived, consists in this, that in the day, that is, from midnight to midnight, only one complete meal is taken, whose quantity is not determined; whence if it exceeds the limits of temperance, someone can sin against that virtue and wholly or partially lose the merit of fasting, yet he will not sin against the precept of ecclesiastical fasting.

"Fasting," says St. Thomas, a. 6, "is instituted by the Church for restraining concupiscence, yet so that nature be preserved. But for this one meal seems to suffice, by which man can satisfy nature, and yet it takes something away from concupiscence, by diminishing the times of eating. And therefore by the moderation of the Church it has been established that those fasting should eat once in the day."

But this can be violated in three ways: 1) by taking several meals or several parts of a meal; 2) by dividing the meal, or interrupting it for a notable time, because thus there would be several meals and not one morally continuous meal; 3) by prolonging the meal for a long time, because thus it would be virtually multiplied.

Still less can that be admitted which sometimes they profess, not indeed in writing but orally: that the law of fasting no longer obliges because only a few observe it. But this reason is not sufficient, because the law has not yet become harmful or contrary to reason.

They imagine for themselves another law which they would wish to be held more conformable to reason; but the old law has not yet been abolished. Indeed each year, on the occasion of the Lenten mandate, in the several dioceses and churches the law is customarily inculcated again; and the very dispensations which the faithful ask suppose the persistence of the law. These things therefore prevent a custom contrary to law from being able to be introduced. Therefore it is not licit to interpret the law of fasting otherwise than was received before the Code. - But if the ecclesiastical law were too much attenuated, the practice of penance among the faithful would be reduced to nothing.

*955. The time through which the meal can last** is assigned differently by different men; but not without fault will it be prolonged beyond two continuous hours, unless there is a reasonable cause (for example, the custom of receiving friends in this way); or, as some say, if afterward only sweetmeats or altogether light foods (dessert) are set forth, especially if the little evening meal is omitted, but this can be done only rarely.

Interruption: 1) if it is very brief, for example, of one quarter of an hour or morally within half an hour, even without a just cause, it does not prevent the eating from being morally continuous, even if it is interrupted with the intention of continuing elsewhere, in an inn. Indeed, if someone has already finished with the intention of eating no more, he can return, for example, if the table companions are still eating, or if food is set forth which he did not know of, because intention alone, although it can multiply human acts, nevertheless cannot make the eating not one but twofold: for eating is an external fact, and all consider as one eating the fact of eating in several turns not much interrupted.

2. If it is brief or rather notable, for example, of half an hour or within an hour, and there is an intention of returning and a proportionate motive, it does not prevent the eating from being

morally one, because the motive sufficiently unites the two parts; on the contrary if there is no reason, because the intention of man alone does not suffice to unite two eatings.

3. If it is truly notable, that is, of one hour or, according to others, morally beyond an hour, it always constitutes two meals; whence if someone had to interrupt the meal on account of a grave reason and was not sufficiently refreshed, he will be excused from the law of the single meal but will not fast, unless in the other part he takes a small matter of food.

956. The hour of the meal according to present-day custom is about noon.[2] But theologians dispute whether it is of the substance of fasting and an integral part of it, or only a certain accidental circumstance. Many more recent men probably deny the former, because the sole substance of fasting, at least today, is one meal; whence they say the hour is prescribed only under light obligation, as for the divine office, and therefore even notable anticipation is never mortal.

[2] Thus from the fourteenth century. Anciently it was in the evening; afterward at the ninth hour (that is, 3 p.m.), and this usage still existed in the time of St. Thomas, who writes of it, a. 7: "because then especially the nature of the human body needs to be helped against the exterior heat of the air, lest the humors within be burned."

St. Alphonsus held this opinion as more probable, but afterward he retracted it altogether, because in the Middle Ages the hour was of the substance of fasting, as is had from canon law (cap. *Solent*, 50, de consecr. dist. 1): "In Lent they are in no way to be judged to fast who have eaten before the evening office is celebrated," and from St. Thomas (IV Sent., d. 15, q. 3, a. 4, ad 3): "He who too notably anticipates breaks the fast"; which would not be the case if only an accidental circumstance obligating under light obligation were violated. But now it is not proved that present-day custom has derogated from the ancient precept, or at least this is not certain; and therefore the precept possesses against liberty. Yet this last does not certainly conclude, because according to the doctrine of the Probabilists it suffices that the custom be solidly probable.

Nevertheless the hour seems to pertain to the substance of fasting: a) because the greater and principal difficulty of fasting consists precisely in this, that someone must wait a long time for the meal, which once taken, the hour of collation is already much more easily awaited; b) because the faithful think themselves obligated to this under grave obligation, nor would they judge that man to fast who took the meal at the eighth or ninth hour, whence custom does not seem to have abrogated this. Therefore the hour seems to pertain to the substance of fasting, and to conduce much to the end of the law, the mortification of the flesh, and therefore it is prescribed under grave obligation; and truly notable anticipation, because it is much contrary to this end, of itself is mortal.

957. Outside the meal all food is of itself prohibited, namely, everything which of itself or principally is ordained to nourishing the body, whether it is taken by eating, drinking, or sipping, such as porridge, milk,[3] honey, broth, extracts of flesh, oil, sugar, fruits, juice of fruits pressed by the teeth, unless however they are mixed in a small quantity with drink, because then they are so liquefied that they seem to lose their proper nature and by the estimation of men are judged true drinks, for example, light lemonade, sugared water,[4] etc.

[3] Skimmed milk in some places is held as a drink, for example, among the Tyrolese.

[4] Also chocolate, even if it is prepared not with milk but with water, is not a drink, since it does not principally serve to extinguish thirst, but is food because it rather nourishes. But in certain southern regions custom considers light chocolate as a medicine, insofar as it helps to carry food and to strengthen the stomach, as Benedict XIV and St. Alphonsus testify.

According to that custom it can be used in a small quantity, which authors measure at one and a half ounces per day diluted in four or five ounces of water.

But these are not prohibited:

a) drinks or liquids, which are not ordained of themselves to nourishing the body, but to aiding the digestion of food and extinguishing thirst, for example, water, cider, beer, wine, tea, coffee: for nourishment, if present, accompanies accidentally, even if the liquid is frozen, because once put into the mouth it immediately liquefies and because freezing does not change the nature of the thing. Hence one who drinks immoderately can sin against the virtue of temperance and lose the merit of fasting, yet he does not sin against the precept of fasting;

b) medicines which are principally ordained to medication of the body or to promoting the operation of the physician;

c) electuaries prepared from chosen things, such as sugar, juniper, lemon (for example, jelly, preserves, candies, fondants, pastilles, jujube paste, almonds, conserves), if they are taken in the manner of medicine and in a moderate quantity (half an ounce or a little more in the day), for example, for the digestion of food, strengthening the stomach, removing odor of the mouth, preserving the voice, or lest drink harm, or lest strength fail when someone must defer dinner beyond the common hour. But if it is done in a great quantity, accidentally they will have the account of nourishment and will be taken in the manner of food in fraud of the law (a. 6, ad 3).

958. Custom introduced the collation and the little morsel, besides drink, medicine, and electuaries, concerning which it has been said.

A. From the time when the meal began to be taken about noon, there was introduced the little supper or collation, that is, the little meal which is taken toward evening from lighter foods. Now:

1. Their quantity seems of itself to be determined relatively to the condition of the person and occupations, the duration of the fast, and other circumstances; whence many authors indicate one-fifth or one-fourth part of a complete meal for such a person in such circumstances.1 Others, even St. Alphonsus, say that this rule is obscure and liable to scruples, and therefore determine the absolute quantity, and several allow up to eight ounces even for those who are thus refreshed to satiety (which is a sign of a weak stomach), and permit ten ounces to Germans and to those who have a German stomach, or for whom it is necessary for carrying out offices. The first opinion is in itself more reasonable; but the other, on account of custom, in fact is now practically certain (can. 1251). But now some would wish the quantity to be determined proportionally to the condition of the person, but far beyond the eight or ten ounces which St. Alphonsus generally permits: thus they are not choosing either opinion, but combining both; something which until now no one dared to put forth. Wherefore such a practice could not be introduced by private authority, nor by the power of a bishop or of a particular council, but only by the consent of the Holy See, or of a power delegated by it for this.

But an ounce is understood as the Roman ounce, which is worth 27-28 grams, and is the twelfth part of the Roman pound, which is worth about 325-330 grams.2

2. The quality of food licit of itself in the collation is no other than lighter Lenten food which does not nourish much, such as bread, fruits, legumes or vegetables, cakes, herbs, potatoes, rice, sweet things (jellies, preserves), etc.; in fact, however, it is to be determined according to the various customs of places:3 for whatever foods here or there are in use, even one or two eggs as in Germany, or broth; but nowhere flesh properly so called.4 In Belgium eggs and broth are not in use, as is established from the Lenten mandate, but as to part of the collation stronger foods are permitted, such as milk, cheese, small fish, or even a moderate quantity, namely, two or three ounces, of larger fish.

In the number of ounces, however, drink is not to be counted, unless a solid substance (rice, flour, legumes, bread, vermicelli, beans, pastilles, macaroni) is cooked with liquid (wine, beer, water), because 1) by cooking and fermentation the food by the estimation of men is judged to acquire another nature, and the drink with it becomes one so that it could not easily be separated from it; 2) the whole is judged and called food, nor is one part drunk, but all is eaten; moreover 3) no custom exists of increasing the number of ounces. - Nor does it stand in the way that the whole does not nourish more. For a) we will be more satiated; b) eight ounces of nutritive quantity are not granted, otherwise by chemical analysis we could also subtract the quantity of water from food (bread, potatoes), but eight ounces of that which according to the estimation of men is food are granted; c) just as food mixed with liquid in a small quantity is judged drink, so a certain quantity of drink mixed with food is judged food. This opinion seems solidly proved and is generally admitted by all, with a few excepted.5

According to some, however, even St. Alphonsus, it is probably licit: 1) to soak food in water or wine while someone eats, and immediately bring the food to the mouth, because then fermentation does not intervene and the liquid serves only as the vehicle of the food, and it is still generally judged drink; likewise 2) to take broth from herbs cooked with water and vinegar, or oil, or cooked wine (provided that the vinegar and oil, which are food, are computed in the weight): for custom permits this, and besides these do not become something one as in the first case, and the whole can be taken by drinking.

B. A little morsel of bread taken in the morning is also permitted. The S. Penitentiary, 21 Nov. 1843, only declared for the Canadian region that those who follow such a usage are not to be disturbed, but today it has now been introduced everywhere by custom, which custom was consecrated by can. 1251. Bread, chocolate, or another lighter food not prohibited can be taken, indeed, according to some, some milk, but this certainly has not been introduced everywhere since it is not permitted everywhere even in the collation; the quantity, drink being excluded, cannot exceed two ounces, according to the received custom.

For the quality, the custom of the region seems rather to be looked at by us; thus in southern regions a drink of chocolate is in use, in northern regions rather bread.

1. Lehmkuhl notes, *Th. M.* I, n. 1462, that no one indicates one-third part; in fact, however, eight ounces will sometimes be one-third part of a complete meal, if indeed the ordinary meal does not extend beyond two pounds.

2. Genicot seems to determine the ounce altogether accurately at 31.25 grams; but the calculation is false. He divided our German pound by sixteen, because it contains about so many ounces (500:16 = 31.25). But a) the question is not of our pound, but of the Roman, which is worth not 375 but about 325 grams; b) even our pound is not worth 500 grams but a little less. - Others have the ounce as 30 grams; but this is said approximately.

3. Vermeersch says, *Th. M.* III, n. 873: "Concerning quality a fairly great variety of usage is discerned. In a few places eggs themselves are permitted; in many at least dairy products are admitted; in others, for example, in Italy, only fasting foods; in Spain, if you except one or another diocese in the northern part, even fish or little fish are prohibited. And because approved custom is confirmed, therefore stricter abstinence is to be observed by all in Italy and in many places in the morning and evening than in the principal meal, where eggs are always permitted."

4. Their use even after the Code is illicit, as we know from the response of the president of the Commission of Interpretation, 29 Oct. 1919.

5. Namely, Berardi, Noldin, and Genicot, the last of whom, *Th. M.* I, n. 437, II, has these things: "A chemical change is to be considered as though the beginning of digestion, because it does not differ from that change which is effected at the beginning of digestion. But from this the nutritive matter is in no way increased. The quantity indeed of this soaked bread can create greater satiety than the same portion of dry bread, although even this difference is not so great (Capellmann, *Med. past.*, p. 95). Nor does it seem equitable to permit the richer man to dip eight ounces of bread in wine while he eats them (which St. Alphonsus thinks licit), but to prohibit the poor man from cooking the same quantity in water. Indeed, if recourse is had to the common estimation and the end of the law, by which reasons Lehmkuhl (n. 1462) more fully supports the opinion of St. Alphonsus, that poor man, at least in our regions, will be judged to fast and to exercise mortification better than the rich man using wine." - But no one of the faithful, as I think, holds cooking as the beginning of digestion. - Moreover, one cannot argue logically from a probable opinion to overthrow that which is certain or more probable: St. Alphonsus thinks it probably licit to dip food into wine; but he holds as certain that the cooking of which there is question is not licit. But if the argument from parity were valid, one would have to conclude not that cooking is licit, but that dipping food into wine is also illicit. - Finally, a poor man can dip food into drink (water, coffee) just as a rich man can: in this there is no difference, but the whole difference is from the fact that the poor man does not have wine. But if he mixes food with drink, he will not fast better than a rich man using wine, although he will observe mortification better; but this is outside the question.

959. What of delaying, anticipating, and interverting the meal. - A. Delay of the meal, even without cause, is never a sin, because it conduces better to the end of fasting.

B. Anticipation of half an hour relative to the customary hour or, as St. Alphonsus says, within an hour relative to noon (11 a.m.) is slight and is judged nothing, and therefore is licit without cause. - Anticipation of one hour relative to the customary hour, or even within two hours relative to noon (after 10 a.m.), is rather notable and is judged small, and therefore is illicit unless there is a

reasonable slight cause, such as the custom of then taking dinner, courtesy, for example, the arrival of a guest who must leave sooner, etc. - Anticipation of one hour beyond the licit time (to 10 a.m.) according to several, among whom is St. Alphonsus, is judged notable; that which notably exceeds two hours relative to noon (to 9:30 a.m.) is certainly truly notable and great; and therefore it is illicit unless there is a rather grave reasonable cause, and one graver to the extent that the anticipation is more notable.

The cause can be more or less grave: a necessary journey to be undertaken, a grave business to be performed, for example, necessity of preaching, teaching, rising very early, weakness of constitution, etc.

But if for someone, at least ordinarily, it would be too difficult to fast unless he notably anticipated the hour, he would not be bound to fast: for the faithful so judge, and rightly, because no one is bound, at least habitually, to observe the law in an extraordinary way and in a way which from its nature includes inconvenience.

C. Interversion between the meal and collation is not forbidden, as can. 1251, § 2 says: "Nor is it forbidden... to interchange the evening meal with dinner." Hence it is licit a) if the hours almost agree; b) probably if the hours do not altogether differ, and therefore, if there exists a reasonable cause for interversion (for example, the reason of studies), those are not to be disturbed who take the little meal at the eleventh hour or between the tenth and eleventh hour in the morning and defer dinner to the fifth or even sixth hour in the evening (S. Poen., 10 Jan. 1834; S. Off., 29 July 1837; S. Poen., 17 Sept. 1862); indeed c) according to a few, if the hours differ much, and thus the collation is licitly taken in the morning, the meal at noon, and the little morsel in the evening, because the whole substance of fasting is preserved.

Yet this cannot be composed with the opinion of St. Thomas according to which the hour is of the substance of fasting, and obliges under grave obligation; and therefore it is better said that for this there is required a rather grave cause, for example, rather great weakness, necessity of studies or business; indeed, if for someone, at least ordinarily, it would be too difficult to fast otherwise, he would not be bound to it.

This last also seems true in the opinion of others, because although the mode of interversion today is permitted, it is nevertheless extraordinary, against the customary mode, and as it were a privilege which no one is bound to use; indeed of itself it includes a great inconvenience.

960. Corollary. - He who in the morning has taken breakfast, whether culpably or inculpably, is bound to fulfill the law as far as he can; whence 1) if the breakfast was very small, slightly exceeding the little morsel and not equivalent to a small collation, he is bound to fast; 2) if it was rather large: a) if it is equivalent at least to a small collation, for example, if it is at least four ounces, or does not much exceed a licit collation, he can take nothing except dinner and the little morsel; b) if it much exceeds a licit collation or even is equivalent to dinner, he can take only the collation and the little morsel. For in these two cases, the principal part of fasting can still be observed, namely, that a single meal be taken; whence he is obligated to this, unless there would be a rather great inconvenience, in which case he would not be bound to fast in any way.

Question Three: On the Precept of Abstinence from Meats

S. Th. II-II, q. 147, a. 8.

961. The ecclesiastical law of abstinence prohibits the eating of meats and broth from meats; but not eggs, dairy products, and any condiments, even from animal fat (can. 1250). - The reason is assigned by St. Thomas: "Fasting was instituted by the Church for repressing the concupiscences of the flesh, which are concupiscences of touch concerning foods and sexual matters. And therefore the Church forbade to those who fast those foods which both give the palate the greatest delight and also very greatly move to sexual matters. Such are the meats of animals living on land and breathing, and the things which come from them, as dairy products from animals living on land, and eggs from birds. For since such things are more conformed to the human body, they give greater pleasure and contribute more nourishment to the human body; and thus from their eating more superfluity remains to be converted into seminal matter, the multiplication of which is the greatest incitement to lust. And therefore the Church established that those who fast especially abstain from these foods."

By meats are understood the flesh of animals which live on land, or the flesh of mammals and birds, which have warm blood and are formed on land; by contrast, there are not included fish and other aquatic animals, or those which have cold blood, as crustaceans, sea urchins, mollusks, also reptiles and amphibians, and likewise insects. Hence those animals are regarded as fish which, by the estimation of men, are judged as such; for example, whales, otters, beavers, seals, walruses. But aquatic birds, which are not born or live except on the water, such as wild ducks, coots, teals, mergansers, cormorants, are not permitted, unless a special custom excuses, as in Belgium, in some places, for teals and coots.

962. Under meats there are comprehended:

1. All things which belong as integral or constituent parts to the animal, such as cartilage, nerves, cerebral parts, blood, the marrow of bones, lard, fat, grease;

2. The juice of meats, and broth from flesh, in which are subtler parts of meat, drawn out from it by boiling and diluted, commonly called in French *bouillon*, in Dutch *sop*;

3. Foods seasoned with meat.

On the contrary, these are not prohibited:

1. Condiments which are added to food only to make it tastier and easier to cook or prepare: those made from eggs or dairy products, from butter or margarine, from animal fat or lard, also if, after the fat has been extracted by frying, some minute fragments remain, because they are still regarded as only part of the condiment.

2. Extracts of meat, insofar as they are not used as food but as medicine, according to what was said above, n. 957.

In practice, concerning prepared condiments whose origin is uncertain, note:

a) Certainly prohibited are extracts of meat which are still truly the juice of meat, such as the extract of Liebig and similar products.

b) They are permitted if they are certainly prepared only from herbs, or if there remain in them only the residues of salt destined to make a liquid tasty.

c) If there is practical doubt of fact whether they are made from meat, the doubt must be solved before use; if it cannot be solved, one must abstain. Nor is the assertion of the inventor or producer sufficient if he does not manifest the process by which it is prepared. But if there is a speculative or legal doubt whether the thing is to be counted as meat or as fish, it can be taken.

d) Gelatin is licit if made from fish; perhaps also if made from the bones of calves; but it is illicit if it is made from meat broth.

e) As to peptone, some products are probably licit; but peptone properly so called, made from meats, is prohibited. Genicot and Vermeersch permit it, because it lacks the delight and taste of meat and, as they think, is counted among medicines. But this does not satisfy. For if one asks what the Church prohibits, the origin is looked at, not the taste; and peptone is derived from meats. Nor does the special name suffice for saying that it is no longer meat, since even broth and extracts have special names and nevertheless are prohibited. Hence with Damen we think it is not permitted.[1]

[1] Aertnijs-Damen, *Th. M.* I, n. 1041. Thus also Antonelli, *Medicina Pastoralis*, II, n. 868; Marc, *Th. M.* I, n. 1227; Prummer, *Th. M.* II, n. 663; Lehmkuhl, *Th. M.* I, n. 1458.

963. The time of abstinence. - According to can. 1252, abstinence from meats is prescribed:

1. On all Fridays, in memory of the Passion and death of the Lord, unless outside Lent there occurs a feast of precept in that place where the precept is observed; also in Belgium the feast of the Circumcision of the Lord, where it is not a feast of precept.

2. On Wednesday, Friday, and Saturday of the Ember Days.

3. On Ash Wednesday and all Saturdays of Lent; in some places, as in Belgium, by special indult, on Wednesday instead of Saturday.

4. On the vigils of the Nativity, Pentecost, the Assumption of the Blessed Virgin Mary into heaven, and All Saints, unless they fall on Sunday; for then they are no longer anticipated.

Yet many Ordinaries use the faculties granted to them for dispensing, so that days of abstinence are each Friday of the year, Ash Wednesday, Good Friday, the vigil of the Immaculate Conception, and December 23, as was noted above, n. 953.

5. By the decree of the Sacred Congregation of Rites, *Maxima Redemptionis*, 16 November 1955, the abstinence of Holy Saturday no longer ceases after noon, but endures until midnight.

964. Observations. - 1. Today, by the general law of the Church, these are no longer prohibited: 1) fat or grease by way of butter or condiment; 2) fruits or products of animals, namely eggs and dairy products, such as milk, butter, cheese; 3) the promiscuity or mingling of meats and fish, which from Benedict XIV was a necessary condition for the dispensation of meats on days of fasting.

Hence those who are not fasting can take these as often as they wish; but those who are fasting can take them at the meal, not at the collation or the little morsel, unless an approved custom exists.

2. Travelers in regions where abstinence is observed on Wednesday instead of Saturday must abstain on one or the other day, at their choice, scandal being removed (S. C. C., 9 February 1924).

Question Four: On the Subject of Fasting and Abstinence

S. Th. II-II, q. 147, a. 4.

965. The Code (can. 1254) defines the subject of the law of fasting and abstinence:

"§ 1. By the law of abstinence all are bound who have completed the seventh year of age.

"§ 2. By the law of fasting all are bound from the completed twenty-first year of age to the begun sixtieth."

Hence:

1. All the faithful, having the use of reason, after the completion of the seventh year, unless they are excused or dispensed, are bound by the law of abstinence.

2. All the faithful, having the habitual use of reason, after the completion of the twenty-first year and until the sixtieth year has been reached, are bound by the law of fasting, unless they are excused or dispensed. Therefore women also are bound after the fiftieth year, whatever some once taught; and before the twenty-first year one is not bound, because at that age more abundant food is needed for growth and strength.

It has now been declared, according to can. 34, § 3, that the obligation begins at midnight and terminates at midnight. Hence, if someone was born after midnight, the obligation begins after the anniversary day on which the seventh or twenty-first year is completed; and fasting ceases after the anniversary day on which the fifty-ninth year is completed, or the sixtieth begun.

Article I: On Excusing Cause, or Impotence

966. Excusing causes do not remove the obligation of the law, but impede its application in a particular case. They are reduced to impotence, which, in the present matter, can arise from necessity or great utility, from impossibility, or from piety.

