TREATISE ON CHRISTIAN MARRIAGE

Dominic Palmieri, S.J.

1897 · In the public domain.
The English translation is our own, made from the Latin
for the Morals of the Church library, where the text may be read and searched online.

Contents

Title Pages and Approbations **12**

TREATISE — ON — CHRISTIAN MARRIAGE — TREATISE — ON — CHRISTIAN MARRIAGE ... 12

Preface to the Former Edition **13**

Treatise on Christian Marriage **16**

Chapter I: On the Essence of Marriage Considered in Itself **17**

Thesis I **18**

Thesis II **24**

Thesis III **31**

Thesis IV **39**

Thesis V **43**

Thesis VI **49**

Parergon: At What Time the Nuptials Were Celebrated between the Blessed Virgin and St. Joseph ... **52**

Chapter II: On Marriage as Sacrament **60**

Thesis VII **61**

Thesis VIII **70**

Thesis IX **77**

Thesis X **80**

Thesis XI **87**

Appendix **99**

Chapter III: On the Properties of Marriage **101**

§ I: On Unity **102**

Thesis XII **103**

Thesis XIII **110**

Thesis XIV **115**

Thesis XV **119**

§ II: On Indissolubility **127**

Thesis XVI **128**

Thesis XVII **139**

Thesis XVIII **146**

Thesis XIX **161**

Thesis XX **164**

Thesis XXI **169**

Thesis XXII **179**

Thesis XXIII **183**

Thesis XXIV **190**

Thesis XXV **193**

Thesis XXVI **202**

Thesis XXVII **211**

Scholion **213**

Chapter IV: On the Power of Establishing Impediments of Christian Marriage and of Dispensing in Them ... **215**

Praenotiones **216**

Thesis XXVIII **220**

Thesis XXIX **223**

Thesis XXX **237**

Thesis XXXI **245**

Thesis XXXII **247**

Thesis XXXIII **257**

Thesis XXXIV **268**

Thesis XXXV **271**

Corollary 278

Appendix: Conspectus of the Decrees and Ecclesiastical Canons in the Matter of Marriage from the First Centuries of the Church Down to the Year 1215 ... **280**

Monitum 280

From the Canons of the Apostles, in the First Three Centuries of the Church **282**

Decree of Callistus, Roman Pontiff (A.D. 218-222), from the *Philosophumena*, Book IX, Chapter 12 ... 284

From the Council of Elvira, in the Province of Baetica, A.D. 305 ... 285

From the Council of Arles, A.D. 314 ... 289

From the Council of Ancyra, A.D. 314 ... 290

From the Council of Neocaesarea, in Cappadocia, 314-324 ... 291

From the Council of Nicaea, A.D. 325 ... 292

From the Council of Carthage, A.D. 348 ... 293

From the Council of Laodicea, in Phrygia, 343-381 ... 294

From the Council of Gangra, about A.D. 350 ... 295

From the Council of Valence, in Gaul, 374 ... 296

From the Canons of St. Basil, in the Letters to Amphilochius, A.D. 374-75 ... 297

From the Council of Saragossa, in Spain, A.D. 380 ... 302

From the Responses of Timothy, Bishop of Alexandria, A.D. 380-385 ... 303

From the Responses of Theophilus, Bishop of Alexandria, A.D. 385-412 ... 304

From the Decretal Letter of Siricius, to Himerius of Tarragona, A.D. 384 ... 305

From the Synodal Letter of the Same, to the African Bishops, A.D. 386 ... 307

From the Synodal Letter of the Same, to the Church of Milan, A.D. 390 ... 308

From the Synodal Letter of the Same, to the Gauls (cf. P. Coustant, Letters of the Roman Pontiffs) ... 309

From the Council of Carthage, A.D. 390 ... 311

From the Council of Hippo, A.D. 393 ... 312

From the Council of Carthage, A.D. 398 ... 313

From the Council of Turin, A.D. 401 ... 314

From the Council of Carthage, under Aurelius, A.D. 401 ... 315

From the Council of Toledo, A.D. 400 ... 316

From the Decretal Letter of Innocent I, to Victricius, Bishop of Rouen, A.D. 404 ... 318

From the Decretal Letter of the Same, to Exuperius, Bishop of Toulouse, A.D. 405 ... 319

From the Letter of the Same, to Probus 320

From the Carthaginian or African Council, A.D. 407 321

From the Council of Orange, A.D. 441 322

From the Spanish Council, celebrated by the Bishops of Tarragona and Cartagena, and by the Lusitanians and Baeticans, A.D. 445 ... 323

From the Letter of Leo, to Turibius, Bishop of Astorga, 447 324

From the Synod of St. Patrick, in Ireland, About A.D. 450 325

From Another Synod of the Same, in Ireland, in an Uncertain Year 326

From the Council of Chalcedon, A.D. 451 327

From the Council of Arles, A.D. 443 or 452 328

From the Council of Angers, A.D. 453 329

From the Letter of Leo, to Rusticus, Bishop of Narbonne, A.D. 458 or 459 330

From the Letter of Leo, to Nicetas, Bishop of Aquileia, A.D. 458 333

From the Council of Tours, A.D. 461 334

From the Council of Vannes, about A.D. 465 335

From the Letter of Gelasius, to the Bishops of Lucania, A.D. 494 336

From the Council of Agde, over Which Caesarius of Arles Presided, A.D. 506 337

From the Council of Orleans, A.D. 511 339

From the Decretal Letter of Symmachus, to Caesarius, Bishop of Arles, A.D. 513 ... 340

From the Council of Girona, in the Province of Tarragona, A.D. 517 341

From the Council of Epaon, A.D. 517 342

From the Council of Lyons, or Held Elsewhere in Burgundy (cf. Anton. Pagi at the Year of Christ 517), in the Cause of a Certain Stephen, about A.D. 517 ... 343

From the Council of Lleida, in Tarraconian Spain, A.D. 524 344

From the Council of Toledo, A.D. 527 or 531 345

From the Council of Orleans, A.D. 533 346

From the Council of Auvergne, A.D. 535 347

From the Epistle of Vigilius, to Caesarius, Bishop of Arles, A.D. 538 348

From the Council of Orleans, A.D. 538 349

From the Council of Orleans, A.D. 541 350
From the Council of Orleans, A.D. 549 351
From the Council of Paris, about A.D. 557 352
From the Capitularies of the Franks 353
From the Council of Braga, A.D. 563 354
From the Council of Tours, A.D. 567 355
From the Council of Macon, A.D. 581 356
From the Council of Lyons, A.D. 583 357
From the Council of Macon, A.D. 585 358
From the Council of Toledo, A.D. 589 359
From the Diocesan Synod of Auxerre, A.D. 590 360
From the Epistle of St. Gregory the Great, to Augustine, Bishop of the English (Epistles, Book XI, Epistle LXIV), A.D. 601 ... 361
From the Epistle of the Same, to Felix of Messina (Epistles, Book XIV, Epistle 17), A.D. 604 ... 362
From the Council of Barcelona, A.D. 599 366
From the Council of Paris, A.D. 615 367
From the Council of Reims, about A.D. 625 368
From the Council of Toledo, A.D. 633 369
From the Council of Toledo, A.D. 638 371
From the Council of Toledo, A.D. 655 372
From the Council of Nantes, A.D. 658 373
From the Council of Hertford, in England, under Theodore, Bishop of Canterbury, A.D. 673 ... 374
From the Council of Toledo, A.D. 681 375
From the Council of Toledo, A.D. 683 376
From the Capitular of Gregory II, Given to Martinianus the Bishop and Gregory the Presbyter, Delegates to Bavaria, A.D. 721 ... 377
From the Roman Council of the Same Gregory II, A.D. 721 378
From the Epistle of the Same Gregory II, to Boniface, A.D. 726 379

From the Epistle of Gregory III, to Boniface, A.D. 731 380

From the Epistle of Zacharias, Roman Pontiff, to Pepin, Mayor of the Palace, the Bishops, Abbots, and Nobles of the Franks, A.D. 747 ... 381

From the Epistle of the Same, to Theodore, Bishop of Pavia 383

Another Text of the Same Zacharias 385

From the Roman Council under the Same Zacharias, A.D. 743 386

From the Council of Soissons, whose Decrees Were Published Also with the Consent of Prince Pepin and by the Counsel of the Nobles of the Franks, as Is Said in Chapter X, A.D. 744 ... 388

From the Council of Leptines, with Boniface and Two Others, Legates of the Apostolic See, Presiding, A.D. 745 ... 389

From the General Synod in the Province of the Franks, At Which Boniface, Legate of the Apostolic See, Was Present, Which Perhaps Is the Same as the Synod of Leptines (cf. Hefele, Work Cited, at A.D. 745), Said to Have Been Held about A.D. 745 ... 390

From the Statutes of St. Boniface, (From the Spicilegium Dacherianum, Tom. IX) after A.D. 751 ... 391

From the Council of Vermerie, celebrated at the Palace of Vermerie, in the Presence of King Pepin, A.D. 753 ... 392

From the Responses of Stephen III, Otherwise II, which, While Dwelling in Francia, He Gave to the Britannic or Britennac Monastery to Various Consultations (Jac. Sirmondus Edited Them from a Laudensian Manuscript), A.D. 754 ... 396

From the Synod of Verneuil, Before King Pepin, A.D. 755 399

From the Synodal Chapters, Given After the Preceding Synod in the City of Metz Under King Pepin ... 400

From the Council of Compiegne, celebrated in a General Assembly of the People, A.D. 756 ... 401

From the Epistle of Stephen IV, Otherwise III, to Charles and Carloman, Kings, A.D. 770 ... 404

From the Synod of Dingolfing, in Bavaria, A.D. 769-771 405

From the Council of Calchuth, celebrated in England, in the Presence of Legates of the Apostolic See, to Which King Alfwold Also Subscribed, A.D. 787 ... 406

From the Aachen Capitular of Charles the Great, A.D. 789 407

From the Council of Friuli, A.D. 796 408

From the Council of Arles, A.D. 813 409

From the Council of Mainz, A.D. 813 410

From the Second Council of Chalon, A.D. 813 411

From the Capitular of Aito, Bishop of Basel, About A.D. 822 412

From the Roman Synod of Eugene II, A.D. 826 413

From the Constitutions of St. Nicephorus, Bishop of Constantinople, who Died A.D. 828 ... 414

From the Council of Verneuil, A.D. 844 415

From the Council of Meaux and Paris, A.D. 845-46 416

In the Collection of Capitularies of Benedict the Levite, By Order of Otgar, Archbishop of Mainz, A.D. 845, There Exists, Book III, Under n. 179, This Decree in This Manner ... 418

From the Decretal Epistle of Leo IV, to the Bishops of Britain, A.D. 847 419

From the Capitularies of Benedict the Levite, Book III, Capitulum 463, Has Thus ... 420

From the Council of Mainz, under Rabanus, A.D. 847 421

From the Council of Pavia, A.D. 850 422

From the Assembly of Mainz, Of Several Bishops, Rabanus Presiding, Under Louis, King of Germany, A.D. 851 ... 423

From the Council of Toul, At Tusey, A.D. 860 424

From the Epistle of Nicholas I, to Ado, Archbishop of Vienne, A.D. 862 425

From the Epistle of the Same Nicholas I, to the Bishops of Germany Who Had Assembled at the Council of Mainz, A.D. 863 ... 426

From the Epistle of the Same Nicholas, to Charles, Archbishop of the Church of Mainz, A.D. 863 ... 428

From the Epistle of the Same Nicholas, to Rodulph, Archbishop of Bourges, A.D. 864 ... 429

From the Epistle of the Same Nicholas, to Harduic, Archbishop of Besancon, A.D. 865 ... 430

From the Responses of the Same Nicholas, to the Bulgarians, A.D. 866 431

From the Epistle of the Same Nicholas, to Salomon, Bishop of Constance, A.D. 867 ... 433

From the Council of Worms, A.D. 868 ... 434

From the Council of Douzy, A.D. 874 ... 435

From the Epistle of John VIII, to Edered, Archbishop of the English, A.D. 877 ... 436

From the Epistle of the Same John VIII, to Anselm, Bishop of Limoges, A.D. 879 ... 437

From the Epistle of the Same John VIII, to Airard, Archbishop of Auch, and His Suffragans, A.D. 879 ... 438

From the Council of Mainz, A.D. 888 ... 439

From the Council of Tribur, A.D. 895 ... 440

From the Council of Koblenz, A.D. 922 ... 441

From the Laws of the Presbyters of Northumbria, in What Year Indeed They Were Published Is Uncertain, But They Are Placed by the Collectors of Councils Toward the End of the Tenth Century ... 442

From the Roman Council of Gregory V, A.D. 998 ... 443

From the Council of Troyes, A.D. 1007 ... 444

From the Epistle of Paschal II, to Bonus Senior, Bishop of Reggio, A.D. 1100-15 ... 445

From the Council of Salegunstadt or Mainz, celebrated by Aribo, Archbishop of the See of Mainz, A.D. 1022 ... 446

From the Council of Bourges, A.D. 1031 ... 447

From the Council of Enham, celebrated by the Bishops Together with the Nobles of England, A.D. 1009 ... 448

From the Council of Compostela, A.D. 1056 ... 449

From the Roman Council of Nicholas II, A.D. 1059 ... 450

From the Council of Tours, with the Apostolic Legate Presiding, A.D. 1060 ... 451

From the Epistle of Alexander II, to the Clerics of Naples: How the Degrees of Consanguinity Are to Be Computed, A.D. 1061-73 ... 452

From the Epistle of the Same Alexander II, Responding to the Questions of a Certain Bishop, A.D. 1061-73 ... 453

From the Epistle of Alexander II, to William of Monasteriolum (from Ivo, Part IX, c. 82) ... 454