In the law of fasting and abstinence there is not found physical impotence, but moral impotence, namely a sufficiently great extrinsic inconvenience accidentally connected with the observance of the law. For an intrinsic difficulty is not enough to excuse, since the law was established precisely for bearing some difficulty and for afflicting the body. This moral impotence is absolute and strict, if the law cannot be observed without sin; it is relative and broad, if from the observance there arises some great harm or inconvenience, whether material or spiritual.

And because the same arduousness is not found in abstinence and in fasting, the same inconvenience does not excuse from both.

967. From abstinence are excused:

1. The poor, if they receive meats in alms and do not have other foods with which they can be sufficiently nourished.

2. The sick, convalescents, those who have a weak stomach, women nursing infants, and others who cannot be sufficiently nourished by fasting foods. Pregnant women also, if they are weak, or if they have a great appetite for meats, can take a morsel of them.

3. Those who engage in very arduous labor, by which appetite for fasting foods is taken away, such as those who work in foundries, glassworks, ironworks, mines, or locomotives.

4. Wives, children, and servants, if they cannot obtain other foods. Yet servants must seek another master if they can do this without great inconvenience.

5. Travelers, soldiers, and guests, and others of this sort, when without grave inconvenience they cannot obtain other foods. Also if, by error, forbidden foods have been prepared, for example, for weddings, it is licit to eat them if they cannot be sent back without grave inconvenience.

968. From fasting are excused those to whom it would cause a grave and extrinsic inconvenience. Such are:

1. By reason of age, those who have not completed the twenty-first year, and those who have reached the sixtieth.

2. By reason of infirmity, the sick, convalescents, weak persons, nervous persons, pregnant women, women nursing infants; also those who cannot take sufficient food at one time, or who would suffer notable headache, dizziness, or deprivation of sleep.

3. By reason of indigence, the poor who do not have a sufficient meal, or who have only bread, legumes, and foods of little nourishment.

4. By reason of labor. Per se, only honest bodily labor morally and ordinarily incompatible with fasting excuses: such as the labors already mentioned concerning abstinence, and also those of blacksmiths, woodworkers, masons, stonecutters, tanners, shoemakers, bakers, oven workers, cooks who prepare many dishes, farmers, potters, weavers, wool-workers, fullers, porters, couriers, drivers, sailors while sailing, if they spend the greater part of the day in such labors; likewise servants who are occupied in many very arduous works. All these are excused by custom, even if they are robust and could fast.

Other bodily labors, and also intellectual labors, do not per se and always excuse, as is clear from the proposition condemned by Alexander VII:[1] but they do excuse accidentally, when from a special circumstance fasting becomes very difficult. Then dispensation can be obtained.

[1] Proposition 30 condemned by Alexander VII: "All officials who labor bodily in the republic are excused from the obligation of fasting, nor must they certify whether the labor is compatible with fasting."

5. By reason of a journey, if it is long and arduous, and causes notable fatigue, and there is a reasonable cause for undertaking it. For it is not enough to travel in any manner whatever, as is clear from the proposition condemned by Alexander VII.[2] Hence a journey on foot of four or

five leagues excuses; a shorter one also, if the road or weather is difficult. But a journey by horse or carriage does not excuse, unless it lasts several days or causes great fatigue; still less a journey by railway.

[2] Proposition 31 condemned by Alexander VII: "All those are absolutely excused from fasting who travel by riding, however they travel, even if the journey is not necessary, and even if the journey is of one day."

6. By reason of a greater good, or piety, if a more excellent work or one more pleasing to God cannot morally be performed with fasting, nor deferred to another time: such as works of mercy or religion, preaching, hearing confessions, caring for the sick, or similar works.

969. Observations. - 1. If the excusing cause is evident, one can omit the precept. If it is doubtful, one should consult the pastor, or the confessor, or the physician, provided he is not lax; and if these are lacking, a prudent and good man. If doubt still remains, dispensation is to be obtained, according to can. 15.

2. Not every annoyance excuses from the precept, but only a grave and extrinsic one. Some weakness, headache, and difficulty are inherent in fasting itself.

3. It is illicit voluntarily to place a proximate impediment which makes fasting impossible. Hence one cannot assume extraordinary labor, or undertake an arduous journey, even from devotion, unless there is a proportionate cause, for example, extraordinary profit. Yet once the impediment has been placed, fasting does not oblige; but the sin was in placing the impediment.[3]

[3] Noldin, *Th. M.* II, n. 686.

4. One is not excused from abstinence because only foods which are worse or dearer are available, unless they are so bad that they do not constitute a fitting meal, or so dear that the use of them would cause notable detriment.[4]

[4] Ibid., n. 678.

Article II: On Exempting Cause, or Dispensation

970. Exempting cause removes the obligation of the law. Besides the causes which remove the law for all, dispensation is an act of the ecclesiastical superior relaxing the law in a particular case. Generally the same one can dispense from fasting and abstinence; yet someone delegated for a particular matter could dispense from one and not from the other.

971. Who can dispense. - They can dispense:

1. The Pope, by ordinary power, for the whole Church.

2. Local Ordinaries and pastors, by quasi-ordinary power from custom confirmed by law, in singular cases and for a just cause, their subjects, individual faithful or families, even outside the territory, and in their own territory also pilgrims, from the observance of the common law of abstinence and fasting (can. 1245, § 1).

3. Ordinaries, for a special cause and on account of a great crowd of people or public health, the whole diocese or some place (ibid., § 2).

4. Superiors of exempt clerical religious, who have the same power as a pastor toward those subject to their jurisdiction (ibid., § 3).

5. Others, if they have been delegated.

Confessors per se have no power of dispensing. Yet in Belgium a yearly faculty is often granted to confessors, for individual persons, not for families, only on the occasion of confession, and for the year from Lent to Lent. Bishops also receive broader delegated faculties.

972. Observations. - 1. The Pope dispenses validly even without cause; others do not. For validity there is required a grave reason, not merely a light one, although a reason less grave than that which would excuse suffices. If the cause ceases, the dispensation ceases.

2. According to canons 50 and 85, universal dispensations from abstinence, insofar as they are given for a private benefit, are of strict interpretation, since they are odious. Therefore faculties granted in Belgium and elsewhere, except on Good Friday, to certain classes of persons in the Lenten Mandate must be interpreted strictly. Thus military men, or those similar to them, are understood as those actually serving; workers of railway vehicles are not station or administrative workers.[1]

[1] Genicot thinks that, with a general dispensation, soldiers can eat meat when they are allowed to be at home briefly, or when they habitually take food outside the barracks, because the indult is granted to all who are actually enrolled.

3. Non-ecclesiastical superiors cannot dispense. Hence a father cannot extend his own dispensation to his family because of expense. Yet if there is an excusing reason, for example, if preparing two meals would cause grave inconvenience, or if the father cannot or will not prepare other food, a simple confessor can permit meats, provided hatred of religion is absent and fasting is observed if possible; for then the reason is the impotence of the children, not the indult of the father.

4. One dispensed from fasting is not on that account dispensed from abstinence, and conversely. Hence if he is fasting, he can eat meat once in the day, and only at the meal, not at the collation; but if he is also not bound to fast, he can eat meat more often.

5. Bishops sometimes impose prayers or alms for the dispensation. Usually the dispensation is principal and absolute, with a slight commutation added. If there is a true precept, it binds only those who are exempted by a dispensation delegated by the bishop, not those who are excused or dispensed by their own superior. Prayers are light and bind lightly; multiple omissions do not coalesce into grave matter. Alms, likewise, are not grave.

Question Five: On Violation of Fasting and Abstinence

973. The law of fasting and abstinence obliges under grave obligation, because it conduces greatly to spiritual good, to mortification, and to the repression of concupiscence. Hence its violation

is mortal from its kind; nevertheless the matter can be light, unless the observance is required as a confession of faith, or for some similar reason.

1. Proposition 23 condemned by Alexander VII: "He who breaks a fast of the Church to which he is held does not sin mortally, unless from contempt or disobedience; for example, because he does not wish to subject himself to the precept."

974. Violation of fasting. - 1. The precept concerning the meal is indivisible: if it is broken by a second eating, it cannot afterward be kept or broken further in the same way; for abstaining from a third or fourth eating does not much serve mortification, nor is it prescribed.

2. It is negative, but with a limitation: for the law does not say simply, "do not eat more than once," but rather, "do not eat twice." Hence it obliges until it is broken; after it has been broken, it no longer obliges in the same way. Therefore one sins gravely if he takes a second notable quantity; but he does not sin gravely again, by reason of fasting, if after a second notable quantity already culpably taken he adds a third or fourth.

3. It is affixed to the day. Hence several light eatings coalesce into one grave nourishment; otherwise the law would be rendered vain.1

Therefore:

a) He sins gravely not only who takes a second complete meal, but also he who adds a notable quantity to the meal, the collation, and the little morsel, whether this is done at once or at several times, by increasing the collation or little morsel, or by taking something besides them.

b) A light quantity is about two ounces; a notable quantity is that which is equivalent to a light breakfast, or to half a collation, or to a notable part of a meal, or which, together with the little morsel and collation, equals half an ordinary dinner.2 Modern authors commonly judge an excess of four ounces notable; lighter foods require a greater quantity.

c) If the collation is exceeded so that it changes into a true supper, there is grave matter. Some place this in an excess of two ounces beyond what is licit; others, more benignly, in four ounces.

d) If the little morsel is doubled so that it reaches four ounces or exceeds it, it becomes equivalent to a light breakfast or a collation; for then one sins not only by anticipating the meal, but by intending and taking a collation, and so two collations are had.

e) If the meal, whether dinner or collation, is notably anticipated without proportionate cause, there is sin according to what was said above, n. 956; yet many think it venial. A brief anticipation without cause is venial; a slight one is nothing.

1. Proposition 29 condemned by Alexander VII: "On a day of fasting, he who often eats a little, even if at the end he has eaten a notable quantity, does not break the fast."

2. These things nearly agree: a light breakfast is four ounces; likewise half a collation. If an ordinary meal is two pounds, that is, twenty-four ounces, four ounces together with the little morsel and collation somewhat exceed half a not large meal. Billuart says that the quantity is

equivalent to another collation, but he admits a very small collation, a middling breakfast. Note that the meal can be larger in the robust.

975. Violation of abstinence. - 1. The law of abstinence is negative, always, and absolute, without limitation: it is not restricted to this, "do not eat meats once or twice," but says simply, "do not eat meats."

2. It is divisible: after it has been violated, it still obliges for the possible part; therefore one sins as often as, by morally interrupted acts, he takes something forbidden.

3. It is affixed to the day: therefore several light takings coalesce into grave matter; and one sins gravely whenever morally interrupted acts reach grave matter. If from the beginning he intends to reach a grave quantity through several meals, or to eat meat at all meals and does not revoke this intention, the acts are morally united, and the sin is mortal from the beginning, and graver according as the quantity is greater.

As to lightness of matter: a very slight quantity, such as when a cook tastes, is no sin, because a little of this kind is counted as nothing; much more if one tastes but does not swallow. A light quantity is venial; a grave quantity is mortal. Authors vary in assigning it. The older authors are stricter: some place the limit of light matter at an eighth of an ounce, as St. Alphonsus; others at one mouthful, or at the size of a hazelnut. This seems too rigorous. Others put it at half an ounce, as Gury. Others at one ounce, and they say that grave matter is that which morally surpasses one ounce; and this is the opinion of many recent authors. Most recent authors say that grave matter is only what approaches two ounces or reaches them; Noldin says what exceeds two ounces. But there is no sufficient reason for this.

It seems to us that almost two ounces are certainly grave matter, and one and a half ounces very probably so. For two ounces are an ordinary portion, and not a large one; one and a half ounces are notable. Besides, such a quantity nourishes notably; the faithful judge it grave; otherwise one could violate the law with a sufficiently large portion without grave sin. Nor is there reason to depart so far from the stricter judgment of the ancients. Therefore it is probable that one ounce is not grave matter; but it is more probable that matter morally surpassing one ounce, or one and a half ounces, is grave.

For broth, light extract, eggs, or dairy products, where they are prohibited in the collation or little morsel, parvity of matter is more easily admitted; nor is there grave matter unless it at least morally exceeds two ounces.

In practice, in sermons it is enough to say that meats are prohibited under grave obligation, unless the quantity is modest. In confessions, most who eat meat take more than grave matter, namely an ordinary portion, and give scandal. An exception can be made for a poor worker or farmer who takes a not very large portion of lard once in the day; this is light, and perhaps he has an excusing cause.

976. Cooperation in violation. - Those who break the law and contribute to its violation sin: namely by inducing another, by properly cooperating, as by preparing forbidden foods, or by failing to prevent violation when they can and ought. Cooperation is illicit per se; accidentally, however, it can be licit for a just cause proportioned to the evil and to the occasion, provided the violation is not

done in contempt of faith or religion, or in profession of a false sect, or in protest against obedience, and provided the violation is not intended by the cooperator.

A. Wives and daughters, if a husband or father commands forbidden foods, must first try to dissuade him if fruit is hoped; but if they cannot, they may obey on account of grave harm, such as discord or blasphemies, contempt being excluded.

B. Servants likewise, if the master is not bound by the law. If he is bound, they may still, at least for a time, serve him because of notable inconvenience or detriment, such as loss of service with danger that they will not soon have another, necessary profit for parents, or fear of a worse master or of an occasion of sin. In doubt they may presume that the master has an excusing cause.

C. Public inns and taverns. This question is less practical where there is a dispensation for those who buy food in inns, as in Belgium for travelers and those who by reason of occupation eat outside the home, except on Good Friday.

Where there is no such dispensation: 1) in places very observant of the fast, and where there is only one inn, it is rarely licit to prepare forbidden foods for one who has no excuse; if there are others, one must act cautiously and use a separate table to avoid scandal. 2) Where the fast is often violated, or travelers come from many places, especially if there are many inns, forbidden foods can rather easily be served because of notable harm, provided licit foods have also been sufficiently prepared and are not refused. 3) They certainly sin if they spontaneously offer illicit foods, or set them before those who have not asked, or fail to buy licit foods in time when they foresee they will be demanded, or show ill will and refuse even when they can provide them.

A private family which receives a few guests for weekly or monthly payment can less readily set meats before them, even if they ask, at least in Catholic regions; for in a private house the law is more easily observed, and a greater reason is required. Yet a moderately grave cause suffices if the sin cannot be impeded by refusing and there is no scandal.

Question Six: On Gluttony

S. Th. II-II, q. 148.

977. Gluttony (*gourmandise; gulzigheid*) **is an inordinate appetite or use of food or drink, insofar as it gives delight.**

1. It is an inordinate appetite, that is, exceeding the order of right reason. The mode of reason in taking food is that a man take what is useful for right life and health, namely what is necessary or fitting for good health and for a proper disposition of mind. Therefore to seek delight from food more than is fitting, or to adhere to it as to an end, is inordinate.[1]

[1] *Gula* is said from the throat, through which food passes to the stomach. - Proposition 8 of Innocent XI is condemned: "To eat and drink even to satiety, for pleasure alone, is not a sin, provided it does not harm health; because natural appetite can licitly enjoy its own acts." Cf. Luke 21:34; see above, p. 885.

2. It concerns food or drink, namely drink which is not intoxicating. If the excess is about food or non-intoxicating drink, it is called gluttony in the strict sense, crapula, or commessation; but if it is about intoxicating drink, it is drunkenness.

3. It concerns these insofar as they give delight, and so it is directly opposed to abstinence.

978. Species of gluttony. - There are five modes according to which gluttony can be committed: too soon, sumptuously, too much, ardently, and too carefully. These are not distinct species in the strict sense, but diverse modes arising from diverse motives opposed to abstinence.

For the inordination can be on the part of the food itself, if one seeks food more delicate or more costly than is fitting, and then he eats sumptuously; or if he seeks food prepared too carefully and tastily, and then he eats too carefully; or if he seeks too much food, and then he eats too much. It can also be on the part of the taking of food, if one takes it before or outside the due time, and then he eats too soon; or if he takes it voraciously and too avidly, and then he eats ardently.

There can also be other modes, by reason of an added species of sin; for example, to eat human flesh from a beastly appetite. This, however, is not illicit if it is done as medicine or from another just cause in extreme hunger; yet it is never licit to kill a man for this purpose.

979. Crapula is of itself a venial sin from its kind, even if it proceeds to vomiting, because it is merely an excess in the appetite for a thing indifferent. This remains true even if someone provokes vomiting so that he may eat or drink again, unless there is grave scandal, or unless this is a sign that he delights in food as in a final end.

Accidentally, however, it can be mortal:

1. If delight in food is held as a final end, explicitly or implicitly; for example, if one is ready to sin mortally, by stealing or in another way, for the sake of delight in food.

2. If one causes grave harm to health.

3. If one renders himself unfit for a grave office.

4. If one becomes unable to pay debts, or dissipates the goods of the family.

5. If through crapula he violates fasting or abstinence.

6. If it is the cause of another grave sin or of grave scandal; for example, if clerics publicly frequent banquets.

980. Observations. - 1. Gluttony taken broadly, insofar as it also includes drunkenness, is a capital vice.

2. The sins of gluttony are not among the greatest. This is so not from the matter, for sins about divine things are graver; nor from the side of the sinner, because they are alleviated by the necessity of food and by the difficulty of discerning and moderating what is suitable. Yet from the side of the effect they can have great magnitude, insofar as they are the occasion and accidental cause of many sins.

Third Part: On the Virtue of Sobriety

Question One: On Sobriety in Itself

S. Th. II-II, q. 149.

981. Sobriety (*soberheid*) **is named from preserving** *bria*, **that is, measure.** In general it signifies any moderation whatsoever (Rom. 12:3); less broadly it is taken for every moderation of temperance (Wis. 8:7; Tit. 2:12; 1 Tim. 2:9), especially of abstinence; in the strictest sense, for the moderation of intoxicating drink (Eccli. 31:32), in which it is best and most difficult to preserve measure, "because measured use contributes much, and immoderate excess harms much, because by its fumes it disturbs the head and impedes the use of reason even more than excess of food." Therefore sobriety is a virtue moderating the affection for and use of intoxicating drink.

It is a virtue, because it renders man perfect: for it is best to preserve measure in that in which it is most difficult to preserve it. It is one virtue, because it has one object: the pleasures of intoxicating drink to be moderated. It is a special virtue: for where there is a special impediment of reason, there it is necessary that there be a special virtue to remove it. But intoxicating drink is a special impediment of the use of reason, because of man's greater proneness toward intoxicating drink, and because of the graver harms which excess in such drink brings with it, insofar as it disturbs the brain by its fumes.

982. Sobriety is distinguished from abstinence. - The object is different: to preserve measure in drink as delightful in itself, and to preserve measure in drink delightful from a fume disturbing the use of reason.

Namely, it belongs to one account that the delightful is from this, that because of its fume it is intoxicating and impedes the good of reason; it belongs to another account that the delightful impedes the good of reason from its mere immoderation. For from immoderation the rectitude of reason is first taken away, and if it is vehement, consequently also the use of reason; hence in these matters to impede the use of reason belongs to the same vice as immoderation. But another passion first and directly tends to impede the use of reason, and from this first has that it is inordinate; hence in these matters to impede the use of reason is one vice, and immoderation of the passion in itself another, just as one virtue preserves the use of reason, and another moderates the passion in itself. Cf. Cajetan and Ill. Waffelaert, on a. 2.

983. The use of wine or of another intoxicating drink is not per se and totally illicit (1 Tim. 5:23; Eccli. 31:36), for no food or drink considered in itself is illicit (Mt. 15:11). But it can be illicit accidentally: a) from the condition of the one drinking, who is easily harmed by wine, or because he is obligated by a special vow not to drink wine; b) from the mode of drinking, namely because he exceeds measure; c) from the side of others who are scandalized.

984. To whom sobriety especially belongs. - Although sobriety belongs to all, because all must flee disturbance of mind, yet for a particular reason it belongs especially to some:

a) because of a greater necessity for restraining: 1) to adolescents (Tit. 2:6), because on account of their ardor there is in them a greater proneness to concupiscences, which must be restrained by virtue; 2) to women (1 Tim. 3:11), because they are more easily disturbed, and in them there is not sufficient strength of mind for resisting concupiscences;

b) because of a greater necessity for their operation: 3) to old men (Tit. 2:2), because in them reason ought to flourish for the instruction of others; 4) to those who preside over others (Prov. 31:4), because they ought to rule the people by wisdom, especially if they preside in spiritual matters, because with devout mind they ought to apply themselves to spiritual offices (1 Tim. 3:2).

Question Two: On Drunkenness

Article I: On Drunkenness in Itself

S. Th. I-II, q. 88, a. 5, ad 1; II-II, q. 150, a. 1, 2, 3.

985. Drunkenness (*dronkenschap*) **is taken:** a) for the state, namely the defect of reason which happens from much wine having been drunk, and thus it is not sin, but can be the effect of sin; b) for the act by which someone falls into this defect, whether it happens contrary to the opinion of the drinker, and then it can be without sin, especially if it does not happen from man's negligence; or whether it happens from inordinate concupiscence and use of wine, and thus it is sin, and can be defined: a voluntary excess in intoxicating drink, for the sake of pleasure. This indicates:

1. The genus: excess, for it pertains to intemperance, and thus it is distinguished from the opposite insensibility.

2. The material object: in intoxicating drink, that is, drink violently inducing privation of the use of reason. Thus it is distinguished from gluttony strictly so called, which is excess in non-intoxicating drink.

Hence if someone exceeds in non-intoxicating drink, for example in milk, chocolate, coffee, or in an intoxicating drink which in fact is not intoxicating, that is, does not reach defect of reason, as happens in those who by nature, custom, or means of pharmaceutical science are powerful, it is not the sin of drunkenness but of crapula. On the contrary, if someone were deprived of the use of reason by something other than drink, for example, by the odor of hops, or the smoke of tobacco, or by the use of morphine, chloroform, or opium, this is not properly drunkenness, although he can sin if it is done voluntarily and without proportionate cause.

3. The formal object: for the sake of pleasure; for the proper object of every temperance and intemperance is the delightful according to the sense of touch. For if someone drank even to alienation of mind, not for the sake of delight, but for some honorable cause, there is the state, but not the sin, of drunkenness. But if sufficient reason is absent, the privation of the use of reason is sought from such drink for its own sake, and therefore for one's own pleasure.

Namely, privation of the use of reason seems not to be in itself and essentially evil, but something indifferent. It is evil if it is done without a just and grave cause, only for pleasure or gluttonous excess, not through rest and in the natural mode, namely sleep instituted by God, but violently and in an unnatural mode, by disturbing the organs: for thus a lower good is preferred to a higher good. But it can be good if it is necessary in order to health of body, for example, for curing or driving off a disease such as typhus, for checking the force of poison from a serpent's bite, for performing a surgical incision more safely, etc.: not only if the good effect follows from the cause, namely from drink by which the senses are dulled, as immediately as the privation of reason does, but also if

privation of the use of reason is a means for obtaining an intrinsic good, because for the good of the whole it is licit to deprive oneself of the good of a part, namely the use of reason for a time; indeed, according to some, even for avoiding harm or danger from outside, for example, for avoiding death which another threatens to someone unless he becomes drunk. This, however, cannot be admitted if it is formally requested, or requested from contempt.

4. The condition: voluntary, either in itself or intended, when someone expressly wills to be deprived of the use of reason, for example, to forget pains; or only in the cause, when someone foresees that he will be deprived of the use of reason from it and nevertheless prefers to incur drunkenness rather than abstain from drink.

986. Fully voluntary drunkenness is of itself a mortal sin from its kind, even if admitted only once. - It is proved:

1. From the Scriptures: Gal. 5:21; 1 Cor. 6:10; Rom. 13:13; Luke 21:34; Is. 5:11; Prov. 23:20, 21, 29... And "although it can seem that only the habit of drunkenness is in question, it does not appear how this very habit could per se arrive at grave malice, if its individual acts contained only light malice" (Genicot).

2. From reason: It gravely repugns right reason that a man, knowingly and willingly, for the mere pleasure of wine, without necessity, should deprive himself of the use of reason, and of the proximate power of recovering it and using reason for every sudden necessity: namely, of the most excellent good by which he is distinguished from brutes and operates in a human mode according to reason and avoids sins. From this inordination another follows, that he exposes himself to the danger of perpetrating many and grave evils which are apt to follow from drunkenness, and of omitting goods which he ought to perform.

Yet it can be venial: a) from imperfection of the act, through some inadvertence of the act or ignorance of the drink, which nevertheless is not to be admitted in habitual drunkards; b) from lightness of matter, namely from a slight excess, when drunkenness is imperfect, lightly disturbing reason, or also from shortness of time, if perfect drunkenness does not last long, for example, only some moments. Yet in practice this hardly applies, because no one can know how long it will last.

987. Drunkenness is not the gravest of sins: for other sins either directly deprive one of a divine good, if they are directly against God, or directly deprive one of the good of reason or virtue, which is always a good; but drunkenness itself only deprives one of the use of reason, which can be good or evil. Therefore it is among the lesser complete mortal sins.

Yet it is especially to be fled, because by depriving one of the use of reason, it can be the source of all sins accidentally, insofar as these are impeded by the use of reason.

988. The signs of drunkenness are: a) the certain sign of perfect drunkenness: 1) if someone by reason no longer discerns between moral good and evil. Conjectural signs are: 2) if he does those things which, in possession of himself, he would never do; for example, if he swears, speaks shameful things, starts quarrels, breaks vessels, strikes his wife; 3) if on the following day he does not remember notable words or deeds, for example, what quarrels he stirred up, how he returned home, by what way, with what companion; 4) if he scarcely, or not even scarcely, suffices for directing his

common or easy actions; 5) if he has lost the use of the senses and members, for example, of sight, walking, speech.

On the contrary, b) probable signs of imperfect drunkenness or ambiguous signs are: some staggering of gait, stammering of the tongue, an apparent turning of things, seeing things doubled, forgetfulness of small matters, difficulty in carrying out due offices, a certain disturbance of the head or imagination, vomiting: for these also occur while sufficient presence of reason remains.

989. On the use of narcotics (morphine, opium, cocaine, chloroform, ether, etc.), whether for soothing pains or for dulling the senses, since from them can follow privation of the use of reason and great detriment to health, it is useful to say briefly:[1]

[1] The question rather belongs to pastoral theology, where it is usually developed more fully. Cf. our little work *De Variis Peccatis in sacramentali confessione medendis*, c. 2, § B, IV and VI.

1. A transitory use, and so slight that it produces no other effect than restoration of strength and calming of the nerves, is licit.

2. Use in greater quantity or frequency, employed for pleasure alone, or for quieting the craving for narcotics which is generated most vehemently from repeated use of them, is gravely illicit if notable detriment to health and life can follow from it; lightly illicit if the detriment to health or shortening of life certainly is not notable.

3. Use employed in such quantity that the senses are dulled and temporary privation of the use of reason follows, if employed without a just cause, is a grave sin, just as drunkenness is; but from a proportionately grave cause of necessity or utility it is licit, as if it is done so as not to feel sharp pains, or in a major surgical operation, so that the sick person permits himself to be treated without resistance.

4. Use employed at the point of death so that the sick person is deprived of reason and dies without sense of pain is gravely illicit, not only if he is not yet prepared for death, so that he would be deprived of the opportunity of doing penance and would incur the danger of eternal damnation; but also if he is rightly disposed, because thus he would lack the opportunity of meriting and of immediately preparing himself for death and notably increasing heavenly glory. Hence there is lacking a proportionately grave reason for permitting this; indeed, if there is danger that he will not return to the use of reason, it is an equivalent shortening of life.

According to some, however, this could be tolerated, with the consent of the sick person, who is already well prepared for death, namely on account of sharp pains, especially if he is very liable to impatience, so that it can probably be feared that he will fall into grave sin; indeed, as has sometimes been said, even if at the same time an indirect shortening of life would follow in a sick person certainly about to die. But this is more doubtful and rather to be omitted. Without doubt, however, direct acceleration of death would be gravely illicit, so that insensibility and privation of the use of reason would be only effects of the very shortening of life: for evils are not to be done that good things may come.

990. Remarks. - 1. As St. Alphonsus notes, l. V, n. 78, he is not excused from mortal sin who takes a quantity of drink apt of itself to induce perfect drunkenness, even though, before he is deprived of his

senses, he gives himself to sleep, by which he escapes the effect of the wine; because that drinking is already of itself intrinsically evil, since of itself it is already apt to deprive that man of the use of reason, and it is accidental whether he is deprived of his senses through sleep or through intoxication. He placed the whole cause of the evil, and there will remain an incapacity of recovering the use of reason which would not have arisen from natural sleep.

2. The confessor can rightly presume that drunkenness was voluntary in him who is accustomed to become drunk frequently, for example, ten times in individual months. But if a fairly intelligent man confesses that within a month he was drunk once or twice, he should be asked whether he foresaw the drunkenness. He who was drunk once or twice, without any habit, is to be presumed not to have foreseen the drunkenness.

3. To drive away sadness or melancholy it would be licit to drink only up to cheerfulness: for such a reason would not have proportion with the evil of perfect drunkenness. But clerics, fathers of families, and persons established in dignity ought also to avoid cheerfulness.

Article II: On Other Sins Committed on the Occasion of Drunkenness

S. Th. II-II, q. 150, a. 4.

991. On sins committed in drunkenness. - On the occasion of drunkenness various sins and evils are committed by the drunkard himself. These sins and evils which can follow from drunkenness are imputable:

1. Insofar as they were foreseen, even if accidentally they do not follow. Hence a) they are imputed in their proper species and objective gravity if they are distinctly foreseen, either in their proper species, or only in genus and confusedly in species, because thus the agent really wills the evil of that species and gravity to whose danger he exposes himself. Hence drunkenness which of itself would be venial becomes grave if grave evils to follow from it are foreseen, for example, grave scandal, harm to health, lust, grave sadness to wife, children, parents, etc.; b) if they are foreseen confusedly under the general account of evil, they are imputed only in a general way in the sin of drunkenness, which for this reason becomes graver because on account of it someone is prepared to commit many other sins and evils; c) they are not imputed if in no way they were foreseen;

2. And insofar as the drunkenness was voluntary: for the effect cannot be more voluntary than the cause. Hence its gravity also must be measured according to the gravity of the drunkenness, so that if the drunkenness is only imperfectly voluntary, and therefore venial, even the evils to follow, although grave in themselves, are only venial.

That drunkenness is either a) imperfect, leaving the use of reason, and then the sins also are voluntary in themselves, and are mortal or venial according to the gravity of the matter and the present use of reason; or b) perfect, and then the evils are voluntary and culpable in their cause, the drinking; yet less voluntary than if they were voluntary in themselves. They are committed by an internal act and as to affection, when someone deliberately wills drunkenness from which effects are foreseen to follow; by an external act and as to effect, when sins or evils are externally done. Hence in

confession it must be declared which sins were foreseen, and which were externally completed from foresight.

992. Remark. - Words spoken in perfect drunkenness sometimes lose their meaning, or do not preserve it fully. Thus, for example:

1. Injurious words sometimes lose the nature of injury, not indeed if they are determinate detractions or contumelies directed against determinate persons, or even directed against God; but if they are certain general injuries uttered against all men and things which occur everywhere. For these are considered by all as if they had no meaning.

2. Likewise a lie does not exist, because speech against the mind is not given; even a pernicious lie does not remain a lie, although it can preserve its harmfulness.

3. Likewise a vow and an oath do not exist, because for these actual free will is required; but those words can externally sound as an oath, and therefore as perjury. In the same way blasphemous utterances externally sound as blasphemy, and thus dishonor God.

993. On cooperation toward the drunkenness of others. - On the occasion of drunkenness various sins are also committed by others who cooperate in drunkenness. Cooperation toward drunkenness is of two kinds. 1) One is negative, which happens by not impeding drunkenness, when someone by office ought to impede it. 2) The other is positive, which happens by influencing the drunkenness of another. This is a) improperly so called, which happens by inducing him to drink, for example, by commanding, counseling, or provoking equals to draughts. According to some, this is probably licit for impeding a graver evil, for example, sacrilege or homicide, because it is licit to persuade a lesser evil as lesser (cf. treatise on charity I, n. 968); otherwise it is illicit, and constitutes direct scandal. Or b) it is properly so called, which happens by furnishing drink to one who is foreseen to become drunk from it. This of itself is illicit, even for innkeepers, because it gives another the occasion or means of sinning which we are bound to avert from him; accidentally, however, it can be licit on account of a just cause proportioned to the evil and to the occasion of sinning, such as a graver evil to be avoided, for example, a quarrel, blasphemies, a fight, or notable harm, for example, if the tavern would be notably deserted, but not merely the indignation of the guest or merely profit which otherwise would come to others.

The cooperator is guilty in many ways, not only by reason of cooperation or scandal in himself, but also by reason of drunkenness in the other, and by reason of the evils and harms which he foresaw would follow from drunkenness; and therefore he is held to restitution for them after the principal causes, as a cooperating cause.

Fourth Part: On the Virtue of Chastity and Modesty

Question One: On Chastity

S. Th. II-II, q. 151 and 152.

994. Chastity (*chastete; kuischheid*) **has affinity with the word** *castigare*, **to chastise;** and therefore, in a general sense, it indicates the chastisement or repression of concupiscence according to right reason. For just as children, when they are chastised, are corrected, but if they are left to their own

will, become worse; so concupiscences, which are likened to children, when they are restrained, are diminished, but if they are nourished by the consent of the will, are increased.

But in the strict and proper sense it concerns concupiscences which most need to be chastised and restrained by reason, insofar as they are more vehement and more oppressive of reason; but sexual pleasures of the flesh in the genital organ are the most vehement of all, and more oppressive of reason than the pleasures of foods, and therefore they more need to be chastised and restrained. Hence chastity is the virtue moderating the sexual appetite, or venereal pleasures, according to right reason, or the virtue restraining inordinate venereal pleasures, preserving in them the mode of reason from the motive of honesty.

Therefore it immediately and per se moderates the appetite of venereal pleasure. It regards the other senses mediately and accidentally, insofar as they concur in exciting venereal pleasure. Venereal pleasure is that which arises from a commotion or alteration of the lower part because of the motion of the organs serving generation, such as is perceived especially in pollution or copulation. It is called venereal because it is naturally ordered to promoting generation, over which mad and impious gentility made the goddess Venus preside (q. 151, a. 1 and 2).

Sometimes, however, chastity is taken improperly and metaphorically for the moderation of pleasure in the conjunction of the mind to certain things, insofar as the mind ought to be joined to that to which it ought to be joined, for example, to God, and abstains from delighting in things to which it ought not be joined, for example, creatures apart from God. Thus understood, chastity designates a general virtue and is every virtue withdrawing the mind from illicit things; principally, however, it is in charity and in the other theological virtues by which we are immediately joined to God, just as, on the contrary, spiritual fornication is to leave God for the sake of creatures.

995. Chastity is a virtue. - For it renders man perfect: it preserves the good of reason, which is most difficult to preserve against the most vehement passions and pleasures, namely the concupiscences and pleasures of the sexual flesh. It is one virtue, because it has one object: venereal pleasures to be moderated by reason. It is a special virtue distinct from abstinence. For where there is pleasure of a different species and a special impediment of reason, there it is necessary that there be a special virtue for moderating and removing it. Venereal pleasures, which tend toward the conservation of the human species, differ in species from all others, especially from the pleasure of foods, which is ordered to the conservation of the individual; besides, they constitute a special impediment of the use of reason, because they are the most vehement of all, and oppress reason more than the pleasures of intoxicating drink, since drink, not its pleasure, oppresses reason. Therefore chastity is a special virtue (a. 3).

996. The proximate matter of chastity is the interior motions of the appetite concerning venereal things; its remote matter is external acts, namely copulation, kisses, touches, pollution, and carnal motions or excitation of the genital organ with pleasure. The office of chastity is to compress or compose each according to right reason: to restrain venereal desires and pleasures, lest we use them more than right reason dictates.

997. Modesty (*pudicite; schaamachtigheid*) **is named from shame, which a man conceives concerning those things which do not fall under reason and in which bashfulness is signified;** and therefore it concerns those things of which man is most ashamed. But this is concerning venereal

things, and especially concerning the pleasures surrounding venereal things and concerning the signs of venereal things, of which man is most ashamed before others; for shame is more occasioned by the signs of venereal things, which usually are more detected. Hence modesty concerns venereal things, especially the exterior signs of venereal things, such as immodest looks, kisses, touches, etc., while chastity is more concerned with carnal intercourse itself. Hence modesty expresses a special circumstance of chastity (a. 4), insofar as luxury especially brings shame, both because of the disobedience of the genital members, and because reason is especially absorbed by venereal things.

Yet each is the same virtue, because they regard the same matter: venereal things or signs of venereal things, and from the same motive of special honesty shining forth in the moderation of these.

998. Various grades of chastity. - Chastity in some moderates, in others excludes venereal pleasure, by reason of the diverse state. Hence it is usually distinguished as:

1. Juvenile, which abstains from every venereal pleasure until the time of nuptials.

2. Conjugal, which moderates the appetite of sexual pleasure in spouses and excludes whatever is illicit in the use of marriage.

3. Widowed, which after marriage has been dissolved abstains from every carnal pleasure, whether in perpetuity or until other nuptials.

By reason of the mode in which it is preserved, it is distinguished as imperfect, which abstains only from illicit pleasures of the flesh; and perfect, which abstains from all pleasures, even those licit in marriage.

999. Virginity (*maagdelijkheid*) **is named from freshness, because it implies immunity from corruption or from the burning of concupiscence concerning venereal pleasures;** and it differs from chastity, because it abstains not only from illicit pleasures but from all venereal pleasures, and therefore proposes to preserve juvenile chastity perpetually (q. 152, a. 1). Hence:

1. It is a virtue, because it implies a firm purpose of the will of abstaining from all venereal pleasures, both illicit and licit, in a subject never corrupted by lust. But to do this for the good of the soul, so that it may more freely attend to the contemplation of truth and to divine things, is virtuous, because according to right reason it is to renounce lower goods for the sake of higher ones (a. 2); which also we know from the Apostle, 1 Cor. 7:34, and from Christ, Mt. 19:11-12.

Indeed, it is more excellent than marriage, as the Apostle says, 1 Cor. 7:34, and as the Council of Trent defined, sess. 24, can. 10, because it is ordered to the good of the soul, indeed according to the contemplative life, which is to think on the things which are of God; while marriage is ordered to the good of the body, which is the multiplication of the human race, and pertains to the active life, by which a man and woman living in marriage must think on the things which are of the world, as the Apostle says. But the good of the soul is preferable to the good of the body, and the good of the contemplative life to the good of the active life, as the divine good is preferable to the human good (a. 4).

2. It is a special virtue, distinct from common chastity, because it has a special excellence, since it preserves one immune not only from inordination but from every experience of venereal pleasure (a. 3).

And although it is most excellent in the genus of chastity, nevertheless it is not the greatest of virtues; for the theological virtues and religion, which are occupied about divine things and are the end of virginity, are preferable; likewise fortitude in martyrs, who renounce their own life, and obedience in monks, who renounce their own will, while virgins renounce only venereal pleasure (a. 5).

3. It differs from perfect chastity in that it is joined to integrity of the flesh, while perfect chastity can also be preserved by one who previously has already been corrupted by lust. Hence two things are required for virginity understood in the perfect sense:

a) the material element, namely integrity of the flesh, which consists in voluntary immunity from complete carnal pleasure and from corruption of the flesh;

b) the formal element, namely the purpose of the will of preserving chastity perpetually, without which purpose the virtue cannot be had (a. 1).

Virginity understood in the moral sense must not be confused with virginity in a quasi-physical sense. For thus it signifies only integrity of the flesh or of the genital organ, which is lost in men by voluntary pollution which is apt to provoke the effusion of seed, and in women by voluntary breaking of the virginal enclosure or seal of virginity, which happens through carnal copulation with a man or through another touch. Thus virginity is not a virtue but a good of nature given to all from birth; and in this physical sense a woman who has never had copulation, although she has sinned against chastity by solitary internal and external acts, is called a virgin, as also she who, while preserving integrity of the flesh, intends to pass to nuptials.

Corruption, however, can be threefold: a) bodily only, that is, involuntary breaking of the seal of virginity or involuntary release of seed; b) corruption of the mind alone, that is, consent to a venereal thing without the work, whether it happens by incomplete venereal pleasure or by revocation of the purpose of abstaining perpetually from pleasure; c) both at once, namely voluntary complete pleasure, or voluntary or lustful breaking of the seal of virginity. In the third case the virtue of virginity is lost irreparably; in the second, reparably; in the first, in no way.

Question Two: On Luxury

S. Th. II-II, q. 153; Q. D. de Malo 15, a. 2.

1000. Luxury (*onkuischheid*) **is an inordinate appetite for venereal pleasure.**[1] "Someone is called luxurious as if dissolved in pleasures. But venereal pleasures especially dissolve the mind of man; and therefore luxury is especially considered concerning venereal pleasures" (a. 1). Hence luxury properly signifies excess in venereal pleasure.

[1] We propose the doctrine on chastity and luxury briefly and summarily. Whoever desires more should go to our little work *Quaestiones de Castitate et Luxuria*, where he will also find physiological notions and an indicated congruent bibliography.

But the appetite, that is, the love and use, of venereal pleasure is excessive and inordinate if it is sought outside the legitimate use in conjugal copulation and the acts disposing to it. For pleasure, just as the use of the genitals, from its nature is essentially ordered to the propagation of the human race. But this cannot be done in a due manner except in a permanent matrimonial union, which is altogether necessary for the right education of offspring. Therefore the appetite and use of venereal things is inordinate if it is sought: 1) without order to the act of legitimate marriage; 2) in that act, but in an illegitimate and undue mode, apart from the rules prescribed by nature and reason.

1001. Internal and external, complete and incomplete luxury. - Just as venereal pleasure, which is proper to the genital organ in which it is perceived, restrained and ordered according to right reason, is the object of chastity, so inordinate and unrestrained venereal pleasure is the proper object of luxury.

Unduly to seek it, whether really, completely or incompletely, or by thinking to represent it to oneself and to take complacency in it mentally, is luxurious: as perceived completely and perfectly, it is complete or consummated luxury; as perceived imperfectly and incompletely, it is begun or incomplete luxury; as represented in the mind and thus mentally pleasing, it is internal luxury.

Hence by reason of the mode in which it happens, luxury is: A. merely internal, which consists in the mere affection or desire for venereal pleasure or use, and is prohibited by the ninth precept of the decalogue; or B. also external, which happens with the use and commotion of the genital organs, and is prohibited by the sixth precept. This latter can be:

1. Complete, perfect, and consummated, if the exterior act is brought to its natural terminus, that is, satiative pleasure, whether a) it is natural or according to nature and the act is apt for obtaining the natural end of generation, as fornication, adultery, incest; or b) it is unnatural or against nature and the act is not apt for its natural end, but this end is rendered impossible, as pollution, onanism, sodomy;

2. Incomplete, imperfect, and begun, if the exterior act is not brought to its natural terminus and does not attain the ultimate terminus of satiative pleasure. This stands to complete luxury as beginning to terminus, inception to consummation, and therefore it is not so much called luxury, which is more concerned with the pleasure itself of copulation, but rather immodesty concerning the surrounding pleasures.

1002. Principle I. Luxury is a mortal sin from its kind. - It is proved:

1. From Scripture, where the Apostle, Gal. 5:19-21, among the works which exclude from the kingdom of God, enumerates luxury.

2. By reason: Of the account of luxury it is that it exceeds the order and mode of reason concerning venereal things; but such an excess is mortal from its kind. For the more necessary something is, the more the order of reason must be preserved concerning it, and consequently, if the order of reason is passed over, it is gravely vicious. But the use of venereal things is very necessary for the common good, which is the conservation of the human race, just as food is necessary for the conservation of the individual. Therefore excess concerning venereal things,

apart from that which the order of reason requires, is of itself mortal, as in a grave matter (a. 3).

This is confirmed: a) Luxury is contrary to legal justice, because from its nature it is apt directly to harm the common good, namely the conservation and due propagation of the human race; but this is of itself gravely vicious.

b) It violates the right of dominion which God has over our body, of which we have only the use, and indeed only for the due end. Hence "from the fact that someone uses his body inordinately through luxury, he does injury to God, who is the principal lord of our body" (ad 2). But to violate right is of itself gravely evil.

c) The special deformity of luxury consists in this: that the action and pleasure most necessary to the common good and immediately destined to the good of the species are deprived of this natural order to the species, since they are sought for merely personal pleasure and are referred only to the individual. But this is against the natural order of human nature itself.

1003. Principle II. Luxury directly and in itself voluntary, or venereal pleasure sought for its own sake, outside marriage, is a mortal sin from its whole genus; hence it does not admit lightness of matter, but of itself is always grave.

It is said:

1. Luxury or venereal pleasure arising from the commotion of the powers and organs serving generation: for merely sensible or sensual pleasure from the sensible perception of a fitting object, even if sought for its own sake, does not exceed venial fault, because, as was said concerning gluttony, it is only an inordination of a thing indifferent in itself. Hence just as one who hears a sonorous voice, or tastes savory food, precisely for the sensual pleasure arising from it, sins only venially, so one sins only venially who looks at a beautiful woman, or touches her hand or face, precisely for the merely organic or sensual pleasure consisting in a certain proportion and conformity of the thing seen or touched with the organ of sight or touch, so that it is nothing other than pleasure in a beautiful thing which is seen, or in a pleasant, soft, tender thing which is touched, without any other pleasure in a shameful thing.1 And this also holds in practice, though Cajetan and St. Alphonsus think otherwise. Nevertheless it is advisable for all not to linger over these organic pleasures, because from sensual pleasure to venereal pleasure, especially in the sense of touch or sight, progress is easy.

2. Luxury voluntary in itself, or pleasure sought for its own sake: for luxury only voluntary in the cause or indirectly voluntary admits lightness of matter. For, as is clear from the principles set forth in the treatise on Sins:

a) venereal pleasure voluntary in the cause, unless there is a proportionate reason for causing it, is grave or light according as the cause is of itself apt to influence it notably or lightly (I, n. 450);

b) venereal pleasure indirectly voluntary, namely which the will does not repress though it can repress it, is of itself only venial, unless accidentally there is proximate danger of consent (I, n. 449).

3. Outside marriage: for in marriage, luxury even voluntary in itself, or venereal pleasure sought for its own sake, is of itself venial, as being only the excess of a licit thing; unless, however, it happens against nature, in a mode which impedes generation, or includes a danger of this kind.

4. It is of itself always grave and does not admit lightness of matter; hence every luxury, whether complete or incomplete, even the least, provided it is willed in itself, is of itself mortally evil.