From the Roman Council of Alexander II, A.D. 1065 455

From the Council of Girona, in Spain, A.D. 1068 456

From the Council of Rouen, A.D. 1072 457

From Certain Canons, which Follow Without Title After the Canons of the Council of Rouen, A.D. 1074 ... 458

From the Council of London, Lanfranc of Canterbury Presiding, A.D. 1075 459

From the Council of Girona, with the Legate of the Apostolic See Presiding, A.D. 1078 ... 460

From the Epistle of Gregory VII, to the Bishops of Asti, Turin, and Acqui, A.D. 1079 ... 461

From the Council of Lillebonne, celebrated by William, King of the English, with the Bishops and Nobles of Normandy, A.D. 1080 ... 462

From the Council of Benevento, Urban II Presiding, A.D. 1091 463

From the Council of Troia, Urban II Presiding, A.D. 1093 464

From the Council of Szabolcs, in Hungary, A.D. 1092 465

From the Council of Nimes, Over Which Urban II Presided, A.D. 1096 466

From the Council of London Celebrated by Anselm, A.D. 1102 467

From the Council of Toulouse, Callistus II Presiding, A.D. 1119 468

From the First Lateran Council, Ecumenical, A.D. 1123 469

From the Council of London, The Legate of the Apostolic See Presiding, A.D. 1125 ... 470

From the Second Lateran Council, Ecumenical, A.D. 1139 471

From the Council of Cashel, in Ireland, the Apostolic Legate Presiding, A.D. 1172 ... 472

From the Council of Avranches, in Normandy, Legates of the Apostolic See Presiding, A.D. 1172 ... 473

From the Council of London, A.D. 1175 474

From the Decree of Lucius III, Issued in the Council of Verona, A.D. 1184 475

From the Collection of Decrees, Of the Supreme Pontiffs, the Greatest Part of Which Is Ascribed to Alexander III; Which Collection Therefore Is Usually Subjoined, after the Manner of an Appendix, to the Third Lateran Council ... 476

From the Title On the Married and the Betrothed 477

From the Title On Betrothals and Marriage 478

From the Title On Joining Children Born before or after Spiritual Co-parenthood ... 479

From the Title On Betrothals, Second 480

From the Synodal Constitutions of Odo, Bishop of Paris, A.D. 1198 481

From the Council in Dalmatia, Legates of the Apostolic See Presiding, A.D. 1199 ... 482

From the Council of London or Westminster, A.D. 1200 483

From the Constitutions of William, Bishop of Paris, A.D. 1208 484

From the Fourth Lateran Council under Innocent III, A.D. 1215 485

Index (as printed) 487

Title Pages and Approbations

TREATISE — ON — CHRISTIAN MARRIAGE — TREATISE — ON — CHRISTIAN MARRIAGE

By

DOMINIC PALMIERI, S.I.

S.P. Th.

Second edition, enlarged and corrected with new care.

Prato

From the Bookshop Press of Giachetti, Sons and Co.

1897

The author claims for himself the right of ownership.

FRANCIS CARINI

Provincial Superior of the Roman Province of the Society of Jesus

Since certain theologians of the same Society, to whom we committed this matter, have reviewed the book whose title is *Treatise on Christian Marriage*, composed by Father Dominic Palmieri, priest of our Society, and have approved that it can again be published, we grant the faculty that it be committed to type, if it shall so seem good to those whom it concerns.

In witness whereof we have given these letters, subscribed by our hand and furnished with the seal of our Society.

Rome, January 1, 1896.

L.S.

IMPRIMATUR

Prato, August 11, 1897. - Canon Archpriest Joachim Gori, Vicar General.

Preface to the Former Edition

In publishing a treatise on Marriage, now polished with a second care, we are surely conscious that we are treating that head of Catholic doctrine which is of the greatest moment and, especially in our age, demands most exact study and most exquisite diligence. For the matter at issue is one which, although it pertains properly to the Church, also touches civil society and pervades the family; from which it has come about that civil powers have not hesitated to assert for themselves a right over that which the Church testifies has been committed by God to herself alone, and thence a struggle of human authority against the divine authority of the Church has broken forth. But besides a dissension of this sort, which is due indeed partly to ignorance, but most of all to the malice under which certain men labor, who in these times preside, to our harm, over public affairs; if we wish to search out the cause and root of this very malice, there will appear another, deeper and more universal stain of evil, which strives to overthrow the divine right of the Church and the divine institution of marriage. It is that unbridled license, impatient of every obligation, which, first wandering and diffused, now reduced into a certain order and system,

attacks the foundations of civil and religious society and, while it turns all things upside down, abusing the divine gift of reason, endeavors also to shake the sanctity of marriage and to prostitute the chaste union of man and woman to ungoverned lust. For men in this our age do not merely wish to indulge their desires, but besides this they claim for themselves a right to fulfill them, and compel reason, if it can be done, to patronize their vices and to illumine with specious lights what is base and wicked. Now that opinion is spread abroad in books and resounds also in schools, which formerly was veiled by the darkness of mysteries and brothels. It is, namely, the doctrine of libertines, to which an atheistic society, having nothing to oppose, yields obedience even unwillingly: that the end of the coming together of a man with a woman is pleasure alone; that this coming together is determined by the love of the one toward the other; that those who love one another are spouses; that the man and woman are bound by no obligation; that she is not subordinated to the man; that any women whatever are common to any man, and conversely men to a woman; that there is no family; that the offspring which is begotten is to be nourished and educated by society, to which alone it belongs; whence, by the civil power already imbued with the principles of this doctrine, there are to be instituted establishments for the nursing of infants, and, for forming their minds as soon as they have scarcely attained the use of reason, public schools, to which all are to be obliged, every care or power concerning the instruction of offspring being withdrawn from parents. Thus the modern socialists and communists, the Fourierists, the Saint-Simonians, and others of the same bran; concerning whom see the excellent work of

Avogadro de la Motta, *Teorica dell' Istituzione del Matrimonio*, etc., part II, chapters 19 and 20. There is indeed nothing new in this battle against the divine institution of marriage except the excess of shamelessness and the veil of voluptuous science. For in the first centuries of the Church the Gnostics handed down the same principles and reduced them to practice. For, according to the witness of Clement of Alexandria, *Stromata*, book III, impious men existed who openly attributed to the devil the invention of that marriage, namely the society of man and woman which is joined with perpetual obligation; among whom the same writer counts Tatian the Syrian. And in the same place he reports that Epiphanes, from whom flowed the heresy of the Carpocratians, taught, among other

things, this also: that since God had made all things in common for man, and had joined the female with the male in common, and had likewise coupled all living things, he proclaimed that justice is communion with equality; and therefore that one man can have intercourse with all women, as the other living things do. Whence he testifies that there are also those who proclaim common sexual intercourse to be a mystical communion, and practice it, and say that they do this in order to oppose the Creator who forbids fornication. He attributes the same doctrine to the Marcionites, concerning whose founder Marcion Tertullian testifies, *Against Marcion*, book I, chapter 1, that he abolished nuptials. The same things pleased the Manichaeans, who, according to the witness of Augustine, *On Heresies*, no. 46, if they used wives, nevertheless avoided conception and generation, lest the divine substance, which enters into them through food, should be bound in fleshly chains in offspring; whence in *Against Faustus*, book XXX, he says

that they especially detest that intercourse which alone is honorable and conjugal. This pest was derived to their heirs, namely the Albigenses in the Middle Age, who, poured out into every lust, abhorred nuptials. Cf. Natalis Alexander, century XIII, part I, chapter 3. Modern sects, moreover, are connected with the ancient ones in a continuous series.

It is indeed irksome to refute these most shameful inventions. The sole end of man is placed in animal pleasure; the human race is brought back to the multitude of swine from the herd of Epicurus; the foundations of all rights, by which rational creatures are mutually bound, are shaken; the family, only the appearance of it being retained, is utterly abolished; and the structure of all social life is dissolved, and in place of the moral law of justice, by which the human mind is to be ruled, physical and material force is substituted as the supreme reason. The propagators of these errors cannot be refuted by arguments of reason, since they are led by a perverse will alone, which refuses to look upon the light of truth. Their refutation, therefore, belongs rather than to theologians, to those to whom the care of society has been committed by God, and who can commit no greater sin than if they allow men of this sort to go unpunished.

These things, therefore, being set aside, we shall rather have to contend with those who, while reverencing the divine institution of marriage, nevertheless dissent in many things from the doctrine of the Church. To this doctrine, indeed, a splendid light has been added in this most recent age, with the Apostolic See bearing the torch before us, so that the darkness sent in by enemies may be dispersed. There exist, indeed, distinguished documents on this article of faith

which the most recent Roman Pontiffs have given us, especially the three Piuses, VI, VII, and IX, and most recently Our Most Holy Lord Leo XIII; by these the knowledge of the truth has received increase, so that many things are now investigated and certain for us which were doubtful and obscure to theologians not very far removed from this age. This fruit has been borne for us, as often happens, by the assault of adversaries, who, while they strive to extinguish the light of the Church, rather sharpen its force, so that they may be overwhelmed by its very brightness.

In this matter of Christian Marriage, dogmatic writers, moral writers, and canonists are engaged. But we shall have to treat only those things which Theology claims for itself as contained in the Word of God, whether written or handed down; for these things, and not others, our hearers required of us. The questions indeed are not many, but for the most part they are difficult, and one of them also (*On the words of Christ*, Matt. XIX, 3 ff.) does not yet seem to have attained full light. What lay in us, we

have furnished for the benefit of our hearers, and now we publish the treatise in type: for by the same right by which the others have gone forth, this one also can be joined with them.

We said these things by way of preface in the former edition; now that this second edition follows, the reader must be admonished by us of this one thing: not a few things here have been changed, especially in the demonstrations to be brought forward.

Treatise on Christian Marriage

Chapter I: On the Essence of Marriage Considered in Itself

Thesis I

Setting aside for a little while the character of sacrament, the notion of marriage in itself comes back to this: that it is the union of man and woman, situated in a mutual moral power over the body of the other for carnal copulation and for the individual society of life.

I. Marriage (*matrimonium*: γάμος, σύζευξις, γαμικὴ ὁμιλία, חֲתֻנָּה) has received its name from the mother; because "the mother pertains more to the account of marriage than the father: for concerning offspring, which is the end of marriage, the mother is more dutiful than the father" (St. Thomas, Suppl., q. XLIV, a. 2, ad 1); or, as the Roman Catechism says (*On Matrimony*, n. 2), "because to conceive, bear, and educate offspring is the office of the mother." Augustine, *Against Faustus*, book XIX, chapter 25, explains the etymology of the name somewhat otherwise, saying: "it is called matrimony from this, that a woman ought not marry for any other reason except that she may become a mother." It is also called *coniugium*, because it joins two into one. Likewise it is called *connubium* from *nubendo*, because brides among the ancients, when they were handed over to a man, were accustomed *nubere*, that is, to veil their heads: therefore *connubium* is the conjunction of the veiled woman with her man. From the same origin they are also called *nuptiae*, which are also customarily said of the ceremonies and of those solemnities, festive processions, and banquets which are customarily applied to a wife who has been taken; indeed this latter is the primitive and proper signification of *nuptiae*.

Since we are about to give and explain the definition of marriage, we cannot prove it except from the common sense of men, in the way, namely, in which definitions are customarily proved: that is, by accurately inspecting that thing to which, by all men generally, whether ecclesiastical or profane, the name of marriage is attributed; which thing existing, marriage is said to be; and which thing ceasing, marriage is judged to cease (cf. our *Philosophical Institutions*, Logic, chapter IV, article 4). Therefore the process of finding the definition will return to this. We receive from the whole human race that which is called marriage by it; we consider in that very thing what either the consensus of those same men, or manifest reason drawn from the common concept, teaches to be essential; and among the essentials we consider what is first and, as it were, the root of the others, namely so that, when this alone is posited, marriage exists, and, when it is taken away, even if the others remain, marriage does not exist. And seizing upon this, we say that this is that thing, that essence, which men have hitherto generally called marriage. Nor will it be necessary to be anxious over the dissent of certain vicious men: for those very men who oppose the rights of marriage, when they attempt to abolish marriage, are witnesses that under that account, although it does not please them, marriage has commonly been understood and is understood.

Marriage is commonly defined in two ways: namely, both insofar as it is a permanent thing and insofar as it is a transitory act giving origin to a permanent thing. Under the former respect it is commonly defined: the marital conjunction of man and woman between lawful persons, retaining an individual custom of life. Thus the Master in IV, dist. 17; St. Thomas there. Sanchez, *On Marriage*, book II, disputation 1, from the Roman definition, says: Marriage is the conjunction of man and woman, containing an individual custom of life. Thus Institutes, book I, title 9, §1; and with this coheres that definition of Modestinus, law 1, *On the Rite of Nuptials*, ff.: Nuptials are the conjunction of

male and female, a partnership of all life, a communication of divine and human right. Thus also Alexander III, chapter III, *Illud quoque*, *On Presumptions*: marriage is the conjunction of male and female, retaining an individual custom of life. Here observe in passing that no explicit mention is made of the procreation of offspring; nevertheless it is made implicitly, for among the acts of individual life is also, indeed chiefly in itself, carnal intercourse. And such is the definition of marriage which generally occurs among the ancients, and which indeed will be more fully declared below. Under the other respect it is defined, with Hugh of St. Victor (*On the Sacraments*, book II, part II, chapter 4): marriage is the legitimate consent of two suitable persons concerning conjunction; or with Toletus (*Summa*, book VII, chapter 10): the lawful contract of man and woman, by which mutual power over bodies is handed over, conferring spiritual grace; here the account of sacrament is added, which for the present we wish to set aside for a little while.

II. These things certainly are not to be rejected, but are to be explained. Therefore, in order first to declare and prove the definition of marriage, insofar as it is a permanent thing, by the method which we have stated, it must be observed that there are several elements from which that which is called marriage by all coheres integrally. For in marriage, 1. there is a certain contract containing and manifesting the present interior consent of both, that is, of man and woman, into marital conjunction; 2. there is mutual power over the body of the other, which follows upon the contract, or there is the mutual obligation of one to the other with respect to carnal copulation, which obligation arises immediately from the contract and corresponds to the mutual power; 3. there is the bond by which both are formally conjoined and are formally constituted, in first act, as one complete principle of mutual copulation and, through it, of generation; this bond indeed does not differ in reality from the above-mentioned power; but this bond is that which is called marital conjunction; 4. there is the obligation to receive, if God should give it to those coming together, offspring and to educate it; 5. there is power and obligation to an individual life; 6. there is the right, arising from that bond, of exercising conjugal acts and of carrying on life together; 7. there is an unimpeded power for the generation of offspring through carnal copulation; 8. there is use, that is, copulation, the procreation and education of offspring, domestic society, and mutual help; 9. besides this, Christian marriage is a Sacrament: however, we set this consideration aside for a little while now.

III. Now, of those eight, the last, that is, use, does not belong to the essence of marriage, although it pertains to its integrity; because act supposes the essence of the acting thing already constituted, and all concede this. Likewise an unimpeded power for the generation of offspring through carnal copulation is not essential to marriage, if, as all confess, marriage can exist also between sterile persons and the aged, who are fit indeed for coming together, but unfit for generating; indeed also between a man and a woman who lacks ovaries (response of the Holy Office, February 3, 1887), and indeed who lacks ovaries and uterus (response of the same Holy Office, 1890). Again, the proximate right of using does not belong to the essence; for that right can be lost, while marriage remains, by the consent of all civil and sacred laws; it is, namely, something consequent upon the essence. Moreover, the contract and interior consent, which is manifested through it, are indeed essential in order that marriage exist, and can be called marriage itself *in fieri*; but they are not the very essence of marriage; for marriage is something persevering, since marriage is said simply and properly to exist as long as husband and wife continue to live. But consent expressed by words concerning the present is called by Eugene IV (*Instruction for the Armenians*) the efficient cause of marriage, not marriage itself. Indeed consent is not only a transitory act, but it can even habitually cease, as if formal dissent and

aversion should succeed in both toward the other; nevertheless marriage, no otherwise than before, remains and endures. Therefore, in these four of the things enumerated, which are the first, sixth, seventh, and eighth, the essence of marriage does not consist. Let us see the remaining things.

Moreover, the obligation to receive offspring, if God has given it, and not to impede its generation, and to educate it, is necessarily connected with the mutual power for carnal copulation, so that this cannot be admitted without that. For this is the end which nature has appointed for marital copulation, that through it the human race be propagated. Although it is not necessary that copulation be had, nor does offspring always follow copulation, and it is lawful to have copulation without hope of offspring, because there are other honorable ends of the use of marriage besides offspring; nevertheless, because offspring is the end which nature intends in marital copulation, and because this copulation, unless it is impeded accidentally by some physical defect, is naturally ordered to it, it is unlawful for spouses to do anything directly in the use of marriage against the reception of offspring. That is: by the very fact that they have the right of mingling with each other, they also have the obligation of using copulation rightly for the generation of offspring and, if God gives offspring to those using marriage, of receiving it. The same end appointed by nature further demands that the offspring received be rightly educated; but concerning the ends of marriage, see the following thesis. Therefore this obligation is essential to marriage; but because it supposes marriage, and indeed its use, it cannot constitute its essence.

The obligation and power, or right, to an individual life is conceived in two ways: either as obligation and power to carnal intercourse, so that on that account the man is of the woman and the woman is of the man, and in this way that obligation and power is the bond itself, of which we shall speak presently; or as obligation and right to cohabit and to carry on common life together, and then that obligation and that right do not constitute marriage, but suppose it; for it is an obligation and right belonging to spouses. There remains the bond and the mutual power over the body of the other. Now, first, we affirm that this bond is really contained in that mutual power over the body of the other in order to carnal copulation, and in the mutual obligation of one to the other, to an individual life. For some mutual power to carnal copulation is necessary, by the consent of all, to the essence of marriage; once that is removed, there will be any other society rather than conjugal society. But since a manifold bond can arise from mutual power, we say that the conjugal bond is constituted by this very mutual power in order to carnal copulation, and by the mutual obligation of one to the other, which obligation is also necessarily undertaken together with that same power.

For the bond is that which arises necessarily and immediately from the contract; for both consent into conjunction, the man indeed into the conjunction of himself to the woman, and the woman into the conjunction of herself to the man (St. Thomas, q. XLV, a. 1, ad 3); but from the contract there arises immediately and necessarily a mutual obligation, and therefore a mutual power to that which is handed over by the contract (ibid., a. 5, ad 2): therefore. And indeed, with that mutual power and obligation existing, the man is of the woman and the woman of the man; and therefore both are united. And from this union there is constituted one complete principle, not indeed in second act, which is situated in the mingling of bodies, but in first act or power, of carnal copulation and, through it, according to the primary ordination of nature, a principle of generation, which is found incompletely in each separately. Therefore there are two who are united, but there is one thing to which they are united, that is, the principle of generation. Hence the relation of conjunction is

manifold and one: manifold on the part of the subject, because there are two subjects, man and woman; one on the part of the cause, namely the final cause, because it is ordered to the same carnal copulation and generation in number. And insofar as this union is manifold on the part of the subject, it is signified by these names, wife and husband; but insofar as it is one on the part of the cause, it is signified by this name, marriage (ibid., a. 1, ad 3).

IV. Moreover, secondly, we say that the essence of marriage is placed in such a bond. For not only is the bond itself permanent, but, when it alone exists, marriage is truly said to exist; and each, namely bond and marriage, mutually posits itself and mutually destroys itself. Thus marriage is received by both Roman and canon law, civil and ecclesiastical society therefore consenting, and the definition brought forward above from law looks to this. Although all these things, says the Roman Catechism (loc. cit., n. 3), are present in perfect marriage, namely interior consent, the external agreement expressed in words, the obligation and bond which is effected from that agreement, and the copulation of the spouses by which marriage is consummated, nevertheless none of these properly has the force and account of marriage except that obligation and nexus which is signified by the word conjunction. Thus St. Thomas, q. XLIV, a. 1, in corp. and ad 1, where he says: "marriage is the bond by which spouses are formally bound, not effectively; and therefore it need not be something other than conjunction"; and in the following question, article 1, ad 2: "Marriage," he says, "is not consent itself, but a certain union of those ordered to one thing, which consent makes"; and q. XLII, a. 3, ad 2: "External acts and words expressing consent directly make a certain nexus, which is the Sacrament of marriage."

Hence, in the definitions brought forward above, marriage is defined as conjunction: not any conjunction whatever, but of male and female, that is, of each principle, separately indeed inadequate, of generation; and this conjunction therefore supposes the possibility of having copulation and arises from this very mutual power.

These things having been declared, it is easy to gather the definition of Marriage insofar as it is a permanent thing. It is, namely, the union of man and woman, situated in the moral obligation and power of the one over the other for carnal copulation and a certain individual society of life.

We say "a certain individual society," according to those things which above we distinguished in the obligation to an individual life. For domestic society, although it is required by marriage, nevertheless does not constitute its essence. We do not indeed deny that these things are indicated in the definitions of Roman law; nevertheless we observe that they pertain to the true definition if only the exigency of them is considered, which necessarily coheres with the bond; but if domestic society is considered in act, it is therefore placed in the definition because it is that to which the conjunction of male and female is ordered, especially if individual life is taken fully, so that it also comprehends carnal intercourse.

V. We have said that mutual consent expressed outwardly, or the contract, is the efficient cause of marriage. But when we say this, we do not wish to affirm that that consent is the adequate cause of the perennial bond of the spouses, a question which we shall settle in another place; nor that marriage is simply some contract, for in many ways it differs from a contract, as again we shall see later. But because, besides the action of God uniting the spouses, there is certainly required some reason on the part of the man and woman determining the union of both, and this reason is the consent of each into the union, which is posited after the manner of a contract; in this sense we say

that the contract is the efficient or determining cause of marriage. For marriage is a certain mutual obligation between man and woman, which does not exist naturally, nor is it immediately effected by God or by another authority, but is freely undertaken by man; but the efficient cause of an obligation freely undertaken is those very persons who undertake it, insofar as by their consent they will and admit it. Therefore the consent of those contracting marriage is that by which that obligation, or marriage, is determined. But if you seek the principle *which*, it is the contracting persons themselves. But because marriage is a certain union, and this union is made by mutual consent, and this mutual consent already is a certain actual union by which the permanent union begins, hence the consent itself is called marriage, but marriage *in fieri*. Therefore, if you consider marriage *in fieri* and *in facto esse*, consent is intrinsic to it, for it is marriage itself *in fieri*; but if you consider marriage only *in facto esse*, namely the permanent nexus of man and woman, consent is extrinsic to it; for it belongs to the account of an efficient cause to be extrinsic to its effect, that is, distinct from it.

Therefore, when with Eugene IV we say that the efficient cause of marriage is the consent of those contracting, we do not oppose the words of Christ teaching that God is the one who joins man and woman (Matt. XIX); for God joins insofar as he both established the law according to whose norm man and woman ought to be joined for the generation of offspring, and established the indissolubility of the nexus which has once been freely undertaken, and therefore wills, and by his own will effects, that that nexus exist and be perpetual. Besides, God is said to join spouses insofar as by his grace he sanctifies them and unites them in Christ. Therefore the consent of each is a certain proximate cause why the obligation of each toward the other exists; but that it be such an obligation depends both on the law of nature and on the positive law of God, as will be declared later.

VI. Now that nexus, or conjunction, or bond, which consent makes, is called and is the bond of souls: "There are two things in marriage," says Innocent III, chapter *Debitum*, *On Bigamists*, "the consent of souls and the mingling of bodies." Since the latter looks to act, the former displays the essence, which is placed in the bond; whence consent there is the same as the bond. Therefore the bond is a bond of souls. "One society of body and soul is contracted, so that affections may be mingled with affections and flesh in a certain way be joined to flesh," says St. Asterius, bishop of Amasea, homily on Matt. XIX, 3. And indeed before the consummation of marriage there is no actual mingling of bodies, yet marriage exists; "for consent, not lying together, makes nuptials," c. 30, ff., *de R. I.* Therefore man and woman are united before and apart from mingling, because of the power mutually handed over and the obligation mutually accepted; but the subject of power and obligation is the soul, or man through the soul: therefore according to the soul two are bound, and therefore there is a bond of souls. For this reason it is not called consent of souls because the term into which consent is borne is something spiritual only; for it is borne into the mutual power over bodies handed over, which in itself is ordered to mutual mingling; but because that power itself is in itself something spiritual and inheres subjectively in the soul. Wherefore the essence of marriage consists in a moral bond. Marriage is therefore a bond of souls, because it is effected by consent, because it is contained by obligation, which binds souls. This bond, however, remains even if, by the fault of one or both, mutual affection ceases. Yet in this matter a certain sensible affection must be distinguished from marital affection, which is that serious will by which the one wills to have the other as his or her own, and conversely, and to be obligated to that other, and to render fidelity.

VII. The definition of Hugh and Toletus brought forward above (n. 1) directly signifies the cause of marriage, and indirectly its essence; and this definition is employed especially when Marriage the Sacrament is to be defined. For although Christian marriage always remains a sacrament, as will be explained below, nevertheless the sacramental rite, by which the sacrament is made and grace is conferred, is had when marriage is made, or when its cause is posited; this will be declared in what follows.

VIII. From what has been said, you have, first, that the consummation of marriage does not belong to its essence.

Second, you have that the consent which makes marriage is not explicit consent into carnal copulation, but explicit consent into the power of the same, or into the bond, and implicit consent into copulation. Yet this implicit consent, which in itself follows upon consent into the power, can, by mutual consent to preserve chastity, while that power nevertheless remains, be suspended or impeded, as we shall demonstrate in Thesis III.

Third, you have that marriage differs altogether both from the conjunction of the other animals, for no moral bond exists between them, and from fornicatory and wandering concubinages, in which there is no obligation of the man to a determinate woman, which obligation makes marriage (q. XLI, a. 1).

Fourth, you have that in the definition itself the properties of marriage are signified: namely unity, when it is said "of man and woman," and the perpetuity of the bond, when power and obligation are said to be to a certain individual life. To explain and defend these properties, however, is the more important part of this treatment, and this we shall carry out below.

IX. Note: Marriage is divided into legitimate, ratified, and consummated. Legitimate is that which is contracted by legitimate and therefore valid consent; of this sort there is marriage even among unbelievers. Ratified is that which, being legitimate, is sanctified by the sacrament of baptism; of this sort is the marriage of the faithful. And when this appellation is made simply, it is accustomed to have an exclusive signification, that is, not consummated. Consummated marriage exists both among the faithful and among unbelievers, and is marriage perfected by carnal copulation.

Thesis II

There are several goods of Marriage, and they are intrinsic to it; each of these also, taken separately, can be an end why marriage is contracted, although one among them is the primary end.

I. Since we have received the definition of marriage from the common concept of men, it was lawful for us to state it without a clear and distinct knowledge of its end or ends; nevertheless this knowledge is necessary so that the *τὸ τί ἦν εἶναι*, the "what-it-was-to-be," of Marriage may be perceived more fully and more evidently. Therefore here we shall discuss the ends of marriage.