It is proved:

1. What is directly opposed to the ordination and primary intention of our nature and of the Creator of nature is a mortal sin (I, n. 539). But every venereal pleasure, by the primary intention and ordination of our nature and of the Creator of nature, is ordered only to procuring generation in legitimate marriage. Therefore every venereal pleasure sought for its own sake outside marriage is directly opposed to this intention and ordination, and is a mortal sin.

2. Incomplete venereal pleasure from its nature tends to the complete pleasure of which it is the beginning; and therefore he who seeks it for its own sake, by that very fact loves and seeks the complete, not indeed as to be executed but as delightful.2 But love of complete pleasure outside marriage is without doubt a mortal sin, because it is directly contrary to the common good, as is clear from the grave malice of fornication. Therefore also love of incomplete pleasure.

Nor should you say that a human act tends into an object as it is proposed by reason; but reason can abstract from complete pleasure, indeed the will can exclude it. - Resp.: It cannot validly exclude it, because consummated pleasure is necessarily implicitly desired by him who seeks its beginning, which by its nature necessarily tends to consummation. The abstraction of the intellect and the intention of the will cannot change the nature of things.

Therefore, just as he remains truly superstitious who, intending to exclude the intervention of the demon, uses vain means which cannot have effect without the intervention of the demon, since thus implicitly and necessarily he seeks that intervention and so acts against his intention (n. 777); so he who, wishing to exclude complete pleasure, desires incomplete pleasure, acts against his own intention. For by that very fact he implicitly and necessarily desires the complete, because the incomplete is not desirable except as the beginning and part of complete pleasure, and except by reason of complete pleasure.

3. He who voluntarily seeks venereal pleasure for its own sake exposes himself to grave danger of seeking further and complete pleasure, on account of the vehemence of the concupiscence of the flesh and common human frailty. Therefore he sins mortally.

Thus it is impossible for anyone to seek incomplete venereal pleasure without implicitly seeking and willing the complete pleasure, and incurring its inordination, or having an affection toward complete luxury and exposing himself to its danger.

Hence proposition 40 was condemned by Alexander VII: "The opinion which says that a kiss had for carnal and sensible pleasure which arises from the kiss is only venial, the danger of further consent and pollution being excluded, is probable"; because it falsely supposes that a kiss had for carnal, that is, venereal pleasure, does not induce the danger of consent to graver acts.

1. Billuart, diss. V, a. 2.

2. It is founded on the principle that "always the beginning of something is ordered to its consummation"; hence he who wills the beginning, by that very fact implicitly and necessarily wills the consummation, just as he who wills a participated good, by that very fact wills it "as tending into the perfect good." I-II, q. 1, a. 6.

1004. Remark. - Luxury is also a capital sin and very dangerous, as we said in the treatise on Sins (I, n. 505).

Question Three: On the Species of Luxury

S. Th. II-II, q. 154, a. 1.

1005. Seven species of luxury are numbered, namely, simple fornication, adultery, incest, defloration, rape, sacrilege, and the vice against nature.

It is proved: Species in sins is taken from the moral deformity of the object and its diverse repugnance to reason. But in the sin of luxury there is found a diverse repugnance to reason:

a) in one way, as to the end of the venereal act, and this in two ways:

1. Either because the generation of offspring is impeded, and thus there is the vice against nature;

2. Or because the due education and promotion of offspring born is impeded, and thus there is fornication;

b) in another way by comparison to other men, and this in five ways:

3. Either because the woman is too near by kinship, and therefore due honor is not preserved toward her, and there is incest;

4. Or because she is joined to another, and thus there is adultery;

5. Or because she is a virgin under the power of parents, and there is defloration, even if violence is not inflicted;

6. Or because violence is inflicted upon her, and there is rape;

7. Or because due honor is not preserved on account of a vow or the law of the Church guarding sacred things, and there is sacrilege.

As to touches, kisses, and similar immodesties, they are reduced to the species to which they dispose; for example, if they are done with an unmarried woman, to fornication; if with a married woman, to adultery, and so with the others.

Article I: On Luxury According to Nature

S. Th. II-II, q. 154, a. 2, 3, 6, 7, 8, 9, 10.

1006. Simple fornication is the intercourse of an unmarried man with an unmarried corrupted woman, by mutual consent. - It is said:

1. Of an unmarried man with an unmarried woman, that is, of persons who are free, not only from the bond of marriage but also from the bond of consanguinity or affinity, of a vow of continence, or of sacred order; otherwise it will be another species.

2. Corrupted, because if she is a virgin, it will be defloration and not simple fornication.

3. By mutual consent, because if violence is applied, or an unjust means, it is reduced to rape.

Fornication is intrinsically and mortally evil, and therefore it is not only evil because prohibited by positive divine law, but prohibited by natural law as being evil. It is proved:

1. From the Scriptures: Gal. 5:19-21; 1 Cor. 6:9-11; Eph. 5:3-6, from which it is clear that this also regards the nations which did not have positive law.

2. From the condemnation of proposition 48 by Innocent XI.[1]

[1] "It seems so clear that fornication in itself involves no malice and is only evil because forbidden, that the contrary seems altogether discordant with reason."

3. By reason, which Billuart proposes from St. Thomas in this way:[2] "Simple fornication is intercourse deprived in itself of the natural order to its end, namely, the education of offspring, and therefore in itself implies an inordination which tends to grave harm, not only of him who is to be born from such intercourse, but also of the common good and of human society, upon which many and very bad evils rush in from the bad education of members; therefore in itself it is a mortal sin.

[2] Diss. VI, a. 2. - Cf. St. Thomas, a. 2; c. G. III, 122; De Malo q. 15, a. 1.

"The antecedent is proved: The due education of offspring in the human species requires between male and female a lasting society after coition, namely marriage... But fornicarious intercourse in itself neither supposes nor implies the lasting society of male and female, but rather implies the contrary: for it is of an unmarried man with an unmarried woman, that is, of those who are bound by no bond between themselves, whence it happens that, as far as is from the nature of the fornicarious act, one party after coition can at will desert the other party, not acknowledge the offspring, and exercise no care for it; and this indeed very frequently happens, and consequently the worst education of offspring. Therefore."

Nor does it stand in the way if you say that fornicators can agree and swear among themselves concerning cohabitation as long as it will be necessary for the education of offspring, or can provide for it otherwise. - "For the response is that this is accidental to the fornicarious act; but it belongs to it per se that the parties are not held after coition to remain together, since per se they are bound by no bond to this insofar as they are fornicators, nor is anyone prohibited, as far as is from the very

account of the fornicarious act, from approaching any other person whatsoever. And therefore, as far as is of itself, it is an act deprived of the natural and due order to the education of offspring. Therefore that a fornicator after coition remains long with the woman and helps her in the education of offspring does indeed cause that fornication does not actually harm the offspring and the common good, but does not take away the fact that it is harmful in itself and disordered from the end of generation... Moreover, in human acts specific goodness or malice is considered according to that which belongs to them per se, and not according to that which belongs to them accidentally."

Yet fornication is not the gravest of sins. For it is "against the good of a man to be born. And therefore it is a graver sin according to its species than sins which are against exterior goods, such as theft and others of this sort, for example, detraction; but it is less than sins which are directly against God, or a divine good, for example, directly against the theological virtues or religion, and than a sin which is against the life of a man already born, such as homicide" (a. 3), which is graver than all species of luxury (ad 3).

1007. Remark. - Concubinage and prostitution are not distinguished in species from simple fornication, but are diverse grades of the same species. Prostitution is said when someone approaches one who is publicly exposed; concubinage, when he has a habit of approaching some determinate woman, whether he has her at home or not. But intercourse with one who is neither public nor habitual retains the name of simple fornication; but everywhere, as is supposed, it is of an unmarried man with an unmarried woman, and therefore within the same species of fornication.

1008. Defloration (*viol; verkrachting*), **according to more recent authors, is violent intercourse,** so that, if a virgin consents, it is not properly defloration; hence it is the violent or unjust defloration of a virgin. But according to St. Thomas and the ancients it is every illicit defloration of a virgin, whether she consents or does not consent. A virgin is understood in the physical sense, one who retains the seal of virginity. Now:

1. Defloration of an unwilling virgin, or violent defloration of a virgin, adds to simple fornication a mortal malice distinct in species, not only by reason of the violence by which she is compelled to fornicate, such as can exist with respect to a corrupted woman, but also by reason of the natural integrity which is violently taken from an unwilling woman. For this integrity violently taken away is of sufficient moment to constitute in the violator a grave sin of unjust damaging.

Violence is understood not only as physical, but also as moral, such as fraud, fear, importunate prayers and blandishments, such as those which are accompanied by great promises, kisses, touches, and incentives of venery, which a freeborn woman cannot easily resist.

2. Defloration of a virgin consenting of her own accord is a distinct species of luxury. For where, concerning the matter of some vice, some special deformity occurs, there a determinate species of that vice must be placed. But in the defloration of a virgin, even one consenting of her own accord, there is a special deformity concerning the matter of luxury: a) on the part of the girl, who, from the fact that she is corrupted, is impeded from legitimate marriage and is placed on the path of prostitution, from which she was held back lest she lose the signet of virginity; b) on the part of the father, who bears solicitude for her custody.

Hence if it happens that the parents consent, nevertheless defloration would remain, because the same reasons would remain on the part of the virgin; moreover, parents cannot consent to this.

Yet it seems more probable that the defloration of a virgin consenting of her own accord does not add to simple fornication a mortal malice which must be explained in confession, because injury is not done to one knowing and consenting, but only a venial one.

1009. Rape, as it is a species of luxury, is force inflicted upon any person whatever, or upon that person's parents, for the sake of fulfilling lust; while moderns take it more restrictively, defining it as the violent abduction of any person whatever for the sake of fulfilling lust (*enlevement; oplichting*). But the former definition is more conformable to St. Thomas, who says, a. 7: in whatever way violence is present, and therefore even without abduction, the account of rape is preserved.

For it is not of the account of rape as such that the thing taken be led away from place to place, but only that it be violently taken away in the presence of the lord or guardian, or while he resists, even if it is not led away, but is consummated in the same place, or detained by force, so that violence alone is essential to rape and distinguishes it from theft. Thus, for example, he who by force took bread or wine from someone present and resisting and consumed it in the same place would be a true robber and not merely a thief.

In the definition it is said:

1. Force inflicted, or violence, by which is understood not only force or physical violence properly so called, but also fear which is judged grave, at least relatively to the person, for example, reverential fear with respect to a girl; but not fraud or importunate prayers, because he is not properly called a robber who extorts another's property by deceit or importunate prayers, but one who does so by open force or at least by grave fear unjustly inflicted.

2. Upon any person whatever, because here the question is not, as in defloration, of a virgin alone, but whether she is a virgin or corrupted, unmarried or married, male or female, indeed in a word whatever the person may be, there is matter of rape, which is graver according as the person taken brings in graver qualities. Thus if she is married, there is rape and adultery; if sacred to God, rape and sacrilege; if of the same sex, rape and sodomy, etc.

3. Or upon that person's parents, because for the account of rape, as it is in the species of luxury, it is not necessary that violence always be done to the person taken. It suffices that it be done to the parents or guardians, or to custodians constituted by them, under whose care the person taken exists, namely a minor, because then violence is had. But in whatever way violence is present, the account of rape as a species of luxury is preserved. Therefore whether the one taken consents to the taker while the parents resist, or whether the parents consent while the one taken resists, there is rape.

But if the one taken or led away consents while the parents do not know, it is not properly rape, because there is no violence, in which the account of rape essentially consists. It is called by some the rape of seduction, but by others it is better called flight; nevertheless it can be reduced to rape, because, although it happens without violence, it nevertheless does not happen without injury to the parents.

4. For the sake of fulfilling lust, because if it is from another motive, for example, that the person taken become a slave or maidservant, or be sold, it will not be a species of luxury, but another species of rape, which is called kidnapping. Although lustful rape has its complement through the fulfillment of lust, nevertheless there will be true rape from the intention alone, even if copulation does not follow.

Hence if it is done solely with a view to marriage, rape is not a sin of luxury; but then it is an impediment diriment of marriage, as long as it endures (can. 1074).

That rape constitutes a distinct species in the sin of luxury is manifest from this, that it implies a grave personal injury, or violent violation of the person taken or of that person's parents.

1010. Remarks. - 1. A woman upon whom violence is inflicted cannot bear herself merely passively, but is bound to resist internally and externally: namely by dissenting and by manifesting her dissent outwardly, and by crying out and repelling the aggressor according to her strength. Yet she is not bound to resist in that mode which would expose her to danger of death or infamy, provided the proximate danger of internal consent is absent.

2. An oppressed woman can and ought to move and turn herself and in every way impede and break off copulation lest she receive seed, although it is to be poured out, because she has the right and obligation of impeding copulation, and the effusion of seed is to be ascribed solely to the malice of the man.

3. Whether she can also expel seed already received before conception, as pleases some modern authors according to an opinion recently introduced, because they say the seed has the manner of an unjust aggressor?

a) Certainly she cannot, if she has admitted copulation altogether voluntarily; or even if she was deceived by fraud or deceit, or yielded to force or fear, so that the oppression began by force, deceit, or threats, to which subsequent consent was added: for then there will no longer be place for inculpable defense, since the woman ought to have used other licit means. Hence the disputed question does not have much bearing on practice, since the case in which the oppression of the woman is to be attributed to violence alone and was altogether involuntary is very rare.

b) But even then we hold it illicit to expel the seed, both because man does not have dominion over seed, and therefore every action which is exercised directly concerning seed is illicit, except that which is intended by nature, namely conjugal copulation; and because, if it were licit directly to expel seed, this would also be licit concerning the fetus after conception, because in the case it would be more an aggressor and unjust; and because it is a greater injury against human generation and the common good to expel seed from its final seat destined by nature for this, than to procure pollution by which it is expelled from its instrumental seat. But this is always illicit; therefore also the first.

c) Besides, the argument brought by those affirming this does not hold. For it is licit to repel aggression during the action of copulation, but not after copulation has been posited, because then the aggression has ceased and the seed is already in its place to which it is destined by nature. But copulation is finished by the very introduction of seed into the vessel of the woman, because once the seed has been ejaculated, the voluntary work of man ceases and the work of nature alone begins, by

which it happens that the seed naturally penetrates more deeply into the organs of the woman for fecundation. But to break off the work of nature in human generation is illicit.

Nor should you say that the effect of injustice remains, since the seed was deposited there unjustly. For from this it follows that the effect can be removed by licit means, but not that illicit means can be used, such as an action exercised directly upon seed or upon the fetus; just as neither is it licit directly to kill an innocent person in order to protect oneself against unjust harm.

Man does not have dominion over seed, but it belongs to the species; and in the whole process of generation the individual is altogether subordinated to the species.

1011. Adultery (*overspei; echtbreuk*) **is commonly defined: violation of another's bed, or intercourse with another's spouse.**

1. This is a species of luxury distinct from the others; because beyond the deformity of fornication, which it has entirely from this, that someone approaches one not his own, it has besides another special deformity from this, that he approaches one belonging to another. For thus he sins against the fidelity given in the contract of marriage, in which he promised and handed over his body for conjugal use to his spouse alone; and against justice, by violating the right acquired by the spouse over his body, according to 1 Cor. 6:9. The coadulterating party cooperates in this infidelity and injustice.

2. Hence it is a grave mortal sin, which is further clear from the sixth precept, and from 1 Cor. 6:9-10: Neither adulterers shall possess the kingdom of God (cf. Lev. 18:20; 20:10; Deut. 22:22-24; Tob. 4:13; Prov. 6:29; Eccli. 23:21-27); likewise from the penalties of civil law.

There are three grades in adultery: the first is of a married man with an unmarried woman; the second is of a married woman with an unmarried man; the third is of a married man with a married woman; and their gravity is diverse.

The second is graver than the first, because it is more repugnant for one woman to be mingled with many men than for one man to be mingled with many women; for a) from mingling with many men a woman very often becomes sterile and generation is impeded; but if it is not impeded, it is uncertain whose the offspring is; b) an adulteress exposes herself to the danger of introducing illegitimate offspring into the family, with great unjust harm for the husband and for the legitimate children, who are thereby deprived of part of the inheritance (n. 386). But all these things do not follow from the adultery of a married man with an unmarried woman.

The third grade is the greatest of all, because beyond the aforesaid things it contains a double malice of infidelity and a double injustice.

But if the spouse yields his right, or even if the husband becomes the pander of his wife, does adultery remain? It must be answered altogether in the affirmative, notwithstanding the axiom: injury is not done to one knowing and consenting. For by such an act injury is done, not indeed to the consenting husband, but to the state and conjugal right which the spouses cannot renounce, and which therefore, since it remains entire notwithstanding their yielding, is violated through adultery. Thus, if a cleric renounces the right and privilege of his state and from this is dragged to a secular

tribunal, injury is not done to him, but to the clerical state; nor therefore does the one dragging him to this tribunal sin less. Hence the contrary opinion was condemned by Innocent XI.[3]

[3] "Copulation with a married woman, with the husband consenting, is not adultery, and therefore it suffices in confession to say that one has fornicated," prop. 50.

1012. Incest (*inceste; bloedschennis*) **is intercourse with a relative by blood or by affinity.**

By natural law it is prohibited indeterminately for relatives; hence how far and to what degree the prohibition extends must be determined by positive law. Hence, for Christians, incest is among those who according to the law of the Church cannot enter a valid marriage, or intercourse with a relative by blood or by affinity within the degrees prohibited by the Church. The prohibited degrees are in consanguinity up to the third degree inclusively for the collateral line; in affinity, which now arises even from a ratified marriage, up to the second; in both, to any degree in the direct line (can. 1076 and 1077). But if in some degree a legitimate dispensation has been obtained, it is no longer incest.

Incest is a determinate species of luxury. There it is necessary to find a determinate species of luxury where there is found a special and manifold repugnance to the due use of venereal things. But it is so in incest:

1. Because man, especially in those things which regard the act of generating, naturally owes a certain honor and reverence to parents as the principle of his origin, and consequently to relatives by blood and by affinity, in whom he sees parents, that is, the principle of his origin. But in venereal acts there is a certain turpitude contrary to honor and reverence, whence men are ashamed of these things.

2. Because persons joined by blood must necessarily live together with one another; hence if they were not kept away from venereal mingling, too great an opportunity would be given for venereal mingling, and so the minds of men would be softened too much through luxury.

3. Because by the mingling of blood relatives and affines, the multiplication of friends is impeded; for when a man takes a wife from outside, all the blood relatives of the wife are joined to him by a certain special friendship, as if they were his own blood relatives, because husband and wife become one flesh.

Therefore in incest there is found a special and manifold repugnance to the due use of venereal things, and therefore it is a distinct species of luxury (a. 9).

Accordingly it contains a double grave malice: namely against chastity, and against piety or reverence due to relatives (Lev. 18:6 sq.; 20:11, 12, 14; Deut. 22:20, 22, 23; 1 Cor. 5:1-5).

All carnal incests are probably of the same species; but many theologians say that incest between blood relatives in the direct line is distinguished in species from the others, or even incest between brothers and sisters. It is certain:

a) that a different species is present if another office of piety is also violated, as in the incest of parents with minor children, which derogates from the office of right instruction;

b) that incest is not distinct in species from the fact that it happens between blood relatives or between affines, because "an affine person is joined to someone because of the connected blood

relative; and therefore, because one is for the sake of the other, consanguinity and affinity produce an inconvenience of the same account" (ad 2);

c) that legal or spiritual incest differs in species both from carnal incest and from each other by reason of legal kinship, where it exists, or spiritual kinship; because legal kinship, which is founded on perfect adoption, and spiritual kinship, which arises from Baptism, are distinguished in species both from each other and from carnal kinship, which arises from copulation, and they are after its likeness. For because an adopted son passes into the power of the adopter and receives from him food and inheritance as a natural son, and because a spiritual son receives spiritual being from the one baptizing as a natural son receives natural being from his father, the Church, moved by these likenesses, established among them a certain species of kinship diriment of marriage.

It should be noted that from the sacrament of Penance there does not arise spiritual kinship such as arises from Baptism and dissolves marriage; and therefore a confessor sinning with a penitent does not commit incest.

1013. Carnal sacrilege (*vleeschelijke heiligschennis*) **is the violation of a sacred thing through a venereal act.** It is a species of luxury, because when the act of one virtue or vice is ordered to the end of another, it assumes the species of that other, just as theft which is committed for the sake of adultery passes into the species of adultery. Therefore violation of the sacred which is committed for the sake of luxury passes into the species of luxury, and thus is sacrilegious luxury. By the name of the sacred, however, are understood a sacred person, a sacred place, and any sacred thing other than person and place. Therefore there is a threefold species of carnal sacrilege: personal, local, and real; and it is graver according as the person, place, or thing is more sacred, and according as the profanation is graver (n. 802-803).

1. A sacred person here is said to be one dedicated to God for preserving chastity by a public vow emitted before the Church, whether solemn or simple; for thus by public authority the person has been deputed to divine worship. Hence on this side sacrilege is committed:

a) when a sacred person is contaminated by luxury, whether internally through morose pleasures or consent to an act of luxury, or externally through immodest acts both in himself and toward another person even if not sacred;

b) when a non-sacred person desires a sacred person, or acts immodestly with that person; for although he is not sacred, nevertheless by affection or act he violates the sacred person. But if he merely suffers immodest things from a sacred person, he at least cooperates in that person's sacrilege;

c) when both accomplice persons are sacred, and then there is double sacrilege, because each commits his own sacrilege and cooperates in the sacrilege of the other; which must be declared in confession.

The violation of a private vow of chastity, although it is not established that it is sacrilege properly so called, nevertheless contains a distinct species of sin, namely against religion; and thus in some way reductively pertains to sacrilege.

2. A sacred place is a place deputed to divine worship by public authority, such as churches and cemeteries consecrated or blessed. Hence carnal sacrilege is committed by an external and complete carnal sin committed in a sacred place, or by immodest acts disposing altogether proximately to the complete act.

In the case, a sacred place is not judged to be the sacristy, adjacent rooms, cloister, tower, or exterior roof of the church.

3. Sacred things are violated by carnal sacrilege when immodest things are done concerning them or through their intervention; for example, if seed is poured out on sacred linens or vessels, if a sacred thing, especially the sacrifice of the Mass, is promised as the price of a carnal act, if a priest solicits a penitent in confession, etc.

It is not sacrilege to ask for something immodest by adjuration of God, or of the Blessed Virgin Mary, or of some saint, although it is blasphemous; likewise, to commit a sin of the flesh with relics or other sacred things hung around the neck or elsewhere, unless it is done in contempt of the sacred thing or the sacred thing is applied to the venereal act itself, because otherwise they are related to the sin of the flesh only concomitantly and materially.

Article II: On Luxury Against Nature

S. Th. II-II, q. 154, a. 5, 11 and 12.

1014. A sin of luxury against nature is that which repugns the order and mode which nature established in the venereal act for generation, to which alone it is ordered by nature; hence it is a distinct species of luxury, since it has a special deformity.