II. By the end of marriage we understand the end of the work, to which in itself it is ordered and which by its very constitution it can produce; and if this is intended by the one positing the work, it will also be the end of the worker, although this latter has a wider extension. But since only that which is good has the account of an end, the end of Marriage will be a certain good which marriage itself is naturally fitted to produce in itself and to procure for those entering it. Now that good which first strikes the eyes of all is offspring, by which the continuation and propagation of the human family is obtained, and the suitable education of that same offspring; this indeed must be added, for offspring alone is also the effect of a fornicatory union. In this matter it must be observed, first, that the generation of offspring is indeed an end of marriage appointed by nature, yet to be obtained through marital copulation, which is always free to the spouses and is not always efficacious; second, that the proper act of marriage is that very carnal copulation for which power is obtained through marriage, whether offspring follows from it or not. This we have already suggested (Th. I, III), and below it will be declared more fully; for the present we anticipate it lest false concepts creep upon the incautious reader. Third, in order that offspring be rightly received and further educated, the copulation must be between persons mutually obligated, that is, spouses. This for the present we can suppose, since we shall demonstrate it afterward (Th. VI).

Offspring, however, is not the only good of marriage. "Offspring," says Augustine, *On the Good of Marriage*, chapter 1, "is one honorable fruit, not of the conjunction of male and female," that is, not of marriage, "but of lying together. For there could have been in each sex, even without such mingling, a certain friendly and genuine conjunction, one ruling, the other obeying." And indeed, besides the good of offspring, another good is found in the marital bond itself and is proper to it. This is the very union of the two, man and woman, namely friendship, communication of works, and mutual service and help. This friendship is not that which can also be had among the rest, but is proper to marriage; for it is founded on mutual power over the body of the other, by which it comes about, therefore, that it is also closer and more enduring. "It is asked why marriage is a good," Augustine says in the same place, chapter 3. He answers: "because it seems to me to be so not on account of the procreation of children alone, but also on account of the natural society itself in the diverse sex. Otherwise it would no longer be called marriage among the aged, especially if they had either lost children or had by no means begotten them." From these words, as we now observe, you understand that when Augustine says that marriages are to be entered into for the sake of procreating alone, as in *Against Faustus*, book XV, chapter 7, he has directly before his eyes the use of marriage and a marriage entered into with the intention of carnal copulation; he excludes, namely, an end situated in the fulfilling of lust, which indeed is an end different from the remedy of concupiscence, of which presently, the intention of

which is at least implicitly joined with the intention of offspring. And indeed this friendship, or, as St. Thomas says, the indivisible conjunction of souls between spouses who from obligation preserve faith with one another, is that good which the definition of marriage handed down in law chiefly commends, making explicit mention of it alone. For this reason the same Augustine, in the same work, chapter 9, distinguishes both certain goods to be sought in themselves, such as wisdom, health, and friendship, and goods to be sought on account of another, such as learning on account of wisdom, food and drink on account of health, marriage and lying together on account of friendship; although, as the same author observes, friendship toward others is also obtained in another way, and indeed can also be more perfect without Marriage.

These two goods of marriage would have had place not only in the present state of fallen nature, but also in the state of integral nature; for they are absolute, supposing only the essence of marriage and its legitimate use. But, once the infirmity of vitiated nature through concupiscence is supposed, or the state of pure nature is supposed, another good arises for those contracting marriage from that mutual obligation and power over the body of the other. There arises, namely, the moral good which is the restraining of concupiscence within the limits of honesty. This restraining is situated in this: that concupiscence is indeed indulged, but only with that person who has power over the body of the other, to whom fidelity is owed in marriage, and in that manner which is proportioned to generation; so that the act is legitimate and even owed. From this it comes about that, the ardor of concupiscence being calmed, the soul does not run out toward illicit things and sin is avoided. "Marriages also have this good," Augustine says in the same place, chapters 3 and 5, "that carnal or youthful incontinence, even if it is vicious, is reduced to the honesty of propagating offspring (cf. *Treatise on God the Creator*, etc., Thesis XLIV), so that conjugal copulation makes something good out of the evil of lust... For this reason there are nuptials, that that concupiscence, reduced to a lawful bond, might not float about deformed and dissolved, having from itself the unrestrainable infirmity of the flesh, but from nuptials the indissoluble society of fidelity." "Nuptials are good," says Gennadius, *On Ecclesiastical Dogmas*, chapter 53, "but for the sake of children and under the pretext of restraining fornication." The Apostle teaches that this is a good of marriage, 1 Cor. VII, 2: "Let those who do not contain themselves," that is, who cannot contain themselves, "marry. On account of fornication," namely to be avoided, "let each man have his own wife and each woman her own husband."

Isidore embraces these ends when he says, *Etymologies*, book IX, chapter 7: "A wife is taken for three causes: the first is for the sake of offspring, concerning which see Genesis I, 28; the second for the sake of help, concerning which see Genesis II, 18; the third for the sake of incontinence; whence the Apostle says that he who does not contain himself should marry."

Besides these, Augustine enumerates another good, which is Sacrament: under this name a twofold thing is understood, namely cause and effect. The cause is the very character of sacrament situated in the signification of a certain mystery and in the efficacy of grace, as will be demonstrated in its own place; the effect is the indissolubility of the bond. "Whom does it not make attentive," says Augustine, "what so great a firmness of the conjugal bond means? I think it could by no means have had such force unless a certain sacrament of some greater reality from this weak mortality of men were applied, which, even when men desert it and desire to dissolve it, remains unshaken for them unto punishment... Nor, nevertheless, except in the city of our God, on his holy mountain, is there such a case with a wife," ibid., chapter 7. That Augustine distinguishes the effect, that is,

indissolubility, from the cause of sacrament is clear both from these words themselves and from the fact that, although he has said that the sacrament exists only in the Church of Christ, nevertheless he also finds the indissolubility of the bond before the law of Christ and places sacrament there, as in the marriage of the Blessed Virgin and St. Joseph. "For every good of nuptials was fulfilled in those parents of Christ. We recognize offspring, Jesus Christ; fidelity, because there was no adultery; sacrament, because there was no divorce," *On Nuptials and Concupiscence*, book I, chapter 11. The very indissolubility of the bond, namely, is called sacrament by Augustine, because in the New Law it is chiefly from the sacrament; and that this is a good, namely a perfection of the conjugal bond, is evident.

III. All the goods of marriage enumerated thus far can be brought back to those three which Augustine frequently proclaims, and with him the whole School: offspring, fidelity, sacrament. Concerning offspring there is nothing further we need say. Fidelity formally embraces the second of those mentioned in the preceding number, and the third at least causally; for fidelity, both in habit and in act, is the very friendly society of the spouses, the communication of works, and mutual service and help. But fidelity, situated in the rendering of the debt, furnishes a remedy for the concupiscence of each or of either, so that by the very fact that fidelity is furnished, the remedy is applied. Sacrament says the indissoluble unity of the two, besides sanctifying grace.

IV. Since these are the goods of Marriage, they will also be the ends on account of which marriage can be entered into. Concerning these goods, now setting aside sacramental sanctification, observe that each separately is sought according to the ordination of nature. And indeed with regard to offspring there is no difficulty, since it is a good, and the natural distinction and conjunction of the sexes itself is ordered to the procreation of offspring. But familiar friendship itself, or the society of man and woman through marriage, even when abstraction is made from the obtaining of offspring, is a good which is sought according to the ordination of nature. For that must be said to be sought according to the ordination of nature whose principles are all in nature itself, and the use of whose principles has an end which the natural law itself most highly approves. But the principles of the mutual obligation and power of man and woman over the body of the other, by which marriage is constituted, are certainly in nature itself. From the very institution of nature, the capacity for certain duties and offices which are useful, or even necessary, for human living together is different in each sex. The use of these principles, that is, the mutual obligation and power over the body of the other contracted by man and woman, and the communication of works resting on this obligation and power, begets a special stable friendship and security of mutual service and help. Natural law most highly approves this end, for, while it approves friendship generally among men, it distributes diverse offices useful to both for the fostering of friendship between man and woman. But once these are posited, the essence of marriage is had, whose essence consists "in a certain indivisible conjunction of souls, by which one of the spouses is bound indivisibly to preserve fidelity to the other" (III, q. XXIX, a. 2).

The third good also, that is, the remedy of concupiscence, is sought separately in marriage according to the ordination of nature. For he acts according to the ordination of nature who, for attaining that which the natural law itself approves, uses that which from nature itself has the account of a means to this end. But the natural law approves the restraining of concupiscence; and marriage, conferring

the right of using and imposing the duty of rendering, is by this very fact, and therefore from the very institution of nature, a suitable means to this end. Therefore.

V. You will say that each argument supposes that nature, making man and woman suitable for marital union, has not necessarily and uniquely ordered that union to the procreation of offspring, or has not commanded that marriage be entered into with this intention alone. Yet this supposition would have to be demonstrated in order to prove that one or the other of these two latter ends can be sought while abstraction is made from the first.

I answer that this supposition is not hard to demonstrate. And as regards the third end, which is the remedy of concupiscence, it is certain that when some thing or some work can conduce to several honorable ends, in order that you may honestly employ it according to natural law itself, it is not necessary that you intend all the ends, or the primary one if there is such among them, but it is enough that you intend some one of these ends and do nothing against the others; for thus your action will be good from its object and end. Cf. the moral theologians. But if this is not necessary, natural law being considered, it is certain that the same is not prescribed by nature. Thus, for example, there can be a manifold end of fasting: the honor of God, the expiation of your sins, the obtaining of some spiritual or temporal benefit for yourself or for others; by whichever of these ends you act, you act rightly, while the others follow in themselves, if they are intrinsic ends. In the same way, you contract Marriage on account of the remedy of concupiscence and intend this in its use; nevertheless you do not impede generation, and you receive the offspring which God may have given. And observe that the mingling of the sexes in itself is not evil, since it is from the very institution of nature; but wandering mingling among the unmarried is evil, and much more with those persons who are obligated to another. Therefore, in order that this evil, into which man would be borne because of concupiscence, may be avoided, that state is chosen in which the mingling of flesh is lawful and honorable.

As regards the second end which we have mentioned, besides the principle just brought forward, which is valid here also, it is certain further that when by nature itself or by law you have a right to some act without which the right can exist, it is lawful for you, while retaining the right, always to omit the act, and indeed, after acquiring that right, to obligate yourself to the omission of the act, especially if this omission induces greater moral perfection; and finally, you can undertake the very obligation of omitting the act when you acquire the right, if that right, even with the omission of that act, can be useful for other uses and ends. For then that obligation excludes not the right, but only some exercise of it. Thus, therefore, they act who enter marriage only on account of domestic society, not wishing to mingle carnally; and therefore, just as it is lawful after marriage has been entered for spouses to agree upon perpetual continence, so also it is lawful before, without this agreement harming the truth of the power handed over, since this power also generates other rights and obligations, whose use will be available. But since this power mutually handed over, or this conjugal bond, is one indivisible thing, although several rights and offices sprout forth from it, if it can remain for producing some effect, it must remain whole. But concerning this matter, in which the difficulty is not slight, we shall treat expressly in the following thesis.

You will say: if there were no procreation of offspring, marriage would not have been instituted. I answer: if only the actual procreation of offspring were not had, I deny; if it were not possible, I distinguish. If it were not possible only from some positive law of God not willing to form the

organism of offspring in the womb of the woman or to create souls, again I deny. If the procreation of offspring were not possible because it were impossible in itself that offspring be generated from the mingling of flesh, let it pass. I say, let it pass; for, once this hypothesis were made, we would be living in an altogether different order, nor would there be, I think, a distinction between male and female, who are the subject of marriage. But even if, unless the procreation of offspring were possible in itself, marriage would not have been instituted, it is not rightly gathered that now it is to be entered into on account of the procreation of children alone. For it not rarely happens that something which would not have been instituted unless some determinate end existed, nevertheless, after it has been instituted, since it can conduce also to other ends or produce other goods, can be employed on account of them, with those alone directly intended, provided nothing is done against that end which would be primary. On this matter consult the moral theologians. For example, if society did not exist, social authority would not have been instituted; nevertheless, once this authority has been instituted, if it conduces the one holding it to other honorable ends, it can be sought on account of those ends, provided the good of society is not excluded.

VI. Here, however, the question offers itself whether among the ends enumerated there is one that is primary. Before the answer, the notion of primary end - we are speaking of the end of the work - must be held. For we do not call that end primary apart from whose intention the means cannot be employed; this is not really a primary end, but the only end. But a primary end allows other ends with itself. The primary end of nature is that for the attaining of which some work is adapted by nature before her other works; therefore it is not the same as the immediate end, or that which necessarily follows from the thing or work. For it suffices, when all the ends of the thing or work are compared together, that one be before the others, on account of which the work is chiefly instituted by nature, so that it may be called the primary end. This indeed does not prevent another end from being honestly intended primarily by the intention of the worker, provided that nothing is done against that first end. Now, if you consider the use of marriage in conjugal copulation, its primary end, intended by nature, is certainly the procreation of offspring; for this copulation itself is the means, and the only means, although from several contingent causes it is not always efficacious. But also if marriage itself is considered in itself, although domestic society with all the goods accompanying it is something more necessary and immediately consequent upon it, nevertheless this could in itself also be obtained without the matrimonial bond. But the remedy of concupiscence cannot be the primary end, unless by the intention of the worker, since marriage and its use could perfectly have been had without it, as would have happened in the state of innocence. You will say: the primary end can never be excluded; but, as will be proved in the following thesis, the procreation of offspring can be excluded; therefore. I answer: it can never be excluded by the agent, that is, in the very use of the thing which is destined by nature to that end, I concede; it cannot be excluded when the very use of the thing is excluded, I distinguish: if that is the only and necessary end, I concede; if it is not such, I deny.