There are four subordinate species of it, including a diverse repugnance to nature and reason. For the venereal act, so that offspring can be conceived from it, requires four things: 1) the intercourse of two; 2) the same specific nature in each; 3) diversity of sexes; 4) the connatural mode of lying together. Therefore there are four species of sin against nature:

1. If, without intercourse, pollution is procured for the sake of venereal pleasure; this is called the solitary sin or mollities (*zelfbevlekking*);

2. If it happens through intercourse with a thing of a different species; this is called bestiality (*beestachtigheid*);

3. If it happens through intercourse with an undue sex, that is, with the same sex, for example male with male, or female with female; this is called sodomy properly so called (*sodomieterij*);

4. If, while the due sex is preserved, the due natural mode of lying together is not preserved, so that generation is impeded; this is unnatural intercourse with a woman (a. 11). This can happen in two ways: a) on the part of the organ: it is called sodomy improperly so called, if copulation happens in an undue organ, for example in the posterior vessel; b) on the part of the mode alone, if copulation is exercised in the due organ, but in such a way that, from the very mode by which the action is carried out, generation is impeded, either because the man withdraws himself before insemination and pours out seed externally, or because he or the

woman uses an instrument or another means by which the seed is impeded from passing to the womb. It is usually called onanism.

Therefore sins against nature are morally distinct in species from one another, as repugning nature and reason in diverse ways; and the contrary was condemned by Alexander VII.[1]

[1] Proposition 24 was condemned: "Mollities, sodomy, and bestiality are sins of the same lowest species; and therefore it suffices to say in confession that one procured pollution."

A mere change of the natural position in copulation is not against nature except insofar as generation would be impeded by it, which ordinarily does not happen; otherwise it will rather be beside nature than against nature, and is only venial in spouses and sometimes nothing, namely if some reason requires that it be done so.

1015. Luxury against nature is in the genus of luxury the gravest in itself and other things being equal, because it transgresses that which is determined according to nature itself concerning the use of venereal things; but the other sins transgress only that which is further determined by reason. Yet by reason of an added circumstance these can be graver in another genus: thus adultery by reason of injustice is graver than pollution, and sacrilege by reason of irreligion; but pollution is graver than both in the account of luxury (a. 12).

Among sins against nature, bestiality is the gravest, because the due species is not preserved; after this is sodomy, because there the due sex is not preserved; then there is an undue mode of lying together, but more if the due organ is not preserved, than if the mode alone is impeditive of generation; the lowest place is held by pollution, which consists only in the omission of intercourse with another. For the gravity of sin is considered more from the abuse of some thing than from the omission of due use (ad 4).

Let it be noted: 1) Sodomy is an execrable sin, as is clear both from the fact that even brute animals regularly abhor it, and from the graver penalties inflicted by ancient law or by God himself (Gen. 19). The same holds concerning bestiality, as is proved from the penalties laid down against it by God, for example, Lev. 20.

2. For these sins to be committed externally in their proper species, a mere touch exercised upon a person of the same sex or upon an animal is not sufficient, even with sodomitic or bestial affection; rather, intercourse to an undue vessel is required, whether it is not destined for coition or is naturally destined for it. Indeed, for them to be fully consummated in their species, insemination within the vessel is required.

3. Intercourse with a demon is reduced to bestiality, because the demon is of a different species from man: whether the demon really appears under a human form, which happens rarely, or the sinner, by hallucination, sets him before himself as present in this way. This sin additionally includes the malice of superstition against religion; then another diverse species of luxury according to the form under which the demon is seen by the sinner: if as a person of the same sex, the malice of sodomy is present; if as a person of a different sex, the malice of fornication; if under the form of another's spouse or of a nun, the malice of adultery or sacrilege, etc.

1016. Pollution, or the solitary sin, is the separated complete use of the genitals without intercourse. It is said:

1. Complete use of the genitals: for thus it is distinguished from immodesty or acts of imperfect luxury, which are only the beginning and preparation of complete luxury, and it differs from these in species, as the mere beginning of a work differs from consummation, beginning from terminus, and an incomplete species from a complete species;

2. Without intercourse, because if it happens in natural intercourse, it will be fornication or another species according to nature; if in unnatural intercourse, namely had in an undue organ, it will be another species against nature. Therefore from the fact that it is a solitary vice, or that it implies the separated use of the genital organ, pollution differs in species from other consummated sins according to and against nature.

The complete use of the genital organ is apt to produce perfect and satiative venereal pleasure; and in men, the expulsion of seed, which aggravates the sin comparatively to what takes place in women. Yet these two things do not constitute the essence of the solitary sin, but are a certain bad effect which usually accompanies it, and an indication and sign of the complete use of the genitals. But the essential inordination is in the perverse use of the genital organ, which someone employs for individual satisfaction, without any order to generation and the good of the species for the sake of which alone it can be employed. Hence the complete solitary sin also exists in women,1 and can exist in men if they do not have seed, as sometimes happens in the young and the old, or if accidentally it does not flow out externally.

1017. Pollution directly and in itself voluntary is intrinsically and gravely evil, and therefore prohibited by natural law, so that it can never be made honorable by any end. - It is proved:

1. From the Scriptures: 1 Cor. 6:10; Gal. 5:19; Eph. 5:[2].

[2] Hence, when the doubt was proposed: "whether masturbation directly procured so that sperm may be obtained by which a contagious disease may be scientifically detected and, as far as possible, cured is licit," the Holy Office responded: in the negative, 24 July 1929.

2. From the condemnation of proposition 49 by Innocent XI.[3]

[3] "Mollities is not prohibited by natural law; hence if God had not forbidden it, it would often be good and sometimes obligatory under mortal sin."

3. By reason: This act is directly against the primary end to which the genital organs, venereal pleasure, and human seed are destined by nature and by the author of nature. Therefore a) it is an inordination intrinsically evil and illicit by the law of nature, so that it can never be made honorable by any end;3 b) it is also a grave or mortal inordination, because it is directly opposed to the primary inclination of our nature and to the greatest common good of human society, namely its conservation and propagation. Hence if fornication itself is a mortal sin because it is against the due education of offspring, a fortiori pollution, which is against propagation itself.

This is confirmed: "If in any case whatsoever it were licit to procure pollution for oneself or another, since in it men are affected with the greatest pleasure, they would easily abuse that license and extend it to almost infinite cases, and thus, content with that pleasure, they would neglect marriage and the legitimate mode of generating with the greatest detriment of the human species. Therefore in this, as in many other matters, one must not attend precisely to the actual harm which follows, but to the harm which would follow or would be apt to follow if this were licit."[4]

[4] Some modern authors doubted concerning this, among whom was also Noldin; but in new editions of his work this was corrected by Fr. Schmitt.

Every pollution of itself is a sin of the same species, in whatever way it happens.

Accidentally, however, by reason of a special circumstance, another species can be added. Hence pollution is divided into simple, which besides the malice of pollution has no other malice joined; and qualified, which has another joined, either on the part of affection toward the object thought of, as if someone, while polluting himself, has a fornicarious, incestuous, adulterous, sacrilegious, sodomitic, etc. affection, by taking pleasure precisely in a woman, a blood relative, a married woman, one sacred to God, a male, as such, or by desiring them; or on the part of the person polluted or polluting, as if a religious, a married person, etc. pollutes himself or another, or is polluted by another. These circumstances, as adding a species, must be declared in confession.

1. Billuart, diss. VI, a. 11.

1018. Corollary. - The doctrine set forth applies to pollution directly and in itself voluntary; but not to pollution voluntary only in the cause or indirectly. For this is not always gravely evil, indeed not always a sin, as is clear from the principles set forth concerning the voluntary in the cause and the indirect, which are to be applied here.

1. It is not illicit to posit an action from which pollution is foreseen to follow, provided the action is licit in itself and at the same time necessary or useful, provided consent to the pollution or proximate danger of consent is absent. For no one is bound to omit an action licit in itself, necessary or useful for a good effect, because of some evil, not very great, following from it apart from intention, provided the evil is not the means for obtaining the good effect. But in the case the action, as is supposed, is licit in itself, and necessary or useful; the passive pollution following from it apart from intention is a rather slight evil, bringing little or altogether no inconvenience either to the acting individual or to the human species. Therefore the action is licit, provided the pollution is not the means by which the good effect is obtained.

2. It is a venial sin, without sufficient reason, to posit an action lightly evil and lightly and remotely influencing pollution which is foreseen to follow from it. For pollution, since it is not willed in itself, is not more voluntary and sinful than its cause as cause; but the cause as cause is only lightly evil, since its influence is only light and remote; for a light influence upon something grave is something light. Therefore pollution is only lightly evil; unless, however, there is proximate danger of consenting to it.

3. A fortiori it is only venial, without sufficient reason, not to impede depraved motions of concupiscence and pollution itself, while nevertheless it can be impeded without

inconvenience; because in the case every tendency or positive consent of the will toward pollution is lacking; unless, however, there is proximate danger of consent to it.

4. It is mortal, by reason of pollution, without a just cause, to posit an action mortally evil from which pollution is perfectly foreseen naturally to follow, or an action which per se, notably, and proximately influences it so that it is apt to follow from it. For to will an effect and to will its proximate cause are of the same morality, unless there underlies a grave and just reason.

1019. Remark. - As to nocturnal pollution, its malice is to be weighed from its causes. Hence it either is or is not a sin according to the condition of the cause in which it was foreseen, or ought to have been foreseen. If the cause is not culpable, as if it is posited from a just reason, and a fortiori if it is merely natural, neither will the pollution itself be culpable; if the cause is culpable venially, lightly and remotely influencing it, it will be venial; if the cause is mortal, gravely and proximately influencing it, it will be mortal.

Question Four: On Internal Luxury

S. Th. I-II, q. 74, a. 6-8.

1020. Internal luxury is that which consists in mere affection toward venereal pleasure or use. It is, namely, the consent of reason and will to inordinate venereal pleasure alone, represented in the mind; and therefore it is called morose delectation. But if besides this there is consent to a shameful work, it will be either desire of a future work to be executed, or joy concerning a past work perpetrated.

Morose delectation is the same as voluntary delectation. For it is not called morose from delay of time, since in one instant the sin of delectation can be completed by the consent of the will; but it is called morose from delay of reason, insofar as reason, noticing it, either consents to it, or voluntarily accepts it, or does not repel it as it can and ought, and thus lingers about it in that sense in which one who is not fulfilling his office is said to be in delay. But there can be delectation either concerning the very apprehension or cognition of a shameful object, or concerning the shameful thing itself apprehended or known. Now the question is whether simple voluntary delectation, both concerning the apprehension or cognition of a venereal thing, and concerning the venereal thing apprehended or thought, without the will of executing the work, is sin, and indeed mortal sin; for no one can doubt that the will of the luxurious work itself is mortally evil.

1021. Principle I. Voluntary delectation concerning the thought or cognition of a venereal thing is not mortally evil; indeed of itself it is no sin. - The reason is that delectation concerning the thought or cognition of a venereal thing, for example, fornication, follows the inclination of affection into the thought itself. But the thought or cognition itself, for example, of fornication, is not of itself mortally evil, indeed not even a sin, since it is in God. In fact, however, it will sometimes be venial, for example, when someone thinks altogether uselessly about fornication; but sometimes without sin, for example, when he thinks about it usefully, as when he wishes to preach or dispute about it.

1022. Principle II. Morose delectation, or direct and fully deliberate consent to the very pleasure of a depraved venereal thing through the apprehension of it as present, is always a mortal sin. - For he who takes pleasure in a mortally evil thing, for example, fornication, loves it and

is voluntarily affected toward it; for no one takes pleasure except in that which seems good to him and conformable to his appetite. But that someone deliberately loves and has as conformable to his affection that which in itself is mortal sin, such as venereal action and pleasure sought outside marriage, is already mortal sin. Therefore he who deliberately takes pleasure in a venereal thing sought outside marriage commits mortal sin.

It is said:

1. Direct consent to the very delectation, because consent in the cause or indirect consent can be only a venial sin and sometimes none, as was said above concerning pollution, n. 1018;

2. Fully deliberate, for which full advertence is required; for if this is half-full, or consent imperfect, it will be venial sin; if there is no advertence, it will not be sin, even if the delectation is long-lasting;

3. Of a venereal thing, and not of the mode or effect only. For to take pleasure in the subtle, clever, new mode of perpetrating luxury is not evil, unless the mode itself is in itself venially or mortally evil, as is a mere change of position in conjugal copulation, or a mode of sinning against nature. And similarly, to take pleasure only in the good effect following from luxury, or in the fact that it had a good effect, is not evil, provided it is not also done concerning the luxurious work itself, even though because of the good effect.

1023. Principle III. Morose delectation has the specific malice of the object thought, insofar as it is its object. - For a human act has morality from its object as such; hence:

1. Morose delectation joined to the will or desire of completing the work, or to joy concerning a work perpetrated, contracts the whole malice which the object has in itself with all its circumstances; as if someone takes pleasure in copulation with a married blood relative, and wills or desires it, or approves it as had, he is guilty not only of fornication, but of incest and adultery. The reason is that the will of the work or desire is borne toward the work as it is to be exercised on the part of reality, and joy toward the work as it was exercised; but the work is exercised with all its circumstances.

2. Morose delectation without the will of doing the work contracts as many malices of circumstances as are apprehended as delightful and concerning which pleasure is taken. The reason is that human acts, such as voluntary delectation itself, have species from their formal object; hence he who takes pleasure in a woman precisely as blood relative or married contracts the malice of incest or adultery.

3. Morose delectation which prescinds from the circumstances of the work and does not take pleasure in them, although they are known to be present, probably does not contract their malice, provided the will to execute the work is absent; as if someone merely takes pleasure in copulation with a woman whom he knows to be married and a blood relative, yet not insofar as she is married and a blood relative, but precisely insofar as she is a woman fitting for him. The reason is that delectation tends toward the object, not as it is on the part of reality with all circumstances, but as it is represented in the mind as delightful, and therefore it does not tend

toward circumstances which are not represented as delightful and which are not the motive of delectation, but from which it prescinds in taking pleasure.

Question Five: On Imperfect Luxury or Immodesty

S. Th. II-II, q. 154, a. 4.

1024. Immodesty (*impudicite; schaamteloosheid, oneerbaarheid*) **or imperfect luxury is that which externally begins perfect luxury, without the exterior act being brought to its natural terminus, or to the highest degree of venereal pleasure.** Hence it consists in those external acts which are apt to surround the act of consummated luxury and constitute its beginning and as it were a part or circumstance, such as touches, kisses, embraces, looks, and, if it is mixed with them, shameful speech.

Hence immodesty is not to be confused:

a) with internal luxury, which is completed in the mind and will alone, and is a depraved affection, whether it is delectation or desire, concerning which it was said in the preceding question;

b) with an external occasion, which is not a preparation or beginning of the consummated act, but a mere occasion or danger, with scandal, more or less proximate, of internal or external luxury, for example, dances and spectacles.

1025. Principles. - I. External acts which are apt to excite incomplete carnal pleasure and thus to furnish matter of immodesty, per se and according to their species, are not luxurious and evil. The reason is that in them venereal pleasure is not found per se; hence they are indifferent, otherwise they would never be licit, while nevertheless they can be exercised from a good or evil end and produce a twofold effect, good or evil. Hence of themselves, that is, intention and the power of exciting luxury being excluded, they are not evil or immodest.

II. But they can be evil and immodest:

1. From the intention of the agent, by reason of the end, which can be mortally evil if someone outside marriage seeks in them venereal pleasure itself; on the contrary, the end is venially evil if they are done exclusively from curiosity, levity, jest, or for merely sensible pleasure; the end is good if someone acts from a certain necessity or utility.

2. From the nature of the act, by reason of influence upon venereal commotion and pleasure; for by nature they are apt to provoke shameful motions and excite pleasure, and therefore, unless a just cause proportioned to causing pleasure is present, it is illicit, gravely or lightly, to exercise them outside marriage from this alone, that they gravely or lightly influence venereal pleasure, even without evil intention or danger of consent. Hence, if by someone very immodest and repeated acts were done without danger of venereal motion, for him they would not be a sin against chastity.

3. From the condition of the sinner, by reason of danger: for sometimes, even if of themselves they lightly influence venereal motion, because of man's frailty they can be a danger of consent for him, or of grave scandal for others.

1026. Immodesty differs in species from consummated luxury in the same way as an imperfect species differs from a perfect one. This is to be understood if it is sought separately, without the consummated act; for if it happens from the intention of the perfect act and is joined with it, they are one sin in complete species and in number.

But immodesty is of itself a sin of one and the same species; for every venereal motion of itself, and unless special circumstances are added, is of the same species, because the pleasure which arises in imperfect acts is of the same account. Accidentally, however, a malice diverse in species can be added, because of special circumstances.

Thus:

1. From the circumstance of the acting person, as if he has a vow of chastity;

2. From the circumstance of affection or of internal intention, if the acts are done from a fornicarious, sodomitic, bestial, deflorative, adulterous, incestuous, sacrilegious affection, as was said concerning pollution;

3. From the circumstance of the special mode in which they are performed, namely if they are done with another person: for then scandal and culpable complicity intervene. And if the exterior immodest acts according to themselves are a preparation and beginning of the complete act with that person, as is the case with touches, embraces, kisses, they participate in the specific malice of this complete act, even if the other person was unwilling; on the contrary, if of themselves they are not the beginning of the consummated act, which holds concerning looks. Hence in confession, for touches the quality of the person employed must also be declared; for looks it suffices to declare that a certain person was employed, and the person's quality need not be declared, unless they are done with desire of the complete act, or unless the other person is bound by vow and consented.

1027. Applications. - The principles have been applied by theologians to many concrete cases; some solutions of these we add here. Yet these solutions for the most part admit exceptions; hence generally they are not to be considered as rules altogether universal, but only as general rules which hold only as in the majority of cases.

A. As to touches.

1. To touch one's own body or another's from lustful intention or venereal affection is always mortal.

2. To touch the genital parts of others, especially of the other sex, even mediately over clothing, except in a case of necessity as happens for physicians, surgeons, and others having care of the sick, is easily mortal because it provokes lust, and for the most part shows a depraved affection; unless it happens from levity alone and only in passing, as among nurses touching the organs of little children, or among those before puberty of the same sex touching one another. Likewise, to touch the breasts of a woman, and especially the nipples, morosely, because they are seats of pleasurable excitation, which usually brings with it a commotion of the genitals, even a vehement one; or on the contrary, from levity and in passing.

3. To touch the genitals of brute animals from curiosity or sensuality generally does not exceed venial sin, especially if it happens in passing, because it does not gravely move to lust; but if it is done for a long time or even to the pollution of the animal, it easily induces danger of one's own pollution.

4. To touch the less honorable parts of a person of the same or different sex, not from venereal affection nor from utility, but from curiosity, sensuality, or sensible love, generally is only venial, especially if it happens in passing, from jest or levity; but if morosely and with grave commotion of the genital organs, especially if it is a question of a person of different sex, it will easily be mortal because of proximate danger of consenting to venereal pleasure.

5. To touch oneself in dishonorable parts for the sake of necessity or utility, for example, to drive away itching, to wipe away filth, or to cure infirmity, is not a sin, provided consent to the venereal pleasure which can arise from it is excluded. To do this without a just cause, from levity or curiosity and without venereal affection, is a venial sin, unless the touches gravely influence vehement carnal motions or bring in proximate danger of consent.

B. As to kisses and embraces.

1. Those done from venereal affection are mortal.

2. Those done on dishonorable or less honorable parts, such as breasts, are easily mortal, because they for the most part excite grave carnal motions and usually indicate venereal affection; unless perhaps they are done in passing and from levity alone.

3. Those done on honorable parts, without reasonable cause, but because of sensible love and from levity, jest, or sensuality, are venial, unless there is proximate danger of consent to venereal pleasure, as easily happens if they are morose, or repeated rather often, or impressed with great affection between persons of different sex, especially the columbine kiss by which the tongue is inserted into the mouth of another.

4. Kisses, embraces, and handlings of hands according to the custom of the country, for the sake of courtesy, friendship, or kinship, are licit, even if accidentally carnal motions are excited, provided danger of consent is absent.

C. As to looks.

These must be carefully distinguished from mere sight, and they move toward lust, though less than touches, and therefore are dangerous:

1. Without necessity, to look morosely and deliberately either at the genitals of the other sex, or even at the breasts of a woman, entirely bare or covered with a transparent veil, or at a man and woman exercising copulation or immodest acts toward one another, or at persons polluting themselves, is easily mortal because it gravely moves to venereal pleasure; unless it happens in passing or very remotely, or only a child is looked at, or the one looking is a cold old man or an infant.

2. Without a just cause, to look at the less honorable parts of a person of different sex, or at the coition of animals, from curiosity or levity and without venereal affection, ordinarily does not exceed venial sin, especially if it happens in passing.

3. Without cause, to look at one's own genitals from curiosity or levity and without venereal affection is venial, especially if it happens in passing; likewise, in this mode, to look at the genitals of a person of the same sex, unless someone is prone to sodomy, or unless a very beautiful adolescent is looked at morosely.

1028. Shameful speech. - Shameful conversations can be gravely evil:

a) by reason of the end, if they are uttered from lustful affection because of delectation concerning luxurious or immodest things themselves, or for inducing others into sin, or for maliciously teaching venereal matters;

b) by reason of the danger of luxurious delectation or work, which is easily present in treating of very obscene things, such as the private parts of men, especially of the other sex, modes of copulating, natural or unnatural, or of polluting oneself, the manner of procuring venereal pleasure, very immodest acts, especially if those things are described accurately and in particulars;

c) by reason of scandal, which is frequently present when they are uttered before adolescents or girls, or among lovers.

Hence the following rules are usually established:

1. To speak, sing, write, signify by gesture, hear, or read shameful things from carnal delectation, or with proximate danger of consent to it, or with grave scandal, is a mortal sin.

Hence they easily sin gravely:

a) who mix into conversations things concerning the conjugal act, concerning licit and illicit things between spouses, concerning unnatural modes of lying together or of procuring pollution, or concerning young men and girls, especially if this is done at length or among younger persons of different sex;

b) who from boasting narrate shameful sins committed by themselves, and adorn the narration with words not a little obscene, both because they glory in a gravely evil thing, and because they often provide great scandal, and because they easily take complacency in the evil thing perpetrated by themselves;

c) who say shameful things because of delectation taken from those things thought, or with danger of such delectation, or with danger of grave scandal;

d) these things also hold concerning equivocal words about shameful matters, and obscene songs; likewise concerning writings and readings that are very obscene.

2. To speak shameful things for the sake of jest, recreation, or vain consolation, especially among men accustomed to these things, as among workers or the rude, or among married women, although it is inordinate and reprehensible, of itself is not mortal, because the affection is not

borne toward luxury; unless the hearers are so weak that they suffer scandal, or unless the words are very lascivious.

Hence:

a) amorous words, shameful jests, uttered in passing, regularly are not to be judged mortal, because they are said or heard playfully;

b) this holds a fortiori, proportionally, concerning hearers and those laughing, unless perhaps by listening or laughing they give spirit or authority to those speaking in this way. Namely, to hear shameful conversations, or even to smile at them, can be grave sin only when the hearer takes pleasure in them from depraved affection, or has provoked them, or promotes or approves them, or does not impede them, although he ought to do this by office;

c) likewise it holds concerning readings a little dishonorable, done from mere curiosity.

3. To speak, write, read, or hear shameful things with a legitimate cause, without depraved intention and danger of consent and without scandal, is not a sin.

Thus if it is done for the sake of doctrine, for acquiring knowledge, for learning the truth of history, for correcting morals or informing superiors, provided consent is not given to shameful pleasure.

Fifth Part: On the Virtues Annexed to Temperance

Question One: On Continence

S. Th. II-II, q. 155 and 156.

1029. Continence (*zelfbeheersching, inhouding*) **is taken in various ways:**

1. Generally, it imports the firmness of reason and will which contains itself within itself, that is, in that which befits reason, lest it flow forth to illicit things; and this is the entirely general sense: abstinence from every illicit thing.

2. But specially it is firmness of reason and will by which someone resists any evil concupiscences whatever which vehemently exist in him.

3. But because the chief concupiscences according to touch, namely of foods and venereal things, are more vehement and more difficult to overcome, because they more follow the inclinations of nature in the conservation of the individual and of the species, therefore continence properly is a disposition of the will by which resistance is made to the chief depraved concupiscences according to the pleasures of touch. Hence he who resists passions in the matter of temperance, especially in venereal pleasures which are more vehement, is called simply continent; he who resists passions in other matters is not called continent simply but in a certain respect, as continent of anger, of avarice, of gain, of honor, etc.

4. Sometimes continence is taken in a perfect sense for abstinence from every voluntary venereal pleasure, so that one may be wholly intent upon more perfect goods, and thus perfect continence is principally virginity, secondarily widowhood.

Hence continence is defined: A habitual disposition of the will for resisting the impulses of depraved concupiscence, especially of the pleasures of touch, most of all venereal pleasures; or, a disposition of the will by which resistance is made to depraved concupiscences concerning touch.

1030. Continence is a good habit and has something of the account of virtue, because it denotes firmness of soul, insofar as by it reason is strengthened against passions lest it be led away by them; yet it is not a virtue in the strict and full sense, because it does not render man perfect: a) for it is an imperfection to resist the motions of concupiscence and not to consent; perfection is to have mastery over them; but continence does not attain moral perfection, according to which the sensitive appetite also is subjected to reason, so that passions contrary to reason do not rise up in it so vehemently and so frequently;1 b) it is also a habit easily movable. Hence:

1. Continence is not in the sensitive appetite, namely in the concupiscible power, but in the will.2 Every habit existing in some subject makes that subject differ from the disposition which it has while subjected to the opposite vice. But the sensitive appetite has itself in the same way in him who is continent and in him who is incontinent, because in both it bursts forth toward vehement depraved concupiscences. Therefore continence is not in the sensitive appetite as in its subject. But it is in the will, which through continence is disposed to choose to resist depraved concupiscences, by which the incontinent man permits himself to be overcome (q. 155, a. 3).

2. "Continence has as its matter the concupiscences of the pleasures of touch, not as moderating them (which belongs to temperance, which is in the concupiscible power), but it is about them as resisting them. Hence it must be in another power, because resistance is toward another" (ad 1). For "although passions are not in the will as in their subject, nevertheless it is in the power of the will to resist them; and in this way the will of the continent man resists concupiscences" (ad 3).

3. Continence differs from temperance as the imperfect and begun differs from the perfect and completed. Temperance represses the sensitive appetite concerning concupiscences of touch, subjects it to reason, and renders it obedient; continence resists it as it rises up and still struggles against reason. Hence temperance is better. For a) "the good of reason is stronger in him who is temperate, in whom even the sensitive appetite itself is subjected to reason and as it were tamed by reason, than in him who is continent, in whom the sensitive appetite vehemently resists reason through depraved concupiscences" (a. 4);

b) "the will is nearer to reason than the concupiscible power. Hence the good of reason, from which virtue is praised, is shown to exist more from the fact that it reaches not only to the will, but also even to the concupiscible power, which happens in him who is temperate, than if it reaches only to the will, as happens in him who is continent" (ad 3).

1031. Incontinence is opposed to continence and therefore pertains more to the soul than to the body. For each thing is attributed more to that which is the cause per se than to that which only furnishes the occasion. But vehement passions, which from the disposition of the body rise up in the sensitive appetite, which is a power of an organic body, are only the occasion of incontinence, because, while the use of reason remains, man can resist them and not consent. Therefore the cause

per se of incontinence is on the part of the soul, which by reason does not resist the passions; and indeed in a twofold way: a) when the soul yields to the passions before reason takes counsel, and then there is unbridled concupiscence or flying ahead, either from swiftness, as in the choleric, or from vehemence, as in the melancholic; b) when man is inconstant in those things concerning which he has taken counsel by reason and has judged, and then there is weakness, from softness of temperament as in women, and in the phlegmatic.

Hence incontinence:

1. Properly and simply is about pleasures of touch, and in this way it is sin for a twofold reason: in one way from the fact that the incontinent man withdraws from that which is according to reason; in another way from the fact that someone immerses himself in certain shameful pleasures;

2. Properly and in a certain respect is about pleasures from cognition of exterior things good in themselves (honor, riches, vengeance), namely when man in these does not observe the mode of reason: thus it is sin, not from the fact that someone plunges himself into depraved concupiscences, but from the fact that he does not observe the due mode of reason in the concupiscence of things to be sought in themselves;

3. Improperly and according to likeness, it is about concupiscences of those things which someone cannot use badly (for example, virtues), when someone is wholly led by good concupiscence as the incontinent man is led by evil concupiscence. And such incontinence is not sin but pertains to the perfection of virtue.

1032. Remarks. - 1. Incontinence is a lesser sin than intemperance, because the intemperate man sins from a permanent evil habit, the incontinent man from a passing passion.

For a) "where there is a greater inclination of the will to sin, there the sin is graver. But in him who is intemperate, the will is inclined to sin from its own choice, which proceeds from a habit acquired by custom; but in him who is incontinent, the will is inclined to sin from some passion. And because passion quickly passes, but habit is a quality difficult to move, hence it is that the incontinent man at once repents when the passion has passed, which does not happen concerning the intemperate man; indeed he rejoices that he has sinned, because the operation of sin has become connatural to him according to habit... Hence it is clear that the intemperate man is much worse than the incontinent man" (q. 156, a. 3);

b) voluntary ignorance also is greater in the intemperate man; "for the ignorance of the incontinent man is considered with respect to some particular eligible thing, insofar as namely he judges that this is now to be chosen; but the intemperate man has ignorance concerning the end itself, insofar as namely he judges this to be good, that he should follow concupiscences unbridledly" (ad 1);

c) hence "his healing is more difficult for two reasons. The first of these is on the part of reason, which has been corrupted concerning the estimation of the ultimate end; which is as a principle in demonstrative matters. But he who errs concerning a principle is more difficultly reduced to truth, and similarly in operative matters he who errs concerning the end. The other is on the part of the inclination of the appetite, which in the intemperate man is from habit, which is difficultly removed;

but the inclination of the incontinent man is from passion, which can more easily be repressed" (ad 2).

2. He who has efficaciously retracted a vicious habit, for example of intemperance, but has not yet extirpated it, is not simply intemperate, since that habit is no longer voluntary to him; hence if from the inclination of the remaining habit he happens to sin, he seems rather to be assimilated to the incontinent man who falls from passion than to the intemperate man who sins from a voluntary habit.

3. On the part of the passion by which reason is overcome, incontinence of concupiscence is more shameful than incontinence of anger, for four reasons: a) "because the motion of anger participates somewhat in reason, insofar as namely the angry man tends to avenge an injury done to him, which reason in some way dictates, but not perfectly, because it does not intend the due mode of vengeance; but the motion of concupiscence is totally according to sense, and in no way according to reason; b) because the motion of anger more follows the temperament of the body, because of the swiftness of the motion of choler, which tends to anger; hence it is more ready at hand that he who according to the temperament of the body is disposed to being angry becomes angry, than that he who is disposed to concupiscence concupisces...; but that which proceeds from a natural disposition of the body is reckoned more worthy of pardon; c) because anger seeks to work openly; but concupiscence seeks hiding-places and steals in deceitfully; d) because the concupiscent man works pleasurably; but the angry man as if compelled by a certain preceding sadness." But incontinence of anger for the most part is graver by reason of the evil effects to which it leads, as to those things which pertain to harm of neighbor (q. 156, a. 4).

1. This is not to be understood as if the temperate man feels no further rebellious motions of concupiscence in himself; but a man endowed with the virtue of temperance suffers less frequent and vehement motions and more easily represses the motions.

2. It belongs to reason as first mover, to the will as subject.

Question Two: On Meekness and Clemency

Article I: On Meekness and Clemency in Themselves

S. Th. II-II, q. 157.

1033. To moderate vengeance, two virtues annexed to temperance concur: meekness (*douceur; zachtmoedigheid*), **which is the virtue moderating anger, or the very appetite of vengeance, according to right reason; and clemency** (*goedertierenheid*), **which is the virtue moderating punishments from mildness of affection insofar as the account of justice permits.** For from mildness toward neighbor one is well affected and abhors his evil, and inclines the soul to imposing lesser punishments than can be imposed by right, with attention to the circumstances of the fact, person, cause, mode, etc.

These two virtues are distinguished: meekness directly moderates the very appetite or affection of vengeance and diminishes the passion itself of anger, and is in the irascible appetite; clemency

directly moderates and diminishes the effect, namely exterior punishment, and therefore also the affection (of a superior) of using his whole power, and is in the will. Yet this does not prevent them from being able to concur in the same effect, when anger rises up in a superior who has the office of punishing: for then meekness, by moderating anger, brings it about that a graver punishment is not inflicted, which properly belongs to clemency, just as abstinence from theft, which belongs to justice, can be from liberality, which restrains the inordinate love of money. Nevertheless, even then they tend to the effect under a diverse formal motive: meekness inclines to it because of the honorableness which shines forth in moderating anger; clemency because of the honorableness which is in not using one's whole power on account of benignity; meekness moderates punishment as to be taken away from the impulse of anger, clemency as to be inflicted from legitimate power. Therefore meekness is not about an interior act and clemency about an exterior act; but clemency is a virtue proper to superiors, meekness common to all.

But meekness, for moderating anger, has two chief offices: a) it represses anger where a just cause of being angry is lacking; b) and if a just cause is present, it prevents anger from exceeding measure; hence it is a mean between irascibility and lack of anger.

1034. These virtues are annexed parts of temperance, because they imitate it in secondary matter as to mode: for as temperance consists in the restraint of more vehement concupiscence, of foods and venereal things, so meekness and clemency consist in a certain restraint of anger and punishments, namely in the restraint of a less vehement concupiscence, namely anger, and of the affection for inflicting punishments.

They are virtues because they moderate punishments and anger according to right reason; hence:

a) Meekness is not directly opposed to severity. For "meekness is about angers, but severity is considered about the exterior infliction of punishments"; nor is clemency opposed to severity, because each is according to right reason. "For severity is inflexible concerning the infliction of punishments when right reason requires this; but clemency diminishes punishments also according to right reason, namely when it is fitting and in those in whom it is fitting. And therefore they are not opposed, because they are not about the same thing" (a. 2, ad 1).

b) They hold the mean between excess and defect, although they diminish anger and punishments: "The virtue (of meekness) is named from the diminution of anger... because virtue is nearer to diminution than to superabundance, on account of the fact that it is more natural for man to seek vengeance for injuries inflicted than to be deficient in this, because injuries brought upon oneself scarcely seem too small to anyone... But clemency is diminutive of punishments, not indeed with respect to that which is according to right reason, but with respect to that which is according to the common law, which legal justice regards; but on account of certain particulars considered, clemency diminishes punishments, as it were judging that a man is not to be punished more... From this it is clear that clemency is compared to severity as epikeia to legal justice, of which severity is a part as to the infliction of punishments according to law. Yet clemency differs from epikeia" (ad 2): "In the diminution of punishments two things are to be considered. One of these is that the diminution of punishments be made according to the intention of the legislator, although not according to the words of the law; and according to this it pertains to epikeia. The other is a certain moderation of affection, so that a man does not use his power in inflicting punishments; and this properly pertains

to clemency... And this moderation of soul proceeds from a certain sweetness of affection, by which one abhors everything which can sadden another" (a. 3, ad 1).

c) They also differ from piety and mercy "as to the motive: for piety removes the evils of neighbors from the reverence which it has toward some superior, for example toward God or a parent; but mercy removes the evils of neighbors from this, that one is saddened in them, insofar as he judges them to pertain to himself..., which proceeds from friendship, which makes friends rejoice and be saddened concerning the same things; but meekness does this insofar as it removes anger inciting to vengeance; but clemency does this from mildness of soul, insofar as it judges it equitable that someone should not be punished further" (a. 4, ad 3). And therefore "mercy and clemency agree in this, that each flees and abhors another's misery, yet differently and differently: for it belongs to mercy to relieve misery by the conferring of benefit; it belongs to clemency to diminish misery by the removal of punishments" (q. 159, a. 1, ad 2).

1035. They are not virtues simply the most perfect. - For they are praiseworthy and withdraw from evil insofar as they diminish anger or punishment; but it is more perfect to attain good than to lack evil. And therefore the theological virtues, prudence, and justice are simply greater. Yet under a certain respect they have a certain excellence among the virtues which resist passions. For "anger, which meekness mitigates, because of its impulse, especially impedes the soul of man from freely judging truth, and on account of this meekness especially makes man possessed of himself... But clemency, in this that it diminishes punishments, seems especially to approach charity, which is the most excellent of the virtues, through which we work goods for neighbors and impede their evils" (q. 157, a. 4).

Article II: On the Opposed Sins

S. Th. II-II, q. 158 and 159.

1036. Two sins are opposed to meekness: irascibility primarily and by defect; secondarily and by excess, lack of anger, by which someone does not stir up anger which he needs for fulfilling an office of justice or charity to which he is bound, for example, to correct, chastise, beat back the contumacious. This is not distinguished in malice from the omission itself of the office, and is not evil except insofar as in it the omission of the due action is judged to be willed.

1037. Irascibility (*irascibilite; grammoedigheid*) **is the inordinate appetite of vengeance.** - To be angry of itself is not evil: for anger properly is a passion of the irascible appetite, and passions as such are not evil. Yet a passion can be evil: a) from the object or according to species, as envy from its object is evil, which is sadness concerning another's good, which in itself is repugnant to reason: in this way anger is not evil of itself, since its object, vengeance, can be sought well or badly; b) from the mode, if it rises up more or less than reason dictates: in this way anger is evil, if it abounds more than reason dictates, or even if, when reason dictates, it is deficient. Hence anger is good and praiseworthy, provided both according to the mode of reason and legitimate vengeance are sought, for example, that another be corrected, that the order of justice be preserved, that reason execute justice more strongly, that others be deterred, etc.: then it is called zeal (anger through zeal); on the contrary, it is evil if illegitimate vengeance is sought, or if in legitimate vengeance the mode of reason is passed over (anger through vice). Hence irascibility is rightly defined: an inordinate appetite of vengeance.

1038. Anger (*colere; gramschap*) **can be evil in two ways:**

1. On the part of the object: a) by seeking unjust vengeance upon him who did not deserve it, or beyond what he deserved; b) by seeking vengeance not according to legitimate order, but to be executed by one's own authority; c) by seeking it not for the due end, which is the conservation of justice and the correction of fault, but, for example, from hatred as satisfying one's own evil soul, or intending rather the extermination of the sinner than the abolition of the sin. This anger from its genus is mortal, because it is contrary to charity and justice; yet it can be venial, not only from indeliberation, but also from lightness of matter, when one seeks to avenge himself in some small matter, for example, if he pulls a boy a little by the hair or by the ear, or something of this sort.

2. On the part of the mode, anger is evil if it is too burning interiorly, or is manifested too much exteriorly. This of itself is venial; nevertheless it becomes mortal because of an effect prohibited under grave obligation, such as scandal, blasphemy, notable harm to health, etc. But let it be noted that anger is not necessarily inordinate because it is great, but because it is too great; hence a vehement motion of anger is good provided it is required by right reason or conformed to it, for example, if it is proportioned to the quality of the fault, to the condition of the sinner, and to other circumstances. Hence even Christ was moved by grave anger when he cast the merchants out of the temple.

1039. Gravity of anger. - Anger is a capital vice, as was said in the treatise on sins, I, n. 510. Yet it is not the gravest of sins.

For:

1. According to itself and on the part of the appetible object, "anger seems to be the least of sins." Because a) it is a lesser sin than hatred and envy: "on the part of the evil which it seeks, anger agrees with those sins which seek the evil of neighbor, as with envy and hatred; but hatred seeks the evil of another absolutely insofar as it is such, while the envious man seeks the evil of another on account of the appetite of his own glory; but the angry man seeks the evil of another under the account of just vengeance." But "it is worse to seek evil under the account of evil than under the account of good; and it is worse to seek evil under the account of an exterior good, which is honor or glory, than under the account of the rectitude of justice." Therefore it is clear that hatred is graver than envy, and envy than anger. And b) on this side, "the sin of anger also seems to be less than (the sin) of concupiscence, insofar as the good of justice, which the angry man seeks, is better than the pleasurable or useful good which the concupiscent man seeks" (a. 4).

2. But on the part of the mode of becoming angry, anger has a certain special disorder and excellence before those vices, because of the vehemence and swiftness of its motion (a. 4). And under this respect three species of irascibility are distinguished: a) of those suddenly becoming angry and from any slight cause: it is bilious anger, which pertains to the sharp; b) of those remaining in anger and sadness from too much retained memory of an injury inflicted: it is mania, which is called madness, and is found among the grave and bitter; c) of the obstinate, who do not cease from anger unless they complete vengeance: it is fury, which pertains to the

difficult and grave, who seek vengeance with an obstinate appetite and do not dismiss anger until they punish.

1040. Vices opposed to clemency. - Clemency mediates between cruelty and excessive mildness. Cruelty is an atrocity of soul in exacting punishments and exceeds the mode in punishing. Mildness contrary to reason mitigates or remits due punishments.

Cruelty (*cruaute; wreedaardigheid*) is the vice by which punishments are exacted beyond measure from austerity of soul: the excess of punishments externally pertains to injustice, but according to the affection of soul by which one is ready to increase punishments it pertains to cruelty. Therefore this supposes true or usurped authority in the one punishing, and guilt in him who is punished. But if either condition were lacking, there would be ferocity or savagery, which intends to torture innocent men, and takes pleasure in the torment and pains of men.

Excessive mildness (*overdreven zachtheid*) is a vice equally pernicious to the commonwealth as cruelty, by which punishment is mitigated or altogether remitted contrary to the dictate of reason, when the welfare of the delinquent or the example of others requires just severity. This enervates discipline, and leaves vices unpunished, and disturbs the peace of good citizens.

Question Three: On Humility

Article I: On Humility in Itself

S. Th. II-II, q. 161.

1041. Humility is said from *humus*, and humble as if inclined to the ground or near it; hence physically it is the state of that which clings to the ground and scarcely rises above it (*nederigheid*); **metaphorically it is a low and needy condition.** Morally it is taken for every lowering to things low, whether it is done from without, namely by another against the will of him who is lowered, and then it is a punishment (*vernedering*); or from within, and then it can be either contrary to reason (*laagheid*) or according to right reason, when someone voluntarily lowers himself from consideration of his defects, in which case it is a virtue (*ootmoedigheid*). Hence it is defined: "the virtue by which someone, considering his defect, holds himself in low things according to his mode" (a. 1, ad 1), or a virtue moderating the appetite lest it tend immoderately into high things, that is, into those things which are above itself. Somewhat more fully: the virtue which restrains the inordinate appetite of one's own excellence lest it tend immoderately to high things, and inclines man to acknowledging his own baseness (or nothingness) according to truth.

It differs from magnanimity a) by reason of the act: magnanimity primarily tends to high things, secondarily restrains the soul lest it tend to them contrary to right reason; humility does not impel the soul to high things but on the contrary restrains it; but virtues are distinguished according to their primary act; b) by reason of the formal motive: the magnanimous man restrains the soul from high things by considering that they exceed his condition or powers, even according to the gifts which he possesses from God; the humble man does so according to consideration of his own defect, which is from himself (q. 129, a. 3, ad 4). And so humility presupposes that which belongs to magnanimity but adds something beyond, because it does not hope even for things commensurate except as exceeding his dignity, and as to be acquired and preserved only through that which is of God. "And therefore concerning the appetite of arduous good a twofold virtue is necessary. One

indeed which tempers and restrains the soul lest it tend immoderately into high things, and this pertains to the virtue of humility. But another which strengthens the soul against despair and impels it to the pursuit of great things according to right reason, and this is magnanimity" (a. 1).

1042. Humility is a virtue, because it moderates the appetite tending to the great and arduous according to right reason. Hence it is in the irascible appetite, because it is concerned with arduous good, and principally in the will when it concerns a spiritual excellent good; it presupposes cognition of one's own defect, as the rule directing the appetite, and thus is in the cognitive power and in reason as in the rule directing the appetite (a. 2). Its foundation, namely, is knowledge of oneself, which is especially acquired by the comparison of our littleness with the infinite perfection of God; hence Bernard says: it is the virtue by which someone, by a most true knowledge of himself, becomes vile to himself. And so "humility consists essentially in the appetite, according as someone restrains the impulse of his soul, lest it tend inordinately to 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 each is the reverence which someone has toward God" (a. 6).

It is a special virtue which "principally regards the subjection of man to God, on account of whom he also subjects himself to others by humbling himself" (a. 1, ad 5). For it moderates hope tending to one's own arduous good; now "in repressing the presumption of hope, the chief reason is taken from divine reverence, from which it happens that man does not attribute more to himself than belongs to him according to the grade which has fallen to him from God. Hence humility seems principally to import the subjection of man to God" (a. 2, ad 3).

It is a virtue annexed to temperance, because it represses the motion of hope tending to great things, in the same way as meekness moderates anger (a. 4).

1043. Perfection of humility. - Humility is not the greatest of the virtues: for the theological virtues are more perfect, being about God himself as the end; the intellectual virtues and prudence, which are essentially in reason itself; and justice, especially legal justice, which universally participates in the ordering of reason; but it is more perfect than the other moral virtues, namely those which are about passions, because it renders man well subject to the ordering of reason in a universal way as to all things, whereas each other virtue does so as to some special matter (a. 5).

Yet it is called the foundation of the spiritual building, because it is "first in the acquisition of virtues, ...by way of removing an obstacle, insofar as namely it uproots pride, which God resists, and makes man subject... for receiving the influx of divine grace" (Jas. 4:6). Yet it is not the foundation in the virtues directly and positively, or that through which one first approaches God, but this belongs to faith, and therefore faith is a foundation nobler than humility (ad 2).

1044. Practical rules for exercising humility. - In man two things can be considered: that which is of God and that which is of man. Of man is whatever pertains to defect; of God is whatever pertains to salvation and perfection, for man, as a creature, of himself is nothing (a. 3). Hence it is honorable from humility to embrace low things, that we may profess that we have nothing good from ourselves, can do nothing, are nothing, and consequently that every good of ours is from God, that all things are to be referred to him as author, and that every praise and honor which is given to us is to be referred to him. Hence:

1. If man considers God's gifts in himself, humility does not prevent someone from seeking great things, provided from God's gift he has sufficient proportion, nor does he seek those things as if worthy of them from himself. The magnanimous are humble when it is a question of God's honor, because there is nothing which, with God's aid, they hesitate to undertake (a. 2, ad 2).

2. If man considers himself according to that which is his own, the humble man, referring himself to God and to that which is of God, judges himself to be nothing except defect, fault, and offense of God, and judges that he is to be subjected to all things which are of God, and that he is unworthy and useless for these things.

3. Humility properly regards the reverence by which we are subjected to God. And therefore every man, according to that which is his own, ought to subject himself to neighbor as to that which is of God in him, because since humility properly regards the reverence by which we are subjected to God, we ought to reverence not only God in himself but also that which is of God in any persons whatever (a. 3).