It remains, therefore, that the goods enumerated are both ends on account of which it is lawful to enter marriage, and that each separately enjoys this prerogative of an end. Cf. Sanchez, *On Marriage*, book II, disputation XXIX.

VII. You will ask whether the good of sacrament can be the final cause of contracting marriage. I do not see why this should be denied, since it is some good in itself, of the kind that all sacraments are,

and is the more excellent good in marriage; but every good in itself can be an end. Nevertheless one may doubt whether he would act prudently who, led by love of the sacrament alone, wished to enter marriage. For if he neither needs the remedy of concupiscence nor domestic friendship and the assistance of the other sex, nor cares to have offspring, it is not clear why he should not rather choose celibacy and the state of virginity; for although he will not gain the good of sacramental grace, he will gain more abundant grace from the work of the worker and will please God more.

VIII. From what has been said it becomes sufficiently manifest that goods of this kind, of which we have spoken thus far, are goods intrinsic to marriage: either from the nature of the thing, as the first three are, and also sacrament insofar as it says indissoluble unity; or from the institution of God, as sacrament properly so called, whose account will be declared in the following Chapter. That those former goods are intrinsic to marriage is evident; for they either constitute its essence, or are its natural end, or are a property especially fitting to its nature.

From this two things follow. First, since all the constitutive elements of marriage are good, and the last, which is sacrament, is also a cause of supernatural sanctity, it is evident that marriage is an honorable and holy state, and that those who undertake that state act honorably and holily in itself.

Second, by the aforesaid goods marriage is made honorable not extrinsically, as if by an honorableness acceding from without, as if marriage itself in itself were either evil or indifferent; on the contrary, since it is intrinsically constituted by these goods, it is intrinsically good and holy.

It is also customary to say that Marriage is excused by the same goods. This indeed is to be understood not of Marriage itself, but of its act, which is carnal mingling. Namely, in the conjugal act there occurs the loss of some good: namely the loss of virginity, and a certain clouding of reason because of the vehemence of passion, by which reason is in some manner absorbed; also the tribulation of the flesh, which spouses must sustain. But no wise and prudent man would incur the loss of some good except with some compensation of another good; and this good, and indeed a manifold good, although in another order, obtains in marriage. But the act of mingling is again excused not by something extrinsic, but intrinsic; for it is intrinsic to that act that it is owed from the fidelity given to the other, and therefore is an act of justice; that it brings a remedy of concupiscence and receives offspring. For this reason marriage "does not need these goods as certain exterior things for making it honorable, but as causing in it the honorableness which belongs to it according to itself" (In IV, dist. XXXI, q. 1, a. 1, ad 2).

IX. St. Thomas asks (ibid., a. 3, ql. 1) which of the three goods, which are fidelity, offspring, and sacrament, is more principal. Now the holy Doctor observes that something is called more principal in two ways: either because it is more essential, or because it is more worthy. If what is more worthy is sought, then in every way Sacrament is more principal, because it pertains to marriage insofar as this looks to the order of grace, while the others look to marriage insofar as it is a certain office of nature. But if what is more essential is sought, then a distinction must be made; because fidelity and offspring can be considered in two ways. In one way, in themselves, that is, in act, and thus they pertain to the use of marriage, through which both offspring is produced and the conjugal agreement is preserved. But the indivisibility which Sacrament imports pertains to marriage itself according to itself; because from the very fact that through the conjugal agreement the spouses hand over to one another power over themselves in perpetuity, it follows that they cannot be separated; and thence it is that marriage is never found without inseparability, but is found without fidelity and offspring,

because the being of a thing does not depend upon its use. And according to this, Sacrament, that is, the indissolubility of the bond, is more essential to marriage than fidelity and offspring. In another way, fidelity and offspring can be considered according as they are in their principles, so that for offspring the intention of offspring is taken, and for fidelity the duty of preserving fidelity; without these, marriage also cannot exist, because these are caused in marriage from the conjugal agreement itself, so that if anything contrary to them were expressed in the consent, it would not be true marriage. And taking fidelity and offspring in this way, it is clear that offspring is the most essential thing in marriage, fidelity second, and Sacrament third; just as also for man the being of nature is more essential than the being of grace, although the being of grace is more worthy.

As regards the last part of St. Thomas's discussion, namely that offspring is that which is most essential in marriage, observe that this is exactly the same as what we have said here in n. VI. For the holy Doctor has regard to intention, "so that for offspring the intention of offspring is taken." Moreover, if the intention of nature is considered, this is more essential, because it is the primary end; if the intention of the one contracting marriage is considered, note that St. Thomas considers marriage with its use, or with copulation. For the contrary to offspring which is expressed in consent, from which St. Thomas draws his argument, is not a lack of intention of having offspring, but is the intention of avoiding offspring through abuse of the conjugal act (Th. following). But again, as we have said, in the use of marriage the primary end is offspring.

Thesis III

A pact added to the matrimonial contract for preserving perpetual continence does not conflict with the essence of that contract; and it can be that in this way the most blessed Mother of God and St. Joseph entered marriage.

I. In chapter *Si Conditiones*, *On Conditions Added*, it is said: "If conditions are inserted against the substance of marriage, for example, if one says to the other, I contract with you if you avoid the generation of offspring, or until I find another richer in honor or possessions, or if for gain you hand yourself over to be adulterated, the matrimonial contract, however favorable it may be, lacks effect; although other conditions added in marriage, if they are base or impossible, ought, because of its favor, to be held as not added." As regards the last part of this chapter, cf. Sanchez, book V, disp. 3; for it does not pertain to our question. What is established in the first part seems to oppose those things which we taught in the preceding thesis and here again defend more fully. For those who would enter a matrimonial contract with an express pact of preserving virginity, or of abstaining from carnal mingling, would finally add this condition to the contract: I contract with you if you avoid the generation of offspring, which effects no contract. And indeed, since offspring is the end of marriage, so that marriage is to be contracted for its sake alone, if we believe Augustine (cf. preceding Thesis, n. II), and yet that offspring is obtained by means of copulation, does not the condition of abstaining from copulation oppose the end of the contract? But is not an expressed will of not attaining the end, by this very fact, also the will of not employing the means which has been instituted for that end alone? Indeed, the matrimonial contract and the pact of preserving virginity appear mutually contradictory and therefore to destroy each other. For by the former there is made a mutual obligation and power toward carnal copulation; by the latter there is made an obligation of abstaining from it and a lack of power for it, moral indeed, just as the power in marriage also is moral. For this reason this contract seems ridiculous: I give you power for this, provided that you obligate yourself not to use it, that is, provided that you do not obtain this power. Therefore, although the pact of preserving virginity concerns a holy thing, indeed a holier thing, nevertheless, because it cannot be composed with matrimonial consent, it must be said that marriage is made void by that pact. Thus indeed not a few say. Benedict XIV, *On the Diocesan Synod*, XIII, 22 (cf. also *On the Feasts of the Blessed Mary*, on the Espousals), doubtful, as is his custom, hesitates because of the opposed opinions of Doctors; but in order to defend a true marriage, such as he judges really to have existed between the Blessed Virgin and St. Joseph, he enters upon that path which excludes an express pact of preserving virginity added to the contract itself. Although this way of explaining that marriage is not disapproved by us, nevertheless we judge that that marriage could have been true even if a pact of preserving virginity had preceded it, that is, generally that this pact mutually undertaken does not vitiate the matrimonial contract.

II. That there was true marriage, not mere betrothal, between the Blessed Virgin and St. Joseph, Suarez, in III, q. XXIX, a. 2, section 1, holds as so certain that he asserts it to be a truth of faith, which Sanchez, book II, disp. XXVIII, does not approve. If by a truth of faith you understand one which not only has been revealed by God but also has been defined by the Church, Sanchez rightly disapproves the opinion of Suarez; but if you call a truth of faith one which has been revealed and can be defined by the Church, we judge that Suarez spoke truly, because of the theological arguments

which persuade us of this. On this matter one should read the learned Dissertation of the distinguished Father Patrizi, *On the First Embassy of the Angel to St. Joseph*, published separately. We shall complete the matter briefly in this way.

1. In describing the genealogy of Christ, this is Matthew's purpose (1:1 ff.), namely to show that Christ draws his origin from Abraham and David. But since Christ, by the testimony of Matthew himself (ibid. 18 ff.), arose from the Virgin alone without the help of a man, it was necessary that Christ draw origin from David through the Blessed Virgin herself; and therefore it was necessary that the Blessed Virgin herself be from David, and the Evangelist had to demonstrate this if he wished to show Christ's origin from David. Now Matthew deduces the series of generations from David down to Joseph, and then adds that he is the man of Mary, from whom Jesus was born. But this way of describing the genealogy would conclude nothing unless Matthew supposed that this was known to those to whom he was writing, namely that Mary was an agnate of Joseph, that is, from the same family. This, I say, Matthew supposes as known; for this is in reality the minor premise of his reasoning, which nevertheless he left unspoken. Namely he argues thus, nor can his conclusion have force otherwise: those whom I have enumerated are the progenitors of Joseph; but Mary is an agnate of Joseph; therefore the same men, either all or almost all, perhaps with the last excepted, are also the progenitors of Mary, and therefore of Christ. Why, then, did Matthew leave unspoken this premise necessary for his conclusion? There was no other reason except that he supposed it to be known to those to whom he was writing. Moreover, this shows that it was also known to the same persons that Mary was the true wife of Joseph. For how could it be generally established that Mary was an agnate of Joseph? Some public fact was required. Such a fact could be no other than this: that Mary, a daughter lacking brothers, had been compelled to marry by force of the law concerning heiress daughters (Num. XXXVI, 1 ff.), which law indeed ordered heiress daughters to marry an agnate. Cf. Patrizi, *On the Gospels*, dissertation VI and dissertation IX, chapter 2, part 1. Therefore this was commonly established: that Mary had satisfied this law. But the law ordered the heiress daughter to enter, not some mere betrothal, but true marriage with an agnate. Therefore, finally, Matthew himself, calling Joseph the man of Mary, takes "man" strictly, namely as one who was joined by the bond of true marriage to Mary his wife, who by force of that law had married him.

2. Mary is said to be betrothed to Joseph (Matt. 1:18; Luke 1:27). Now either the betrothal of the Virgin of which the Evangelists speak is taken so that the nuptials had been completed, or so that the celebration of the nuptials still remained (cf. the Parergon at the end of this chapter). If the first is said, you have a perfect marriage. If the second is said: first, either betrothal alone effected true marriage among the Hebrews; but the taking or leading of the bride into the house of the man, that is, the celebration of nuptials, provided this, at least in the later age, that the spouses might lawfully and honorably use the power already handed over and accepted (cf. the cited Dissertation of Patrizi). Therefore, if marriage consists in the handing over of power, the Blessed Virgin was already the true wife of Joseph. But second, it cannot be doubted that if something still remained to be done, that is, the celebration of the nuptials, it was done in its own time. For otherwise Joseph would have had to dismiss the bride according to Mosaic law by giving a bill of repudiation, which Joseph certainly did not do. Therefore.

3. Besides, how could it have happened that Jesus was commonly believed to be the son of Joseph the carpenter (Luke III, 23; John VI, 42, compared with Mark VI, 3), unless it had been established for all that there was true marriage between him and the Mother of the Lord? Therefore whatever was required for entering true marriage had been performed by both, and indeed publicly; and therefore true marriage was contracted.

4. But what of the Fathers? The Fathers generally investigate and give reasons why the Blessed Virgin was joined to a man: namely that she might have support and consolation, that she might not be reckoned an adulteress, and that her birth-giving might be concealed from the devil (cf. Jerome on Matthew, chapter 1). Now these reasons, especially the two latter, require such a union of the Blessed Virgin with St. Joseph to be conceived that by force of that union Joseph should be judged to have had a right over the Blessed Virgin to conjugal acts; but this is the bond proper to marriage. But when they deny that Joseph was or is to be called the husband of the Virgin (cf. Jerome, ibid., chapter II), they understand by husband one who is not only a man, but who further uses conjugal copulation. This is a way of thinking frequent in Jerome, who therefore opposes husbands, as also wives, to virgins in this manner: that he numbers among virgins also those who, joined by the bond of marriage, abstain from intercourse (cf. what he disputes against Helvidius, and what we shall bring from him in Chapter II, Thesis VII). And rightly indeed; for it is not the conjugal bond, but the use of copulation, that is opposed to virginity and most perfect chastity. Therefore it must be held that the Blessed Virgin was joined to St. Joseph by the bond of true marriage.

III. But this also must be held: that the Blessed Virgin, before she was addressed by the Angel, had obligated herself to God by a vow of virginity. For her words to the Angel compel us to believe this: "How shall this be, since I know not man?" For this present, "I know not," in this place signifies not some transitory act, but the will or power of the act, as the present form of a verb frequently does; otherwise the response would be foolish and ridiculous. Therefore the sense is: since I do not wish, or I cannot, know a man, that is, be mingled with him. Shall we think, with the Protestant interpreter Wilhelm Meyer in this place, that Mary from error so understood the preceding words of the Angel that she thought that she immediately then had to mingle, not with her own man, who perhaps was absent, but with another, and therefore signified her will of preserving conjugal chastity? This interpretation, full of irreverence, besides the fact that it is unknown to the Fathers and abhorrent from them, is excluded by the words of the Virgin Mary themselves; for she did not answer that she did not know another man, but simply that she did not know man. If these words are considered in themselves, their sense can only be one of these two: either that she knows no man, or that she does not know her own man. But because it is absurd to suppose that the Blessed Virgin suspected the Angel of proposing to her an illicit mingling forbidden by natural law, those words in this place can give only the other sense; and therefore they come back to this: since I do not know my man. Besides, what was there in the words of the Angel, who used only future forms, "you shall conceive," "you shall bear," from which Mary could suspect that he was speaking of a conception to be had immediately? But what that learned doctor says, that our interpretation is excluded by the very condition of Mary, since she was joined in marriage to Joseph, is altogether inept; as though it were not lawful for spouses, at least after nuptials had been entered, to vow virginity by consent. We do

not divine that this happened; we are taught it from the words of Mary. Cf. Petavius, *On the Incarnation*, book XIV, chapter 4.