4. But humility does not require a) that someone subject that which is of God in himself to that which appears to be of God in another, b) nor that someone subject that which is his own in himself to that which is of man in his neighbor (a. 3).

5. Yet someone can reckon that there is some good in his neighbor which he himself does not have, or some evil in himself which is not in another, from which he can subject himself to him through humility (a. 3). "Indeed," says Billuart, "he can think that if others had been endowed with so many graces and benefits as he himself has received, they would be better than he and more pleasing to God."

From these considerations man can without falsity reckon and pronounce himself lower than all, unworthy of God's gifts and unfit for all things: "if we prefer that which is of God in our neighbor to that which is proper to us, we cannot incur falsity" (a. 3, ad 2). And thus "someone without falsity can believe and pronounce himself lower than all according to hidden defects which he recognizes in himself; and the gifts of God which lie hidden in others... Similarly also without falsity someone can confess and believe himself useless for all things, and unworthy through his own powers, so that he may refer his whole sufficiency to God" (a. 6, ad 1).

1045. Grades of humility. - According to St. Benedict, twelve grades of humility are fittingly distinguished, from the root of humility, namely reverence toward God, ascending by degrees from greater things to lesser; concerning this read article 6. These grades are not all species and acts of humility, but certain ones are antecedent dispositions or consequent signs.

According to St. Bernard, three grades are distinguished: sufficient, namely to be subject to a superior and not to prefer oneself to an equal; abundant, namely to be subject to an equal and not to prefer oneself to an inferior; superabundant, that is, to be subject to an inferior.

Billuart recounts eight acts or functions: 1. contempt of self; 2. to reckon oneself unworthy of God's gifts; 3. not to desire to be esteemed greatly or honored; 4. to desire to be held vile and contemned; 5. to grieve when one is magnified or honored; 6. to esteem oneself lower than others; 7. to subject

oneself to God and to men on account of God; 8. in external things or functions to embrace what is more abject.

1046. Remark. - Billuart asks: "whether all these acts of humility belong to superiors toward subjects? Resp. The interior acts belong to them according to that saying of Augustine in the rule: 'before God let the prelate be prostrate at your feet.' But as to exterior acts, discretion is needed, lest, as the same St. Augustine says in the same place, 'among those whom it is necessary to be subject, while humility is observed too much, the authority of ruling be broken.' Hence St. Thomas, a. 3, ad 3: From humility 'man can according to the interior act of the soul subject himself to another... But in exterior acts of humility, as also in the acts of the other virtues, due moderation is to be applied, lest they be able to turn to the detriment of another,'" who from this would become proud or would contemn.

1047. Humility is a mean between pride and excessive self-abasement. - This inclines to imprudent self-abasement when it redounds to injury of the state or office which someone bears, or of the talent with which he is endowed, or to the disadvantage of those whom he ought to benefit. Humility, for a reasonable cause, pursues care for one's own excellence.

Inordinate abasement is opposed to humility secondarily and by excess; but by defect and primarily, pride is opposed.

Article II: On Pride

S. Th. II-II, q. 162; I-II, q. 84, a. 2 and 4.

1048. Pride (*orgueil; hoovaardigheid*) **is the inordinate appetite of one's own excellence.** It is called:

1. Appetite, because pride resides in the appetite, namely principally in the will, if it seeks excellence in spiritual things, secondarily in the irascible power, which tends to sensible, arduous, and excellent good;

2. Inordinate: to seek excellence according to itself is not evil, but it is against the order of reason that someone tend above that which he is, as the proud man does: "for right reason has this, that the will of each one be borne toward that which is proportioned to him" (a. 1);

3. Of excellence: both relative, by which someone wills to excel others, at least implicitly by contemning them; and absolute, by which someone simply wills to excel above that which he is, even not thinking of others;

4. Of one's own: the special object or proper appetible thing from which pride receives its species is the loftiness of one's own person; for not in this or that matter, but commonly and in all things, the proud man has himself as lofty. Therefore pride seeks a certain universal excellence and by this is distinguished from presumption, ambition, and vainglory, which inordinately seek some particular excellence, whether in honors and dignities.

1049. Pride is a mortal sin. - For pride is contrary to subjection to God and to charity; for the proud man exalts himself above that which has been fixed for him by God, whether contempt of God is included in pride, or the man does not wish to be subjected to his rule.

But pride happens in four ways: 1. by judging that the goods which one has are not had from God, or at least by acting as if he had them from himself; 2. by judging that he has received those things from God but on account of his own merits, or by acting as if it were so; 3. by attributing to himself goods which he does not have; 4. in the goods which he has, by willing, with others contemned, to be preferred to them more than is fitting. The first two modes, since they include formal contempt of God, are mortal sin; the last two often are only venial, because to magnify oneself in affection and to raise oneself more than is just, while one does not refuse to be subjected to God, is not a grave disorder, unless it is done with grave irreverence toward God, or renders one ready to sin mortally, or there is present grave contempt of neighbor or notable detriment.

1050. Gravity of pride. - Pride 1. under a certain respect is the gravest of sins, namely on the part of aversion. For the aversion which in other sins follows conversion to created good pertains per se to pride, which per se refuses to be subjected to God; but not to wish to be subjected to him and to his rule is to be directly turned away from him; hence on the part of aversion it is the gravest of sins: for that which is per se is stronger than that which is through another. Therefore pride exceeds other sins in aversion, which formally completes sin. But on the part of conversion it is not the greatest, because one's own excellence is not an object which has the greatest repugnance to the good of virtue. Finally, simply speaking, it is not the gravest, for sins against the theological virtues have for their object the very aversion from God; but pride has only one's own excellence, by reason of which, since it does not wish to be subject to God, it turns away from him (a. 6).

Hence 2. it is the beginning of every sin: a) indirectly and as it were per accidens, by removing an obstacle, insofar as namely man through pride contemns the divine law, by which he is prohibited from sinning (according to Jer. 2:20): thus it is the cause of sin or the beginning on the part of aversion. For aversion or contempt of God, by which someone does not wish to be subjected to his rule and which per se pertains to pride, is found in all sins implicitly as consequent upon conversion to a good opposed to the law; but from this aversion sin has that it is evil, and therefore there the account of evil begins, and thus it is the beginning of sin; b) per se, insofar as other sins are ordered to the end of pride, which is one's own excellence, to which everything which someone inordinately seeks can be ordered: thus it is the cause of every sin or the beginning on the part of conversion, insofar as all sins can arise from it as from a final cause, insofar as temporal goods which man seeks in other sins can be willed on account of one's own excellence, which is the end of pride.

Hence 3. because it is the final cause of all sins, it is not in the strict sense a capital sin, but rather the cause of all the capitals, and the mother and queen of all vices. Nevertheless there are certain sins which immediately and more frequently arise from it, and immediately serve it, because they seek a certain special excellence and have an object very near to the object of pride; hence they are customarily called its daughters. They are presumption, ambition, and vainglory, concerning which it was said in n. 918.

1051. Remarks. - 1. Pride differs from disobedience: the latter is from disdain for the precept as such, the former from disdain for subjection to God.

2. On the origin and progress of pride, cf. Lehmkuhl, Th. M. I, n. 884.

3. Bernard distinguishes twelve grades of pride which are opposed to the twelve grades of humility. Cf. S. Th., a. 4, ad 4.

Question Four: On Studiosity

S. Th. II-II, q. 166-167.

1052. Studiosity (from study, that is, vehement application of the mind; *weetgierigheid*) **is the virtue moderating the appetite and study of truth to be known according to the rules of right reason.** It is subjected principally in the will for intellectual cognition, but secondarily in the concupiscible appetite for sensitive cognition.

The proximate matter of this virtue is not cognition itself of truth, which, speaking per se, is good (nor does it need a moral virtue), but the appetite of truth to be known, which can be good or evil. For on the part of the soul man is inclined to desire for cognition; on the part of the body he is inclined to avoid the labor of seeking knowledge. Hence a virtue is required, which contains each inclination within the limits of reason, lest there be excess toward cognition or the defect of sloth. Insofar as it restrains the immoderate appetite of knowing, lest someone wish to know more and higher things than befits his capacity, nor make knowledge more than truth, it is a potential part of temperance; insofar as it impels to study notwithstanding labor, it rather pertains to fortitude. From this second element it obtained its name, but the first is more essential, for the appetite of knowing per se regards the cognition to which studiosity is ordered; the labor of learning is regarded only per accidens, insofar as it is an impediment of cognition which must be removed. And therefore studiosity rather and simply pertains to temperance.

1053. Curiosity is opposed to studiosity primarily and by excess. - This generally signifies every superfluous care about useless things in clothing, furniture, speech, art, exterior things; properly it imports superfluous diligence in knowing things which either do not pertain to us at all or exceed our grasp, precisely with this mind, that we may know and discern, or from the affection of cognition alone: for if it were done for another end, and not from the delectation of cognition, it is not formal curiosity but material curiosity. Hence it can be defined: the inordinate appetite of knowing.

Vicious curiosity is concerned:

A. About intellective cognition in two general ways: a) per accidens, on the part of the end, namely if knowledge is sought for an evil end, for example, for becoming proud or for harming others, and this is material curiosity; b) per se from the very inordinate mode of seeking knowledge, if it is formal curiosity, and this in four ways: 1. insofar as through less useful study we are withdrawn from necessary study; 2. if someone studies to learn something from him from whom it is not lawful, as from a demon or from magicians or spiritists; 3. if he seeks to know the truth concerning creatures without referring it to the due end (directly or indirectly), namely to the knowledge of God; 4. if he studies to know truth above the faculty of his own talent, because through this men easily slide into errors (Sir. 3:22, 26; Prov. 25:27).

B. Similarly, vicious curiosity is concerned with sensitive cognition in a twofold way: 1. in one way, negatively, if sensitive cognition is not ordered to something useful, but rather turns man away from some useful consideration; 2. in another way, positively, insofar as sensitive cognition is ordered to something harmful: as the curious looking at a woman is ordered to concupiscence, and diligent inquiry concerning the deeds of others is ordered to detraction.

Yet if someone is intent upon cognition of sensible things in an ordered way because of the necessity of sustaining nature, or because of the study of understanding truth, there is virtuous studiosity

about sensible cognition.

1054. Curiosity (*nieuwsgierigheid*) **according to itself is a venial sin;** because it does not seem a great inordination that man should apply superfluous care in knowing things which do not pertain to him: for it is nothing but an excessive affection and use of a good thing, namely cognition. Yet it can become mortal in many ways per accidens from circumstances:

1. By reason of matter or effect, if from an inordinate desire of knowing someone transgresses a positive law or exposes himself to grave danger: thus they sin mortally who read prohibited books, or amorous books with danger of consent; who from curiosity look for a long time at the dishonorable parts of the other sex; who attempt by the powers of nature to know the mysteries of faith; or intend to know the secret of confession; who watch duels by their own effort, etc.

2. By reason of the end, as if you attempt to know something for gravely harming your neighbor.

3. By reason of the means, as if by magical art, or by inducing someone into mortal sin, you wish to know something, or you open letters in order to read them (n. 856).

1055. Negligence is opposed to studiosity by defect and secondarily. - It is the voluntary omission of knowing those things which someone is bound to learn or know for his state and condition. It is mortal or venial according as the obligation of knowing and the negligence is grave or light, for example, a judge neglecting the study necessary for prudently settling a case.

Negligence here is taken for the appetite of neglecting study and is the root of negligence of the intellect. Namely that negligence contrary to studiosity is the cause of negligence against prudence.

1056. Remarks. - 1. Luxury and gluttony are about pleasures which are in the use of tangible things; but curiosity is about the pleasure of cognition of all the senses and is called the concupiscence of the eyes. Hence merely sensible pleasure sought without reason pertains to curiosity, because it is to experience in order to experience, to know by sense in order to know (a. 2, ad 1).

2. Let the words of St. Thomas, q. 167, a. 2, ad 3, be noted: "To look upon the deeds of others, or to inquire with a good mind, or for one's own utility, namely that from the good works of neighbor man may be provoked to better things, or also for the utility of that person, namely that he may be corrected if anything is done viciously by him, according to the rule of charity and due office, is praiseworthy (Heb. 10:24)... But that someone intends to consider the vices of neighbors, for contemning or detracting, or at least for inquiring uselessly, is vicious" (Prov. 24:15).

Question Five: On Modesty of Manners

S. Th. II-II, q. 168.

1057. Modesty of manners (*zedigheid, bescheidenheid*) **is the virtue tempering the external motions of the body according to the prescriptions of reason, or the virtue preserving decorum in external motions and gestures.**

The matter is bodily motion and exterior gesture, presented to the senses, as gait, standing, sitting, motion of the head, contraction and relaxation of the face, movement of the members, voice, laughter, gaze. In these two things especially are to be avoided: that there be anything effeminate or soft, and that there be anything harsh and rustic.[1]

[1] Cicero, *De Officiis* I, 128.

And indeed: the exterior motions of man are free and orderable by reason: for at the command of reason the exterior members are moved; but that which is subjected to the ordering of reason can be ordered well or badly. Therefore it is manifest that concerning the ordering of these motions a moral virtue is to be constituted (a. 1): insofar namely as they can be corrected by the command of reason (ad 2), and are signs of interior disposition (ad 1), which they presuppose (ad 3).[2]

[2] Which St. Ambrose describes splendidly, *De Officiis* I, c. 18-19.

1058. Various modesty. - Modesty imposes the moderation of congruity according to right reason upon external motions and gestures. But the ordering of these motions is considered as to two things: 1. in one way according to the fittingness of the person according to himself (*decentia* or adornment; *voornaamheid*); 2. in another way according to fittingness toward other persons, affairs, times, and places (good ordering; *geregeldheid*). Hence the office is to moderate gait, voice, speech... in such a way that they fit the person both in himself and as placed in such a place, time, and affair, that is, both with respect to the person acting and with respect to exterior things.

And so modesty does not consider exterior motions insofar as they express a relation of debt to another, but insofar as they are to be moderated so that man is well disposed in himself according to the condition of the person acting and the affairs to be performed. Yet because through these motions we live outwardly with others (to whom they can be burdensome and unpleasant), and motions also are for them certain signs of interior disposition, therefore if moderation of exterior motions of this sort is furnished so that someone exteriorly displays himself as he is interiorly, it will be regulatively and imperatively from the virtue of truth (to which simulation and hypocrisy are opposed); if so that he offend no one but on the contrary displays himself agreeable and suitable in society, it will be regulatively and imperatively from the virtue of affability (to which flattery is opposed by excess, quarreling by defect); nevertheless from both sides it is elicited by the virtue of modesty. From this it is clear that this virtue is very useful for social life, for a good name, and for the edification of neighbor.

1059. Sins opposed to modesty. - To modesty of manners by excess is opposed affectation (*gezochtheid*), petulance (courtly mannerism) or insolence, which exceeds the prescription of reason in exterior motions and gestures, for example, if someone exceeds the common mode too much, or assumes a foreign mode which does not fit his own condition, as a religious assuming courtly manners. By defect is opposed: rusticity of manners (*boersheid, onbeschaafdheid*).

Per se these are venial; per accidens they can be mortal by reason of the end, scandal, offense, grave harm, etc.

1060. Modesty in games. - Modesty is not only concerned generally with serious exterior motions and gestures, but also specially with playful and jesting matters. In the first case it is the virtue described above, and is called eutaxy (*welgevoeglijkheid*): a good disposition of the body; in the other case it obtains the name of eutrapely: pleasantness or urbanity which befits the mode of virtuously

and holily indulging recreation; by others it is called austerity (*deftigheid*), because games rather are to be moderated so that excess may be avoided. Eutrapely can be defined: the virtue moderating man in the use of games (by deeds) and jests (by words), or the virtue moderating play lest it depart from the mean of reason by excess or defect.

Game generally is whatever saying or deed ordered to delight of soul; if it is a saying, it is called jest; if a deed, it is called game. And although someone alone can play, nevertheless, because it is for the most part exercised among many, it is defined as a contest of two or more undertaken for delight of soul. To this contest, lest it grow slack, a pact can be added that the prize yield to the victor, and this is the contract of game, concerning which it was said in the treatise on justice, n. 600.

Game is licit, indeed necessary. For since the power both of soul and body is finite, it follows that by length or vehemence of labor it is wearied, and as bodily weariness is relieved through rest of the body, so also animal weariness is relieved through rest of the soul. But rest of the soul is delectation, and it does not so much consist in cessation from every work, because the soul of one awake never ceases from every work. Therefore a remedy against weariness of soul must be applied through some delectation, the intention by which one had previously insisted upon the study of reason being interrupted. But the sayings or deeds in which delectation is sought, and through delectation the repair of powers, are called jests and games. Therefore it is licit, indeed necessary, for man sometimes to use jests and games, so that there can be sin in defect of playing.

But for it to be licit three things are required:

1. First and principally, that the aforesaid delectation not be sought in any operations or words shameful, or injurious, or harmful to neighbor, as infamy, unjust detriment of fortune, etc.

2. That through play the gravity of the soul not be totally dissolved, as happens in those who are delighted beyond the limits of reason;

3. That the game fit the person, time, and place, and that all circumstances which are required for a virtuous act be observed.

Hence eutrapely is said to be "from good turning, because namely it turns certain sayings or deeds well into solace" (a. 2).

1061. Vices in games. - The virtue of eutrapely moderates play lest it depart from the mean of reason by excess or defect. He sins by excess or superfluity who does not observe the three aforesaid conditions. The sin of itself is venial, as being only excess of a good or indifferent thing; yet per accidens it can be mortal in some joined species.

For game is superfluous in two ways insofar as it exceeds the rule of reason: 1. in one way from the species of actions which are assumed, if they are shameful, or contain irreverence toward God and sacred things (for example, if someone abuses the words of Scripture for jests), or are injurious and harmful to neighbor (infamy, unjust detriment of fortune), and then it is a mortal sin from its genus; 2. in another way according to defect of due circumstances, when someone uses play at undue times or in undue places, or also apart from the fittingness of the affair or person. And this is venial, unless because of the vehemence of affection toward play, whose delectation one prefers to the love of God, so that he does not shrink from using such games against the precept of God or of the Church: for

thus he places his ultimate end in the delectation of game, and is ready to transgress a grave precept of God or the Church rather than abstain from play. This sin by excess is reduced to buffoonery or inept mirth (a. 3, and ad 2).

He sins by defect who shows himself morose and burdensome to others, displaying nothing delightful and impeding or not receiving the delights of others.

"Everything which is against reason in human affairs is vicious. But it is against reason that someone display himself burdensome to others, for example, when he displays nothing delightful, and also impedes the delights of others.... But those who are deficient in play neither themselves say anything laughable, and they are troublesome to those saying such things, because namely they do not receive the moderate games of others. And therefore such persons are vicious, and are called hard and rustic. But because play is useful on account of rest and delectation; and delectation and rest are not sought for themselves in human life, but on account of operation,... therefore defect of play is less vicious than super-excess of play" (a. 4).

1062. Remarks. - 1. Excess in play, insofar as delectation is sought too much in it, is against modesty and temperance; but insofar as it is too much rest from labor, it is a certain softness which is opposed to perseverance and fortitude.

2. From these things it can be inferred: "the office of actors, which is ordered to displaying solace to men, is not according to itself illicit..." (cf. a. 3, ad 3).

3. Concerning spectacles and dances theologians remark that these, according to themselves, that is, with depraved circumstances excluded, are not dishonorable, but morally indifferent, as pertaining to arts, games, and joyful recreations; nevertheless in practice they sometimes provide an occasion of sinning and become gravely dishonorable:

a) from a depraved, impious, or shameful end;

b) from grave danger of sinning mortally, for example, of perversion in faith or morals;

c) from grave scandal, whether direct, or even indirect, such as easily arises from depraved speech or words, gesture and touches, immodesty in clothing and other modes insufficiently honorable.

Concerning these they customarily treat more fully in pastoral theology.[3]

[3] Thus in our little work: *Questions on Various Categories of Penitents*, c. III, q. 6: on Worldly Things.

Question Six: On Modesty of External Equipment

S. Th. II-II, q. 169.

1063. Modesty of external equipment is the virtue which applies the moderation of reason in the equipment of external things, for example, clothes, furniture, horse, carriage, banquets, etc., with attention to the state and condition of persons, of place, time, custom, etc. For although in exterior things themselves there cannot be virtue or vice, nevertheless there can be in the man who uses them well or badly. But he can use them badly in two ways: in one way by comparison with the custom of men of the same condition with whom someone lives; in another way from the inordinate affection of the user, whether he observes custom or does not observe it.

Exterior equipment, namely, is ordered 1. to the protection of the body against injury of the air (necessity on the part of the body); 2. to covering the shameful parts of nature (necessity on the part of the soul); 3. to preserving the decorum of one's state according to the custom of the country (fittingness of honorableness and honor); 4. to fostering and raising up beauty (fittingness of beauty): for it is fitting and conformable to reason that man proceed honorably in political life, so that he may adorn his state fittingly.

1064. To this virtue by defect is opposed neglect of external equipment (*slordigheid*): **a)** if from negligence man does not apply care or labor to this, that he use exterior equipment as is fitting, for example, if from sloth he drags a garment along the ground, or thus provides tedium or scandal to others, which is more indecorous among those who, by force of function or office, ought to enjoy the good esteem of others; **b)** if he orders defect of exterior equipment to glory, which pertains to hypocrisy. Hence to use more vile things on account of boasting or pride is a sin, but not on account of mortification of the flesh or humility of spirit, for example, if someone exhorts others to penance.

1065. By excess is opposed luxury (*weelde; prachtliefde*) **above one's state, namely beyond condition and received custom:** a) if someone from superfluous adornment of clothing seeks an evil end, for example, human glory; b) if in these things he seeks delights, according as clothing is ordered to the protection of the body; c) if he applies excessive solicitude, care, or time to his equipment, whether by seeking, preserving, or arranging it, as happens to not a few women and to certain effeminate young men. But it would not be excess to wear extraordinary or costly garments, not indeed for glory but for signifying the excellence of ministry.

Hence three parts or species of the opposite virtue can be distinguished: 1. as to quantity in use, humility in clothing, which excludes intention of glory: it is a habit not superabounding in expenses and preparations; 2. as to instruments and helps which we need, per se sufficiency (*zuinigheid*), which excludes intention of delights: it is a habit content with the things with which one ought to be content; 3. as to the mode of seeking, simplicity (*eenvoudigheid*), which excludes superfluous solicitude for these things: it is a habit content with the things which occur.

1066. On worldly adornment. - Specially, excess can be given and modesty must be regarded in adornment, which theologians are accustomed to consider in women, to whom it more pertains to adorn themselves; nevertheless the same principles, with the same conditions granted, are to be applied to men. Now the adornment of women, even for fostering and raising up beauty, per se is an indifferent thing, and therefore good if it is done according to right reason; hence excess per se is only a venial sin, yet it can be mortal both by reason of intention or of an evil end mortally evil, and by reason of danger or grave scandal. To estimate this, three principles must be regarded:

1. Adornment is licit or illicit, venially or mortally evil, according to a diverse end: if it is done for an honorable end and according to the custom of the country, it is good, for example, so that a woman may please her husband or find a spouse; if it is done on account of levity alone, vanity, or displaying beauty, it is venial; if for provoking concupiscence and impure love, mortal.

2. For estimating danger or scandal, the custom of the country has much force; hence those things which in such a region provoke scandal and strongly incite to lust can elsewhere be excused from sin or from grave sin: for accustomed things entice less; yet to introduce immoderate adornment is not licit, because that is not done without the scandal of many.