IV. But the question can be raised whether the Blessed Mary made the vow of virginity only after the nuptials had been entered, or before them; and if this latter, whether absolutely or only conditionally, namely unless God should perhaps signify to her that something else was pleasing to him.

For resolving the former question, certain testimonies of Scripture do not suffice. Nevertheless the sense of the Church, concordant among ancient and recent writers, shows itself clearly enough in favor of the sentence affirming that the vow, or purpose, of virginity was elicited before the nuptials. This is attested by the most ancient author of the apocryphal book *The Gospel of the Nativity*. Epiphanius seems to have judged the same in heresy LVIII, n. 7, saying that "the Blessed Mary was indeed handed over to Joseph," whom he nevertheless thinks to have been old, "but by no means was she granted to him for copulation." Thus Augustine judged, who in the book *On Virginity*, chapter 4, says: "She was betrothed to a just man, not one who would violently take away, but rather one who would guard against the violent, what she had already vowed." Thus Sophronius of Jerusalem, in his Oration on the Annunciation of the Mother of God (Ballerini, *Sylloge*, part 2, p. 95), after he had commended, insofar as it could be done, the purity and virginity of the Blessed Mary offered in the temple and thereafter, introduces the Angel speaking thus to the Blessed Virgin: "I know that Joseph has obtained the mere name of spouse without the thing; for he was not joined to you as the begetter of offspring, but as the faithful and God-beloved minister of your Son." John Geometra, not later than the middle of the eleventh century (*Sylloge* of Ballerini; cf. his preface, part 2), said in an Oration on the Annunciation of the Mother of God (ibid., p. 106): "the tradition derived from the Fathers to us: that the Virgin knew not only no use of nuptials, but not even a desire of them. I know no desire of a man, she says, no will of the flesh is mine. This indeed was singular to her, even from the whole female sex, since before all others and from a deliberate purpose of the will there was in her a chastity inaccessible to these defilements." Hence in the twelfth century Hugh of St. Victor wondered that anyone had existed who dared to call into doubt the vow of virginity made by the Blessed Virgin before the nuptials, moved by this reason, that it cannot be composed with the consent necessary for marriage. This indeed he excellently and subtly refutes in the little work *On the Perpetual Virginity of the Blessed Mary*. Finally after him Thomas taught, in IV, dist. XXX, that the vow of virginity preceded the nuptials, and generally the Scholastics with him.

V. But the remaining question is whether this vow before the nuptials was absolute or only conditioned. A conditioned vow is understood in this way: that the Blessed Virgin firmly proposed and promised to God her perpetual virginity, with the will of preserving it insofar as it was situated in her own choice, but with some condition nevertheless added to this promise; not only this implicit condition, "if it please God," which accompanies all vows, says St. Bonaventure (in IV, dist. XXVIII, a. 1, q. 6), but an explicit and more determinate condition, arising from a doubt by which the Virgin could still be troubled: namely, unless from some debt of keeping the divine law by which I am bound, I should understand that there is another will of God. For one must think that the Blessed Virgin, who was an heiress daughter, knew the Mosaic law which ordered daughters of this kind to marry agnates, so that goods might remain in the family; and therefore that one of her agnates had a right to take her as wife. Moreover, unless the man consents to continence, it is the obligation of the

wife to render the debt. Could the Virgin, placed in these circumstances, make an absolute vow of virginity? A twofold hypothesis must be distinguished.

If we suppose that the Blessed Virgin had already long before been made certain by divine revelation that, whatever would happen, although she would have to marry, nevertheless her virginity would be subject to no danger, she could before marriage promise virginity to God absolutely. But if we do not suppose this knowledge of the Virgin from divine revelation, she could conceive only a conditioned vow; otherwise she would have shown herself less conformable to the law, which certainly had to be avoided all the more. Therefore, if no revelation preceded, it must be said either that marriage was entered by the Blessed Virgin with that vow only conditioned, "if Joseph should consent"; but, with the consent of Joseph acceding after the matrimonial contract, the vow became absolute before she was saluted by the Angel; or that before the matrimonial contract itself, there intervened a mutual pact with Joseph of preserving virginity in marriage, and that, with the future husband's consent, the Virgin then already vowed absolutely, if indeed this pact does not obstruct matrimonial consent. But if that revelation which we have mentioned preceded, the Blessed Virgin, even before she thought of marriage, before the consent of a future husband was received, could absolutely vow virginity to God, since she knew with certainty that it would not be violated against her will by any external cause. But what is more probable to have happened? If you weigh the sense of the Church expressed by the testimonies cited, you will hardly persuade yourself that there is speech only of a conditioned vow before the nuptials. For they speak either simply of a vow, or even of an absolute vow. This is what Hugh of St. Victor defends, what Thomas affirms, who therefore, to explain it, posits a revelation previously made to the Virgin, by which she was made certain that her virginity would never come into danger. This sentence, that an absolute vow of virginity preceded marriage, coheres more with the eminent concept of the most pure Virgin. Thus the question remains whether it was lawful for each to add to matrimonial consent a pact concerning preserving virginity, and whether it is lawful for us to conceive the nuptials entered by the Blessed Virgin with St. Joseph in this way. This certainly is easier to think to have been done if no revelation preceded for the Virgin; but even on this hypothesis it could also happen, unless the essence of the matrimonial contract rejects a pact of this kind. It is clear that the general question can be proposed, namely whether a pact of this kind renders the matrimonial contract null.

VI. Although not a few Doctors, whom Benedict XIV seems rather to approve in *On the Feast of the Espousals of Blessed Mary*, judge this to be so and seem to rely on the authority of St. Thomas, nevertheless the denying sentence is certain to us, and Hugh of St. Victor in the cited little work, and others whom Ballerini follows (*Theological-Moral Work*, vol. V, On Marriage, n. 419 ff.), defend it. For, first, the arguments brought forward for the opposite sentence do not settle the matter.

Indeed, a) appeal is badly made to the canon of the Decretals (n. I). For that condition which is said to be against the substance of marriage, "If you avoid the generation of offspring," is without any reason confused with this one: "If you are willing to preserve continence," although from this there follows a lack of offspring. For the condition which is against the substance of marriage is that which is opposed, not only negatively but positively, to some good of marriage; certainly of this kind are the two following conditions enumerated by the Pontiff. But the condition of avoiding offspring, which positively opposes marriage, is the will of impeding the generation of offspring in the use of marriage. The sense of the condition, namely, is this: I contract with you if, in carnal mingling, you

are willing to impede offspring from existing. Indeed, the examples of this condition brought by the canonists look to this, namely either by suffocating the offspring or by drinking a potion of sterility, as is taught in chapter *Aliquando*, 32, q. 5, says Gonzalez on the Decretals, book IV, here, which examples suppose carnal copulation and indicate the will of impeding offspring from arising from marital copulation. This certainly is directly against the end of the same. Now this is altogether different from establishing abstinence from copulation; therefore that decretal is not rightly invoked in this question. Indeed, the condition added of impeding offspring is against the substance of marriage, because that very impediment of offspring in carnal mingling is against the end of conjugal copulation; but who would say that mere abstinence from copulation is against the end of marriage? Therefore these two things are wrongly confused.

But, they say, b) in reality it is opposed to the end of marriage, whose end is offspring. Therefore we respond according to those things which we taught from Augustine in the preceding thesis: offspring is the primary end of matrimonial copulation, although not the only end - conceded; it is the end of the matrimonial bond itself - distinguish: immediate, denied; mediate, distinguish further: it is the only end, or an end essential to the essence of marriage, denied; it is some end, indeed even primary, conceded. Now, to enter some contract with a pact not indeed of acting against some one of its ends, but only of not doing that from which some one of its ends, even the primary end, follows, while other ends and goods remain, is certainly lawful. For provided that this end is not positively excluded, an action intending a good from a good end is honorable (cf. the moral theologians); but the end is not positively excluded when only the use of the thing is omitted. Indeed I ask: is there a true matrimonial contract when it is made between those for whom copulation is possible, but offspring is not possible? Who sane has ever denied this? In those contracting, can there be a serious intention of offspring? I do not think so. Therefore the matrimonial contract is valid even without any positive intention of any good or end of the same, without, I say, any intention of offspring.

Therefore, from the fact that, because of the pact of continence added to the contract, the intention of offspring is lacking, that pact cannot be condemned on account of the lack of intention of this end.

But they press more sharply, c). With that pact added, not only is the intention of the end lacking, but also the intention of copulation; indeed there is introduced an obligation of abstaining from it. But this is repugnant to matrimonial consent itself, by which power is conferred for copulation; for a moral power toward copulation and a moral obligation of abstaining from it are contraries which cannot exist together. This is the principal argument of the adversaries (Sanchez, book V, disp. 10). Nevertheless we have something to reply; namely, we affirm three things. First, an intention of not using copulation, hidden in the soul, does not harm the value of the contract; once that contract has followed, if the other asks, it will be necessary to render the debt and to bid farewell to that intention. Second, this intention when manifested, since, if it is seriously made, it signifies the will of obligating the other to continence, vitiates the contract if the other does not consent to the same thing. Third, the mutual obligation of continence undertaken in the contract itself is opposed not to the matrimonial contract itself, but to a certain free use of the same, and therefore does not make the contract void.

The first is clear, because in itself the will of not using some thing does not exclude the will of having it. Indeed, if someone received the order of priesthood without the intention of ever exercising its acts, would this will exclude the intention of receiving the order? By no means; but he would truly be

a priest, who nevertheless could be obligated by the Bishop to acts of the order, notwithstanding that intention. So in marriage. For, with St. Thomas (in IV, dist. XXX, q. 2, a. 2, ql. 3), as Sanchez observes (book II, disp. XXVIII, n. 4), a twofold account of implicit consent must be distinguished. One is implicit consent on the part of the object or contract; in this way it is true that in consent into marriage there is contained implicit consent into copulation, to which marriage is intrinsically ordered. The other is implicit consent on the part of the subject or the one contracting; in this way implicit consent into copulation is not necessary, and indeed, although the one contracting has the intention of not consenting into copulation, there is true marriage. This, says Sanchez, St. Thomas seems clearly to signify in the cited place by these words: "The Virgin implicitly consented into copulation... copulation was never in the proposal; for she had been certified by God that the act ought never to follow." Behold how, on the part of the contract, he posits implicit consent into copulation, but not on the part of the one contracting; rather, he posits the opposite disposition. Thus Sanchez.

The second is also clear: for if the other does not consent to the continence which the one wills, since he wills marriage on account of its intrinsic goods, which he is not going to obtain with this person, neither is he judged to will to contract with this person.

As regards the third, observe with the distinguished Ballerini (loc. cit.) that those who put this pact before the matrimonial contract must be said, rather than to yield a right, to promise a yielding of a right; for the yielding of a right supposes an acquired power, which is acquired by the matrimonial contract itself. But if this pact is conceived together with the contract itself as a mode of it, the persons contracting must be said to hand over power to each other mutually in such a way that at the same time they mutually renounce the right to copulation which arises from that power. It is as if someone buying a house should, in the very act of contracting, yield the use of that same house to the seller.

Therefore we prove this third head thus. A distinction must be made both between transitory and permanent power, and between power to an act which can produce nothing except this very act and no other effect, and power to some act indeed, but which, since it is permanent, is also able to effect or procure another good consequent upon this very power. Now we concede that, if the discussion is about a transitory power and one from which only that one act is naturally able to proceed, the acquisition of the power and the obligation of not using it cannot be composed together. But if the discussion is about another, permanent power, which besides the act to which it is ordered, and because of this very ordination, can produce some other good, we deny that these two cannot be composed together. You have an example first in the power of priestly order. This indeed in itself is ordered to sacred acts, and certainly is nothing but the power of sacrificing, administering the sacraments, and performing other hierarchical acts. But since it is a permanent power, who does not see that, besides all these acts, it procures for a man a certain perfection and dignity through itself, so that it is good and desirable to have it even without any act? Therefore it is not intrinsically repugnant that this same power be conferred with the obligation of not using it. You have a certain example of this in titular Bishops in the regions of infidels, who nevertheless are prohibited from exercising any act of their power in their titular sees, and could be prohibited from exercising those acts in any place. Say the same of Marriage: the power is mutual over the body of the other in order to copulation, but from this very permanent power there arises a special union and friendship; there

arises a right to the help and consolation of the other and to a stable communication of goods. These are the goods which this power produces, even when copulation is set aside.

For this reason the power itself is in itself desirable even when copulation is set aside; nor is it given and obtained in vain when the use of copulation is denied. Now if this is so, it becomes evident that that pact of continence added to the contract is opposed not to the power, but only to a certain act of it; because the power is given and accepted through the contract, and that obligation does not destroy it; for with that obligation this power can still produce good effects and in itself is still some desirable good. Read Hugh of St. Victor, loc. cit. Therefore, since, when there is a permanent power to some act whose positing is not necessary, the power itself and a certain proximate right of using it, which can be lost while the power remains, are distinguished - and so it is in Marriage - and besides this, the power, even when this right is freely renounced, still does something; hence it follows that these two can be composed together: namely, the acquisition of power over the body of the other and the corresponding obligation, and the free abdication of the right of using that power as regards this, namely, as regards copulation.

For this reason, by matrimonial consent affected by this pact, that very thing is handed over and accepted which remains in spouses who after the contract obligate themselves by mutual consent to continence. Therefore what Sanchez says (loc. cit.) is not true: that this mutual pact is repugnant to the intrinsic and necessary elements of marriage. For it is not repugnant to the necessary elements, because neither offspring nor copulation is necessary; but the power over the body of the other, which is necessary to marriage, remains. It is not repugnant to the intrinsic elements, because that which is intrinsic to marriage, that is, that without which its essence cannot exist, is mutual power, not the proximate right of using, which the contracting parties renounce. Therefore if afterward they were to violate this pact, they would not be fornicators, but guilty of a violated promise or vow, if they had sanctioned this pact by a vow. If you hold these things, you have not only the solution of the difficulties, but the demonstration of the Thesis. For the rest, Sanchez does not hand down the opposite sentence as certain, but only as more probable.

Moreover, famous in ecclesiastical history is the marriage of St. Pulcheria the Virgin with Marcian (cf. *Acta Sanctorum*, September 10, on St. Pulcheria, §11), celebrated after this promise had first been sought by her from Marcian and furnished by him, of preserving her virginity in marriage. Therefore we judge that in the same way the Blessed Virgin and St. Joseph could have entered marriage.

Thesis IV

Although the use of marriage is good, nevertheless the state of virginity and celibacy is preferable to it.

I. There is Canon 10 of the Council of Trent, session XXIV: If anyone shall say that the conjugal state is to be preferred to the state of virginity or celibacy, and that it is not better and more blessed to remain in virginity or celibacy than to be joined in marriage: let him be anathema. This is the doctrine to be defended. We suppose not only that marriage is good, but that the use of marriage through carnal copulation is good, that is, an act honorable and holy in itself. For the comparison is not properly instituted between virginity and celibacy on the one side, and marriage simply on the other, since with marriage virginity and the perfection of celibacy can consist; rather, the comparison is with marriage exercising itself through the mingling of flesh, or conjugal copulation. There is no need, beyond the things said in Thesis II, to bring forward other things to prove that this use of marriage is a good act. For from what was said there it is clear that this act was instituted by nature for the best end, which is offspring, and that it is moreover an act of justice in rendering the debt; God himself approved it when he said to the first parents: "Increase and multiply" (Gen. I, 28; IX, 1).

This being supposed, therefore, the comparison is instituted between Marriage exercising itself through carnal mingling and virginity or celibacy. Moreover, it must again be observed that the Tridentine Fathers make a comparison between states, that is, not between the persons who live in these states, or between the perfections with which those persons can be endowed from their own virtue, but between states, that is, between those things which belong to each state from its own nature. But a state is a condition in itself immovable and perpetual of men obligated to certain works or offices. Since the comparison is made between states, hence again it is not made between those things which can be accidental to the account of state, of which sort would be some consecration. Besides, it must be observed that the celibacy of which there is speech is not, so to speak, negative celibacy, namely the mere lack of the conjugal bond, with which an immoral and wicked life can be joined, but positive celibacy, in which, namely, someone alien to nuptials resolves from the soul to lead a life exempt from the pleasures of the flesh. Finally, it must be considered that the comparison is made not by reason of just any goodness, but of moral perfection, which man obtains on account of this or that state; and this moral perfection is the supreme good which man can attain in this life, to which therefore the rest must be subordinated, and on account of which it cannot happen that he is impeded from helping others; indeed, in itself, it is necessary that he exist as more apt for procuring the true good for others. But this moral perfection is that blessedness which man can attain in this life, the beginning and pledge of future blessedness.

II. Therefore for the Tridentine Fathers the question concerned perfection and blessedness, to which state each belongs more. But the Fathers teach, according to the perpetual tradition of the Church, that, when account is taken of perfection and of true blessedness according to God, the state of virginity and celibacy is to be preferred to the state of marriage. That this is true is easily demonstrated. For it is clear, first, from the doctrine of the Apostle, 1 Cor. VII. The Apostle affirms that it is good (καλόν) for a man not to touch a woman (v. 1); that it is good (καλόν) for the unmarried and widows if they remain in that state, that is, without nuptials, as the Apostle himself

remained (v. 8). Nevertheless he adds that if they do not contain themselves, that is, if they cannot contain themselves, they should marry, giving the reason that it is better to marry than to burn (v. 9), that is, to be overcome by the temptation of concupiscence, not merely to be tempted; for he who remains chaste when placed in the fire of temptation is not burned, that is, consumed by fire, but purified. Here there is speech of moral goodness. Therefore the unmarried state is called good simply; the married state is called good on account of avoiding incontinence, namely lest one sin; and since this is the least moral goodness, the unmarried state will be good on account of something more. The former state is good in itself and desirable; the other is good on account of a certain native infirmity of soul, lest something worse happen. Therefore comparison by reason of goodness is instituted between each state, and the appellation "good" made of the state of unmarried women or unmarried men has a comparative force, so that it is the same as "better," according to the custom of the Hebrews. But do not infer from those things which the Apostle here says about the state of married women that it is good only on account of the end of avoiding incontinence; for from the Apostle himself it is clear that it is good on account of other ends, for example, on account of the procreation of children (cf. 1 Tim. V, 14). But the very fact that here the Apostle mentions this one end alone, among the several goods which are in marriage, confirms what we say: that the Apostle, having regard to moral goodness or perfection, prefers virginity to marriage. For if the Apostle is said, when he wrote these things, to have had before his eyes only the moral perfection of those whom he was addressing, and to have wished to commend each state to them from this moral perfection which each person can find in it, and therefore to have spoken to them as though answering the question:

As regards the moral perfection which someone can acquire in either state, which excels, virginity or nuptials? If, I say, you conceive the matter thus, you plainly understand why the Apostle mentions this one good alone out of the many which are in marriage: namely the restraining of concupiscence, lest it break out into sins. For the other goods were altogether ἀδιάφορα to this question. For since moral perfection is situated in this, that we live according to the spirit and not according to the flesh (Rom. VIII, 12), it was necessary to compare each state according to this, if the question was which is morally more perfect. But with this question set aside, there was no reason why the other goods of Marriage, not only physical but also moral, should be passed over in silence. Therefore by reason of moral good the Apostle compares virginity with marriage so that he prefers it to marriage. This indeed is openly declared at the end of the discourse (v. 40): "she will be more blessed if she remains thus," that is, unmarried. Hence it is that abstinence from the conjugal act is called by the same Apostle sanctity, which is not asserted of those who use marriage: "The unmarried woman thinks of the things that are the Lord's, that she may be holy in body and spirit; but she who is married thinks of the things that are of the world, how she may please her husband" (v. 34). And on account of this excellence of virginity, it is the object of counsel (v. 25): that is, it is not merely counseled, not commanded, because it is an indifferent thing, not necessary, which is also true of marriage; but because it contains a more eminent perfection than can generally be exacted from all. For this is the account of the evangelical counsels. This moreover is clear when the words of Christ in Matthew XIX, 10-12 are compared, in which Christ, commending the excellence of the gift of virginity, asserts that it is not given to all, but to those to whom God wills. Read Chrysostom on both places. But there is no need for us to observe that in the Apostle's discourse Marriage is considered insofar as it is exercised through copulation; for thus it contributes to the remedy of concupiscence, and thus it is true that the married woman thinks of the things that are of the world.

III. But, they say, marriage is called by the Apostle honorable in all (τίμιον ἐν πᾶσι; Heb. XIII, 4), but virginity never is. Besides, virginity itself is commended by the same Apostle not in itself, but by reason of another: "I think," he says, "that this is good on account of the present necessity" (1 Cor. VII, 26). I answer to the first: those words of the Apostle contain an exhortation rather than praise, that the honor owed to nuptials be shown by spouses in all their acts, and that nothing be done which would dishonor Christian nuptials, as used to happen among the Gentiles. For the rest, even if nuptials are honorable, it does not follow that virginity is not more honorable; and this, although not in as many words, the Apostle nevertheless signified when he preferred it to marriage. I answer to the second: those words of the Apostle do not pertain to giving the reason why virginity is good, but to presenting a certain persuasive reason for his counsel concerning preserving virginity, or to making souls more inclined to embrace that counsel, arguing also from the present necessity or from the present inconveniences of marriage, as he declares below. Therefore it is a commendation of virginity drawn not from the object, but from a certain condition of the subject: that outside it man is liable to more tribulations of the flesh. But this is not the same as saying that this is the only cause why virginity is good.

IV. It is clear, second, from the doctrine of the Fathers against Jovinian: read Jerome against the same, read also Ambrose *On Virginity* and Augustine *On Holy Virginity*. The Church professed this doctrine from her cradle; she has always held virgins in the greatest honor and has followed them with a certain singular reverence. Surely there would have been no reason for this special esteem if she had judged virginity equal to nuptials or inferior.

It is clear, third, from intrinsic reason. For that state in which the spirit is preferred to the flesh, in which the goods proper to man insofar as he is rational are procured, in which the virtues most difficult because of the impediment of concupiscence are exercised, in which the most noble end, which is the union of the soul with God, can in itself be more fully obtained, and in which therefore generosity and greatness of soul shine forth, is more perfect and more blessed than that state in which one gives work to animal desires and procures those things which are also common to brute beasts, in which satisfaction is made to concupiscence, although within due limits, and in which it is not permitted in a special way to be free for God alone. But such is the case; therefore. The argument of the Apostle in the cited place, vv. 32-35, returns to this. Augustine brings forward another reason in the book *On Holy Virginity*, chapter 2, whose force a Christian man cannot fail to feel: "Since the whole Church herself is a virgin betrothed to one man, Christ, as the Apostle says, how worthy of honor are her members, who guard even in the flesh itself what the whole Church guards in faith, who imitate the mother of her husband and Lord? For the Church too is both mother and virgin. For whose integrity do we consult, if she is not a virgin? Or whose offspring do we address, if she is not a mother? Mary corporally bore the Head of this body; the Church spiritually bears the members of that Head. In each, virginity does not impede fecundity; in each, fecundity does not take away virginity. Therefore, since the whole Church is holy both in body and spirit, and yet the whole is not virgin in body, but in spirit, how much holier is she in those members in whom she is virgin in body and spirit?"

V. But that marriage is a sacrament indeed makes it the case that grace is conferred upon spouses *ex opere operato*, and that the necessary actual graces are given for the operations of their state; but it does not make their operations more perfect than those which are proper to the other state, nor does

it prevent sanctifying grace, and the same grace more abundantly, from being acquired by virgins *ex opere operantis*. But the perfection and blessedness of a state is situated in the perfection of its proper acts and in the very possession of grace, not in the mode by which that grace is acquired.

VI. But those things which Augustine piously and subtly discusses concerning the perfection of married persons in the Old Testament, even of those who spread children among several wives, to whom he does not dare to prefer the continence of Christians (*On the Good of Marriage*, chapter XIX ff.), these things, first, do not regard all indiscriminately, but those Patriarchs, and those like them if there were any, whose sanctity is commended to us in the Scriptures; for he openly names them, and it easily appears that Augustine always directs his mind to them. Second, according to Augustine, the perfection of the Patriarchs using marriage, not less than the perfection of the continent in the New Law, is nevertheless not the perfection proper to the state, but the perfection of the person (cf. chapter XXIII), which perfection in those men the use of marriage did not impede; because, as he supposes, they applied themselves to children not from any lust but from the sole will of propagating the people, or worshippers of God, and therefore from a will moved by charity, and that indeed in that age in which the people of God, God so disposing, was to be propagated by carnal generation. Therefore, according to the same Augustine, they bore a soul prepared for continence and would actually have embraced it if they had believed that, in that age, it was more expedient for them. Therefore, comparing their continence in preparation of soul and in true desire for it with the actual continence of Christians, Augustine does not dare to prefer these to those. But third, you see that the reason for the excellence of the Patriarchs is finally placed by Augustine in continence, which, as he supposes, they had in vow; and therefore, from this very discussion of Augustine, continence in itself excels the use of marriage.

You will say: abstinence from marriage deprives of the greatest good, that is, the increase of peoples; therefore it is certainly not better than the use of marriage.

I answer: abstinence deprives the man himself who abstains of the greatest good: I deny; for his greatest good is not offspring. It deprives others: I subdistinguish; with injury, I deny (see following, n. 74); apart from injury, I again subdistinguish: namely, when a disposition suitable in itself has even been obtained for procuring for the community goods more excellent than a simple increase, I concede; when the increase of the community is impeded, I again subdistinguish: an increase useful and desirable, I deny, for as long as natural inclination in general exercises its force, that will never be lacking; a possible increase, I again subdistinguish: one that would for the most part be harmful, and can be compensated by better goods through the said abstinence, I concede; otherwise, I deny. Cf. the following thesis.

Thesis V

Although marriage is according to the right of nature, and at times was deservedly commanded by God to some, nevertheless from the right of nature there is no obligation properly so called, made either to individuals or to the community, of procuring offspring.