3. A certain fiction in adornment is licit for concealing ugliness or covering a defect, arising from some cause, for example, sickness; but not for simulating a quality or beauty not possessed (which nevertheless is not mortal unless it is done on account of lasciviousness or in contempt of God): except if there were already a general custom of applying fictitious adornment, because then it would deceive no one.

Hence St. Thomas, a. 2, ad 1: "Sober and moderate adornment is not prohibited to women, but superfluous (by reason of mode), and shameless (by reason of scandal), and immodest (by reason of the end)."

1067. Practical applications. - With these things presupposed, we say:

A. Women sin mortally: a) if they adorn themselves with the mind of provoking to lust; b) if they use clothing so thin and fine that the dishonorable parts are not sufficiently covered; c) if they have the breast immoderately bared so that the middle parts of the breasts or almost the whole breasts are uncovered, or covered only with a transparent veil; which holds for cultivated regions, not for barbarous peoples among whom such is the custom; d) if they have the breast not altogether immoderately bared and display only the upper part of the breasts, but apart from the custom of the country, or introduce such a custom: for extraordinary and unaccustomed things move more. Which custom is not praiseworthy, and therefore is rather to be extirpated.

B. On the contrary, they sin only venially: a) if from levity, vanity, or boasting they adorn themselves according to the custom of the country; b) if the adornment is apart from the condition of their state; c) if without sufficient reason they bear the breast not altogether immoderately bared according to the custom of the country (for accustomed things entice less); and also if, apart from this custom, they have the breast moderately bared or the arms bared, or garments so made that the form of the breast entirely appears, or introduce such a custom: yet such a custom is not praiseworthy; d) if in adornment there is fiction or simulation properly so called, for example of beauty, as if without an excusing reason, at least of legitimate recreation, a woman uses masculine clothing, puts on masks and costumes, smears the face with rouge and pigments, uses another's hair in order to lie about her own, wears false breasts, etc., unless these things have been introduced by general custom; e) if they invent or make new and curious ornaments (*modes ridicules*) or introduce them.

C. There is no sin: a) if right intention, legitimate custom of the country, and condition of state are observed: hence, in many regions, to go forth today with hair unveiled is no sin; yet this custom is not praiseworthy (1 Cor. 11:6); b) if a woman adorns herself so that she may please a man, a married woman for pleasing her husband (with him commanding, or lest he turn aside to other women), or an unmarried woman for obtaining a husband; yet if she does not wish to have a husband, she should also leave behind superfluous adornment; c) if there is only dissimulation and someone uses an ornament for covering or concealing a defect, for example, another's hair for covering baldness, a false breast if the other has been cut off, rouge for concealing ugliness arising from a defect.

1068. Remark. - Let it be noted that there is no obligation of putting away decorous adornment according to the custom of the country, even if certain determined persons would be enticed from it to concupiscence; because this would be too burdensome. But if it is apart from the custom of the country, or if it is immodest, yet not altogether dishonorable, such an obligation is present for

avoiding the scandal of a determined person at least on some occasions, according to the principles explained in the treatise on charity, I, n. 966.

Conclusion

We put an end to the complete exposition of all the cardinal virtues with their annexed virtues, according to the natural order of their respective perfection: namely prudence, justice, fortitude, and temperance. For in the order of generation one must proceed in an inverse way in the exercise of these virtues, namely by making a step from the less perfect to the perfect. For first the passions must be restrained, and the order of reason must be established in the concupiscible appetite, consequently in the irascible appetite, finally in the operations of the will toward another; and only when all these things have been placed will prudence be perfect.

By the moral virtues man becomes perfectly apt and disposed for leading the moral and Christian life excellently, whether active or contemplative. For the exercise of the moral virtues constitutes the essence of the active life; but they dispose toward the contemplative life, which especially consists in the exercise of the theological virtues and of the gifts of understanding, knowledge, and wisdom under the influence of the Holy Spirit.

"The active and contemplative life," says St. Thomas, "are distinguished according to the diverse pursuits of men tending to diverse ends; of which one is the consideration of truth, which is the end of the contemplative life, but the other is exterior operation, to which the active life is ordered. But it is manifest that in the moral virtues contemplation of truth is not principally sought, but they are ordered to working... Hence it is manifest that the moral virtues pertain essentially to the active life" (q. 181, a. 1). "But dispositively the moral virtues pertain to the contemplative life. For the act of contemplation, in which the contemplative life essentially consists, is impeded both by the vehemence of passions... and by exterior tumults. But the moral virtues impede the vehemence of passions and quiet the tumults of exterior occupations. And therefore the moral virtues pertain dispositively to the contemplative life" (q. 180, a. 2).

Thus man is well instructed for the perfect life, active and contemplative. But concerning this it is now customary to speak in ascetical and mystical theology; but concerning the states of the life of perfection, of bishops, clerics, and religious, and their obligations, in canon law.

Appendix. Excursus: On the Systems of Moralists concerning Solving Doubt of Conscience

Since the right formation of conscience is made by varied application of principles, it is not strange if the doctrine on this matter did not exist from the beginning perfect and complete, but was slowly elaborated.

I. **Among the Fathers no definite system is found; nevertheless there are traces of principles which can serve for forming conscience.**

Frequently they rather favored the safer part. Namely the safer is to be taken in choosing religion (Lact., *De Div. Inst.* III, 13), in avoiding danger of nullity in the administration of the sacraments (Aug., *De B. c. Don.* I, c. 3, n. 5), in admitting the whole truth of faith without regard to the empty opinions of heterodox persons (Greg. Naz., or. XXXVI, 7; Chrys., *In II Cor.*, hom. XIII, 4; Aug., *De util. cred.* XI), in conforming oneself through all things to the divine law (Tertul., *De spect.* XX-XXI), in striving to inquire into truth (Aug., *De Civ. Dei*, l. XXII, 23), in certainly establishing necessary penance for sins and avoiding the uncertainty of penance at the end: "hold the certain and dismiss the uncertain," Augustine cries, serm. 393. He also inveighs against the Academics (l. III, n. 35-36) who say: "when each one does what seems probable to him, he neither sins nor errs," who understood probability as merely subjective and empty, which each one fashioned for himself.

Even outside these cases, they quite generally favored the safer part, both because of the rigorous penitential discipline of those times and because ignorance of law was regularly held by many as culpable (cf. Aug., ep. 194).

On the opposite side, however, certain more benign solutions are found, for sometimes they did not urge an uncertain obligation in practice.

Lactantius says that one must not care about the precepts of the philosophers, as being mere conjectures without solid foundation; on which occasion he writes: "It belongs to a most foolish man to wish to obey their precepts, concerning which it is doubted whether they are true or false; and therefore no one obeys, because no one wishes to labor toward what is uncertain" (*De Div. Inst.* III, 27).

Gregory Nazianzen, or. XXXIX, 19, replies to the rigorists who did not wish the baptized to be admitted to penance: "Either prove that the matter is so, or, if you cannot, do not condemn. But if the matter is doubtful, let humanity prevail."

Thus Jerome, in the question concerning bigamists to be ordained, permits an uncertain and less safe opinion to be embraced, "prejudging no one from following what he wishes" (*Adv. Ruf.* I, 32). And Theodoret repeats the same (P. G. LXXXIII, 136 B C).

Indeed Augustine in various questions: 1. whether it is licit on the Lord's Supper to receive the Eucharist after food, says: "we compel no one to eat before that Lord's supper, but neither do we dare

to contradict anyone" (ep. 54); 2. whether it is licit to enter marriage with an infidel: "since," he says, "truly in the New Testament nothing is prescribed concerning this, and therefore either it has been believed to be licit, or it has been left as doubtful" (*De fide et op.* XIX, 35); 3. whether it is licit to eat food which has been found in an idol's temple, he replies: "Either it is certain to be idol-offering, or it is certain not to be, or it is unknown; if therefore it is certain to be, it is better rejected by Christian truth; but if it is known either not to be or is unknown, it is taken up for the use of necessity without any scruple of conscience" (ep. 47); 4. whether it is licit for a soldier to fight in a perhaps unjust war: "A just man," he says, "...can rightly fight,... for whom it is certain either that what is commanded is not against God's precept, or it is not certain whether it is, so that perhaps the injustice of commanding makes the king guilty, but the order of serving shows the soldier innocent" (*c. Faust. man.*, l. 22, c. 75).

II. **Among the Scholastics the question of the formation of conscience is explicitly proposed; and they especially insist on this, that conscience ought to be certain, so that to act in doubt is sin, for he who acts while remaining in doubt commits himself to risk and to danger of sinning.** Thus St. Thomas, *Quodl.* VIII, 13; IV Sent. d. 21, q. 2, a. 3, ad 3; III, q. 83, a. 6, ad 2; before or after him, William of Auxerre (*Sum.* l. II, tr. 29, c. 1, q. 3), William of Paris (*De coll. benef.* a. 8; *De legibus*, c. 21), Alexander of Hales (*Sum.* II, q. 112, cas. 8; q. 121, m. 3, a. 1, ad 2), David Augustine (*De hom. compositione*, l. III, pr. 5, c. 19; pr. 6, c. 43), Henry of Ghent (*Quodl.* IV, 33), Scotus (in Sent., prol., q. 2, n. 15; l. III, d. 25, q. 1).

They generally did not know the use of a reflex principle in forming conscience, except in cases of epikeia and a few others: for it is admitted that one must also do that which seems rather illicit, both for a soldier in a war not certainly unjust, and for a religious when the superior commands what is not certainly illicit: this last is noted in the decree of Gratian and is handed down by St. Bernard, Alexander of Hales, St. Bonaventure, William Peraldus, Paludanus.

Hence in practice they rather often give safer solutions, as St. Thomas in *Quodl.* VIII, 13. There he asks "whether he who has several prebends sins," concerning which there were then contrary opinions; he replies that he who "is brought into a certain doubt from the contrariety of opinions,... if while such doubt remains he has several prebends, commits himself to danger, and thus without doubt sins." Thus he simply declares that a certain conscience is required and that it is not safe to act in practical doubt; without inquiring or seeming to suspect whether in the case the doubt perhaps could be solved by some indirect principle. Nevertheless they have several things which favor the more benign part. Thus the principle proposed by St. Thomas in Q. D. *De Ver.* 17, a. 3: "no one is bound by a precept except through knowledge of the precept"; for although there it is adduced to prove that an unknown law does not bind, nevertheless logically the same holds concerning an uncertain law. Besides this, sometimes he holds more benign opinions: thus he denies the necessity either of confessing merely aggravating circumstances (IV Sent. d. 16, q. 3, a. 2, sol. 5), or of confessing at once after a fall (d. 17, q. 3, a. 1, sol. 4), or of repeating an unformed confession (ibid. a. 4); without concluding, on account of the opposite opinions, that to act thus is to commit oneself to danger.

To the safer practice in the thirteenth century a certain corrective was added from the principle of probabiliorism. William of Auxerre seems to have explained this first rather clearly, says Prummer, Th. M. I, n. 345, when he wrote in the treatise on pollution: "That magisterial rule, that one doubting

about something, whether it is illicit, and doing that thing while the doubt stands, sins, because he commits himself to danger, is to be understood of such doubt which is vehement, and more, or at least equally, induces the mind to believe that it is mortally illicit, as that it is licit. It is otherwise where the mind inclines more and judges that it is licit than that it is illicit, although it does not have in every way evident or fixed certitude, because not even this itself is required."

St. Albert the Great accepts the principle of probabiliorism (*Sum. de creaturis*, p. II, q. 70, a. 2), and his disciple Ulrich of Strasbourg; likewise Monaldus; but in the fourteenth and fifteenth centuries several do so, as Gerson (*De consol. theol.*, l. IV, pr. 2 and 3), John of Dambach (*De consol. theol.*, l. XIV, c. 8), Nider (*Consol. tim. consc.*, p. 3, c. 11-16), Conradus (*De contr.*), Gabriel Biel (in IV, d. 15, q. 8, a. 3, dub. 2; and a. 16, q. 3, a. 3, dub. 6); likewise various summae: Tabiena, Trovamala, Angelica. Yet several continued to adhere to the safer part, as Dionysius the Carthusian, Bartholomaeus Fumus, and Adrian VI.

Another corrective is noted among others, when they prescribe to the confessor as a rule: to respect the opinions of the penitent, unless they are openly false. Thus Godfrey of Fontaines (*Quodl.* IX, a. 16), and Paludanus (in IV, d. 17, q. 2, a. 1, n. 5).

III. **In canon law various principles are stated which can serve for forming conscience.**

1. **In doubt the safer part is to be chosen.** Thus Eugenius III, decr. l. IV, t. 1, c. 3; Clement III, l. V, t. 12, c. 12; Innocent III, l. III, t. 43, c. 3; l. V, t. 12, c. 18; Honorius III, l. V, t. 12, c. 24. Moreover, it is invoked not as a universal principle, but in certain cases, when namely there is present danger of salvation, or irreverence, or scandal, in one word, of a greater evil; or also by way of an equitable principle in solving certain peculiar difficulties. But sometimes in the law solutions opposed to this saying are found, as was the license of attempting conjugal copulation for three years in doubt of impotence; and it is to be reconciled with other principles admitted in law, such as: **In doubt the condition of the possessor is better**, or **Laws are to be interpreted more benignly**.

2. **In obscure matters we look at what is more like the truth.** This was borrowed from Roman law, in which it is a rule for judges for establishing presumptions in certain doubts of fact. In canon law it is invoked as a rule in authentic interpretation of law (l. II, t. 9, c. 4), or as a norm prescribed to judges in interpreting facts, contracts, testaments (l. VI, reg. 45), or it also holds concerning some speculatively more probable opinion to be held; but it is not invoked in questions concerning a law to be observed or concerning uncertain obligation. St. Antoninus is recounted as the first who applied this to these matters (*Sum.* p. I, t. 20), and indeed for positive laws.

3. **In doubt one must stand for that for which presumption stands.** Thus l. II, t. 23. The principle holds in many doubts of fact, and is stated under various forms; in doubts regarding the existence of a fact: a fact is not presumed but must be proved; one must stand for that for which presumption stands; one must judge from things ordinarily occurring; in doubt concerning the conditions of a fact: no one is presumed evil unless it is proved; one must stand for the validity of the act; that is judged to have been rightly done which by law had to be done.

Yet it cannot validly be applied in doubts of law: for how can it be solved from presumption whether a contract entered under such a form is just or unjust, whether interest is licitly received from money loaned or not, whether abortion or embryology or vasectomy are ever licit, etc.? Hence we do not understand how some could write that this is the universal principle to which all the others are reduced.

4. **A doubtful law does not bind.** This is handed down under various forms, for example, in doubt of promulgation: "Unless you have been certain concerning the mandate of the Apostolic See, you will not be compelled to execute it," says Innocent III, decr. l. I, t. 29, c. 31; in doubt concerning the intention of a human legislator: "interpretation is to be made against him who could have stated the law more openly"; in doubt concerning the sense of the law: "laws are to be interpreted more benignly, so that their will may be preserved," and "in obscure matters the minimum is to be followed" (reg. 30). But since the body of law contains positive laws, it is not strange if the principle does not regard the natural law.

5. **In doubt the condition of the possessor is better.** Thus l. II, t. 19, c. 3; t. 26, c. 6; l. III, t. 4, c. 31; l. VI, reg. 65 and 11. It is invoked in doubts of fact for the matter of justice, when possession of the thing or of right or power is present, but not where possession is lacking; sometimes in speculative doubts of law, if from use a presumption can be taken for the force or extinction of a law; besides this in practical doubts whether the accused is to be condemned on account of a crime committed or to paying a debt: his condition is better until the crime or the obligation of paying is certainly demonstrated.

As we noted in n. 84, under the form of the principle of possession can be stated the faculty of neglecting slight reasons and negative doubt.

IV. **From the sixteenth century there are well-defined systems.** At the beginning several profess probabiliorism, especially from the Dominican school, as Sylvester Prierias and Cajetan; also outside this school, as John Major.

Cajetan explicitly posited the distinction between speculative and practical doubt (op. 31, resp. 13, dub. 7), from which distinction the question received notable progress, so that from this there came to be a broader use of the reflex principle for rendering practical judgment certain.

The Dominican school of Salamanca, with the masters Fr. de Victoria, Melchior Cano, and Dominic Soto as leaders, also stood generally, and with certain cases of the safer part excepted, for the more probable opinion; but at the same time it affirmed that he does not sin who, among truly probable opinions (equal ones), follows whichever he wishes; so that they approached equiprobabilism.

These things were the occasion of a certain longer and diverse evolution.

1. **Probabilism arose from this.** For Bartholomew de Medina was the first who in the year 1577 formally taught at Salamanca: "if an opinion is probable, it is licit to follow it, although the opposite is more probable." This position was soon accepted not only in Spain, but also in other regions. Thus the Preachers generally held it: Did. Alvarez, Lopez, Bannez, P. de Ledesma, V. Candidus, Gr. Martinez, John of St. Thomas, Arauxo, Barth. de Ledesma, etc., yet with a few excepted, as I. Martinez de Prado; likewise generally the theologians of the Society

of Jesus, as is known to all; several Franciscans such as Reiffenstuel, Mastrius, and Herincx; also several Sorbonists and Louvain theologians, as Malderus, Wiggers, Sylvius; likewise the Carmelite theologians of Salamanca.

Yet certain persons continued to think otherwise, as Dr. Navarrus Azpicuelta, Ant. Corduba and Fabri from the Order of Friars Minor, Palacios, also P. Comitoli and A. Bianchi from the Society of Jesus, all probabiliorists; Perez, O.S.B., and Rebello, S.J., equiprobabilists; and Merenda, a tutiorist.

There was not one tendency of probabilists. Some, the moderate, said it was licit to follow a less probable opinion, provided the opposite was not notably more probable. Others, more benign, who are called pure or absolute probabilists, held licit every less probable opinion, provided it was probable in itself, even if the opposite was notably more probable. Hence probabilism gradually became more lax.

2. **Laxism followed from this.** For certain persons held it licit to act according to thin probabilities, or applied probabilism to cases in which, on account of danger of bringing in harm or frustrating an effect, one must act more safely. Thus, for example, John Sanchez, Bauny, Escobar, Tamburini, Moya, and others from the Society of Jesus; Leander, O.S.Tr.; Diana the Theatine; Caramuel, O.Cist.; etc.

Against those excesses of laxer probabilism a reaction arose, especially at Paris (in the year 1640) and at Louvain (in the year 1649), first in the universities, afterward among bishops and clergy, and among the Jansenists, whose leader was Pascal in the so-called *Provincial Letters* (1656-1657).

Hence Alexander VII condemned 45 laxer propositions, in the years 1665-66. But in the year 1677 four Louvain professors, M. Steyaert, Chr. Wolf or Lupus, Fr. van Viaene, and P. L. Ledrou, go to Rome so that they might obtain from Innocent XI the condemnation of lax propositions; and in fact he condemned 65 in the year 1679.

3. **From this tutiorism was born.** The safer practice which had mostly flourished in the middle age was now erected into a general system. Sinnich, a Louvain professor, in the book *Saul Ex Rex* is said to have defended this opinion: "it is not licit to follow an opinion even the most probable among the probable," which was condemned by Alexander VIII (in the year 1690).

Wherefore others taught a certain mitigated tutiorism, as Steyaert, van Opstraet, Henricus a S. Ignatio, Dens, Perin, Neesen; to whom there closely approached in France Habert, in Italy Fagnanus and Card. Gerdil.

4. **Revived probabiliorism is also taught by many.** Alexander VII had commended to the general chapter of the Order of Preachers held at Rome in 1656 that they fight against laxer opinions. This was done. Advancing further, the Preachers from this moment rather generally taught probabiliorism, as Mercorus, Gonet, Natalis Alexander, Contenson, Billuart, Cuniliati, Concina, Patuzzi, etc.; yet not all: thus Bancel, Ferre, and Larraga are probabilists.

But not only among the Dominicans; also in the French clergy many probabiliorists are found, with Bossuet as leader; and in Italy Berti, O.S.A., P. Ballerini, and Benedict XIV hold it. Indeed in the Society of Jesus itself it has defenders. Thyrsus Gonzalez had written the book *The Foundation of Moral*

Theology concerning the Right Use of Probable Opinions, in which he strenuously defended probabiliorism. Since he could not easily publish it, Innocent XI ordered that the general Father of the Society command that he permit Gonzalez himself and other Fathers to write for the more probable opinion and to attack the view that it is licit to follow the less probable. But when Father Gonzalez himself was elected General of the Society, and since Innocent XI and afterward Clement XI favored the more probable opinion, several from the Society now taught probabiliorism, as Antoine, Elizalde, Estrix, Gisbert, Taberna, and others. In the year 1694 the book of Thyrsus Gonzalez was at last published, but it was attacked by the Jesuits Segneri and Rassler.

5. **Equiprobabilism, which already before was held by several, was now proposed systematically** by Rassler, De Ruvere, Mayr, Biner from the Society of Jesus; by Eusebius Amort, canon regular; by B. Schmier, O.S.B.; and by others.

St. Alphonsus de Liguori, who had been instructed in probabiliorism, when he had learned by experience that that system could not be applied in practice, first (in the year 1755) taught moderate probabilism, although nevertheless he did not specially defend that a less probable opinion could be chosen in practice when a certainly more probable one occurred; afterward (in the year 1762) he perfected and corrected his system with a twofold restriction, namely equality of probabilities and the principle of possession, so that, in order that a law bind, it must be more probable; in order that it cease to bind, it must be more probable that it has been removed or fulfilled. He was vehemently attacked by probabiliorists, especially by Patuzzi, O.P.

And so St. Alphonsus truly was an equiprobabilist, and those err who contend that he never abandoned pure probabilism. But they would err more who tried to bring him into the party of probabiliorism, or who held equiprobabilism as a logical evolution of probabiliorism, forgetful that the holy Doctor chiefly attacked probabiliorism and was sharply attacked by probabiliorists, and that he firmly and broadly defended that principle so hateful to all tutiorists and probabiliorists: **A doubtful law does not bind**.

V. **After St. Alphonsus.** The beatification and canonization of St. Alphonsus, with the approval made of his works by which confessors can safely and licitly follow his doctrine, together with the great political disturbances, more profoundly changed ideas and customs.

Gradually the doctrine of St. Alphonsus was admitted more and more. Laxism and tutiorism were theoretically abandoned. Several taught equiprobabilism, not only among the sons of St. Alphonsus, but also among the secular clergy and in other religious institutes.

Probabilism also revived, and indeed in such a way that not only the theologians of the Society of Jesus commonly, but also many others, follow and defend it.

Writers of the Order of Preachers ceased proposing probabiliorism, except P. Pegues, who in some way defends it, and P. Noble. Several among them now hold equiprobabilism, as Moran, Saralegui, Beaudoin, and Sertillanges, or a system which is reduced to it, as Gardeil and Mandonnet; others propose the system of compensation, which is a certain corrected probabiliorism, as Potton, Lehu, and Prummer; recently P. Richard, after he had brought forth many things to show that the question, in the speculative order, is not rightly set forth by more recent writers, nevertheless in practice concludes, for the case of doubt and suspicion, to pragmatic probabilism.

Thus moralists now are less distant from one another, and in practice they still differ less, as we noted in n. 100. And thus peace succeeded the sharper controversies, which through a century and a half had been prolonged to the detriment of souls and of the science of morals itself.

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