I. What we state in the first place was denied by the ancient heretics, namely certain of the Gnostics and the Manichaeans, who, as we have already observed in the preface, approved indeed the mingling of flesh, but said that the generation of offspring and the perpetual obligation of one to the other were evil, brought in by Satan. There will again be a place for disputing about these in Thesis VII. To them are added those more recent pseudo-philosophers who acknowledge no other legitimate nuptials except those which genial love has brought together, to endure as long as that love survives; for in reality they take away the covenants of nuptials and deny that these are from the right of nature. But no sane man fails to understand that marriage is according to the right of nature. That certainly is according to the right of nature whose principles are in nature itself and which, for attaining a certain end for which nature itself supplies the powers, is either counseled or required by nature itself. Now the principles of marital union are in nature itself: that is, the diverse sexes ordered to each other, and in the mingling of both the native force of producing offspring. But for the production of offspring and its right education, which nature requires, there is either required, or, to say now at least the minimum, since we shall dispute about this later, there is at least fitting, the mutual obligation of man and woman to stable union; and in this Marriage consists. Besides, to speak of this bond itself in itself, it must be said to be according to the right of nature if it is conformed to the principles of natural law; but such is this union. For friendship and society founded on a mutual communication of power, of which each party is capable, for the mutual communication of goods and mutual consolation and help, is approved by the same natural law by which there is approved both friendship and society generally among all, and especially that friendship and society whose seed and principle has been sown by nature itself. But the stability of union is the perfection of friendship according to the same law; therefore the conjugal bond is according to nature. Indeed, that cannot fail to be according to the right of nature which the author of nature instituted for a natural work, such as the propagation of the human family. But that God instituted marriage from the beginning is clear from Genesis II compared with Matthew XIX, testimonies which we shall explain afterward. Cf. canon 1, session XXIV, Council of Trent. But lest we dwell too long on a matter very clear in itself, the consensus of the human race is also a reason for proving this; for although passions might suggest something else, nevertheless when the human race made laws, it approved that union between man and woman which either truly was marriage or had some appearance of marriage.

II. But because not everything that is according to the right of nature is commanded, the question follows whether marriage and the use of marriage in the procreation of offspring is a thing commanded. That marriage was commanded to the first human beings, Adam and Eve, is certain; for God himself joined them and willed them to be husband and wife. But the question is properly about the use of marriage for the procreation of offspring, or about the propagation of offspring itself to be procured, in an honorable way, of course: whether those first authors of the whole race, and also the rest who followed, were therefore ordered by a true precept to procure it; whether the precept affects

individuals or at least the community of men; and whether, if it is not a positive divine precept, it is at least natural.

Therefore appeal is made to the words of the Lord (Gen. I, 28): "Increase" (פרו, *fructify*, bear fruit, so that the act of copulation is thereby signified), "and multiply and fill the earth," said to the first parents. These words seem to contain a divine precept issued not only to those first human beings, who surely could not alone, by offspring received, fill the earth, but also indefinitely to their descendants, who were contained virtually in that first pair. Therefore the question concerns the sense of these words of the Lord.

We judge that this question must be answered thus: by those words is signified the intention of the end which God appointed for himself in the creation of the first male and the first female; this manifestation of an end in itself does not have the force of a precept, but accidentally it also exercised the force of a precept toward those first human beings and perhaps their children, as long as and insofar as they were situated in a condition similar to that of the first parents. This is proved, first, because those words "Increase and multiply" were said in the same way as the words immediately following: "and subdue it," the earth, "and have dominion over the fish of the sea and the birds of heaven and all living things which move upon the earth." But these do not express a precept, but a certain destination of men according to the dignity implanted from the beginning, whether by the natural order or beyond the order of nature. Indeed, the same words "Increase and multiply" were also said to living things in Genesis I, 22; but then the natural destination of these things, or the intention of God creating them distinct according to their kind, was signified. Thus also Cornelius a Lapide on this place. Likewise Chrysostom, homilies X and XXVI, takes these not as a command but as a blessing of God.

This is proved, second. The manifestation of some end intended by God, which is not essential to man and can be obtained without obligation imposed on man, does not in itself assume the account of a precept, unless from elsewhere it is clear that an obligation is generated. This is evident, because if that end can be obtained without obligation imposed on man, the will of God to obligate is not yet established merely by that end having been manifested; and where this is lacking, there is no precept. But in the words of the Lord we have the manifestation of an end which, first, is not essential to man; for offspring is not necessary to man in order that he be, or in order that he be perfect and blessed. Generation is indeed necessary to future men in order that they be; but these in themselves have no right to be, nor can the question now be about them, for we are speaking of those on whom a precept is imposed, and of this sort certainly are not those who do not yet exist. Now, second, in order that this end be obtained, the cooperation of men is indeed necessary, but it is not necessary that they be obligated. For they are sufficiently borne toward it by the propensity of nature, so that in a multitude of men it is morally impossible that there not be many who will it. These things being posited, what need is there, I ask, of a precept?

It is proved, third. We have said that a manifestation of an end of this kind does not in itself assume the account of a precept unless from elsewhere it is clear that an obligation is generated. This, moreover, first had place for the first parents, who were the one pair from which the human race could proceed. If they, indeed, had been unwilling to devote effort to generation, it would have been over with the end intended by God when he created them male and female and united them in marriage. Nor can it be said: even if they were not obligated, there would have been no fear lest

generation follow; for what wonder would it be that two should consent to continence? To continence even the first parents could have been moved after sin, lest they procreate an unhappy stock subject to sin. Do you think that those first two human beings would have acted rightly if they had decreed this? Did this obligation then also exist for others? We suppose that Adam and Eve left several children, whom they were able to bring forth in so long a span of life, and that from these many other children arose.

Now, when they were very many, while natural propensity exercised its force, it was, as we said, morally impossible that many would not devote effort to generation; and therefore a precept concerning this matter was superfluous. And even if few had procreated children, this one thing would have followed: that the human race would have been propagated over the whole earth later. But this would not have been unfitting; for God had not signified that he intended the human race to be multiplied quickly. But when from the beginning they were few, or if this happened later also, so that it would not be morally impossible for all, from the choice of the will, to abstain from generation, they would have been situated in the same condition as the first parents. Therefore, lest the human race fail, an obligation pressed them to devote effort to generation; and this obligation in itself affected not all distributively but disjunctively, for it was enough to preserve the human race, since full multiplication was not immediately to be pursued. But the diverse circumstances in which those men were situated could determine those who would satisfy this obligation. Outside this case I do not see the necessity of any precept; for if men are very many, it is morally impossible, even without any obligation, that all, indeed that many of them, cease from generation. Thus, therefore, we understand a precept issued by the Creator concerning this matter: that a beginning be made for human generation, and provision be made lest the human family cease. The rest did not fall under the precept.

IV. And let these things have been said concerning the obligation which someone might wish to have existed before the subsequent increase of men, which nature can rightly demand. But once that increase had been obtained, and even, if you wish, after some space of time, was there some law of God commanding the conservation or continuation of the human family? Certainly I do not know whether appeal is rightly made to that law issued in creation which we have just weighed. For we hold as certain that at some time this whole human race on earth will cease, but we do not know when and how God has determined this. Therefore, if you have regard only to the account of that primitive law, by what argument will you establish that the human race occupying the whole earth is bound by divine precept to procreate its successors? The end has already been obtained in multiplication. Procreation continued without end is not intended by God. Of course, if no one generates, shortly afterward the human race will cease; but in itself this can be one of the ways by which this human race will at last depart from the earth, although it belongs entirely to God, anticipating, to impose another end. You will say that the human family, as long as it lives, ought to observe that command: "Increase and multiply." But Augustine did not perceive such a necessity by force of those words. When the objection of certain persons was proposed to him in this very question, "If all wished to preserve continence, the human race would cease," he responds: "Would that all wished it"; for thus, as he himself says, the number of the elect would be filled more quickly (*On the Good of Marriage*, chapter X). And indeed, provided that the act is not evil in itself, since that divine will concerning the continuation of the human race for that determinate age is not certain, why would sin be admitted by ceasing universally from generation?

But even if not by force of that divine will expressed by the words "Increase and multiply," still at least by force of another will, namely concerning the future advent of the Redeemer, was it not necessary that men, until he should come, devote effort to generation? It was certainly necessary; but for this there was no need of any precept. First, indeed, it can be said that the promise of the Messiah was made on the supposition of the foreseen future propagation of the human race by force of natural inclination, just as the promise of the sacrifice of the cross was made on the supposition of the foreseen evil will of those who would crucify Christ. Indeed, in order that the truth of the promise concerning Christ to come at a certain age might remain firm, these two elements were sufficient: on the part of men, a certain natural inclination to generation; but on the part of God, a certain gentle and efficacious providence which would moderate the free affections of men. These, however, in themselves abstract from a precept; therefore there was no need of any precept. Nevertheless, at that time, because of the very expectation of the Messiah to come in the flesh, it happened that those from whose family he was to arise were more inclined to procreate offspring. But the others from the Jewish people were borne into nuptials "by a love not only legitimate but holy," because this was the mode of propagating and conserving the people of God and the true worshippers of God, since then one people proceeding carnally from Abraham was guarding the true religion instituted by God. But it is false that in that age nuptials were commanded to individuals; for nowhere does this mandate exist. For what Augustine, *On the Good of Marriage*, chapter 22, reports from Deuteronomy XXV, 5-10, as it seems, that he was cursed in the law who did not raise up seed in Israel, is not expressed in the law in this way, nor is there any law made for individuals concerning nuptials. Rather, it is a law concerning taking the wife of a brother left without children; and this law indeed did not obligate the brother of the deceased unwillingly, except if he wished to possess the goods of the deceased by right of inheritance.

V. And these things said thus far concerning a divine precept are valid whether you speak of a precept made to individuals, or at least to the community. But because we have spoken of a divine precept insofar as it is positive and is distinguished from the natural, it certainly can happen that someone observes that we have in some way played or wasted labor in the demonstration of this matter; for the words of the Lord are an expression of natural right, and this truly commands the procreation of offspring. But on the contrary we reply with two points. First, the words of the Lord, if they express a precept, about which matter we have already spoken, express a precept formally divine, and only foundationally natural. Second, no natural precept properly so called exists, either for individuals or for the community, concerning the propagation of offspring.

The first of these, as you see, depends on the second. For if there is no precept from nature itself, that is, if nature in itself does not require that this be furnished by men, it will follow that if a precept is asserted, it arises immediately from the free will of God, with only a certain natural capacity or propensity supposed; but this is a precept formally divine, and only foundationally natural. Therefore we prove the second, of which that will be the necessary consequent.

Therefore, as regards the second, men can be considered both as individuals separately and in community. We affirm, a) first, that individuals are not obligated, or that nature does not require from them that they attend to the procreation of children. For if there were in individuals any obligation by natural right to procreate, it would have to be derived from the end, which is the procreation of children; for from that end those who press this obligation derive it. But the other

ends of marriage can plainly be compensated and surpassed by other goods. Yet from that end there is, by natural right, no exigency and obligation of procreating in individuals. For an active capacity for it is not a sufficient reason of moral obligation. Propensity, if there is any, is free rather than necessary; and therefore that propensity to having children is not found in all. But naturally there is present a disposition, which is nothing but the active capacity we have mentioned. The good itself, which is offspring, if it is compared to individuals, is not for them the more excellent good which they can attain, but on the contrary it impedes goods more excellent both for individuals and, through them, for the community. For the more excellent good for man is that in which his perfection is chiefly situated; of this sort is the study and contemplation of truth, the exercise of charity toward God and neighbor, from which the greatest benefits redound to society. Yet the full and at least excellent attainment of these goods is impeded by the care of children. But the good of offspring, that is, its procreation, if it is compared with the offspring itself, is certainly an immense good for it and the principle of the rest; but before offspring exists, since it has no right, what obligation can there be toward it? Besides, we have seen that the state of continence is more perfect than the state of marriage, in which effort is given to generation; and this would also be so in the state of pure nature. But the right of nature cannot obligate men to that which is more imperfect with the loss of what is more perfect.

b) Nor by the right of nature is there any obligation of procreating children imposed on the community of men. For besides the things already said, which are also valid here, observe that the community cannot be obligated to this act insofar as it is a community; for this is an act which can be posited only by individuals, namely by pairs made one flesh from male and female, and insofar as they are such. Therefore the natural obligation which is called that of the community will come back to this: that some persons disjunctively from the community, either these or those, are obligated. But what sort of obligation is this, which can affect men only one by one, and yet from which individuals are immune? Do we not see in this matter the very same thing that happens in several other offices of society? For in society there must be farmers, physicians, teachers, artisans, etc. Is there need of any natural law morally obligating, in order that such men exist in society? The diverse natural disposition in individuals, the variety of occasions, advantage, profit, praise, and honor, which offer themselves for different things only in different conditions, are more than sufficient that there never be lacking those who perform those offices. Likewise, if it is necessary for the community that successors exist, which indeed is rather the good of future society than of present society, unlike the other offices enumerated, the propensity to nuptials, which unfolds itself in so many, in suitable circumstances, of which there is abundant supply, will effect that there is never lacking a generation of men succeeding a declining generation. Therefore in this matter we see only a certain instinct of nature, which besides is more vehement than the others, so that it needs restraint rather than impulse; by it nature, and the author of nature, sweetly obtains what he intends.

VI. But you will say: does not nature require her own continual propagation and the perpetual conservation of human society? Moreover, are not men, either taken distributively or at least disjunctively, bound by a true moral obligation to that which nature requires of them and which they can furnish only in a human and free manner? We concede this latter, but we deny the former: namely, that nature requires continual propagation from men. For nature first requires in individuals, and then in society, but by reason of individuals, in whom alone nature itself inheres, that which is necessary for them in order that they be and be well, so far as is needed for the ultimate end. But

generation is not necessary for those in whom nature inheres, nor for existing society, but for future society, which nevertheless now can exercise no right. Therefore it is false that nature requires it; but nature confers the power and also the propensity. But if the author of nature wills a certain perennial series of generations, he knows by what modes he may use this inclination and the affections of men for attaining this end without any moral law.

Yet you will insist: no one would blame a king who, in certain circumstances, lest society be diminished and lest suitable men be lacking for certain offices, commands procreation; but he would make this law by the right of nature; therefore the right of nature commands procreation to society.

I answer: granting the antecedent, about which we do not wish to dispute, we deny the consequence. Namely, in order that a law issued by the community be just, there is no need that the very same thing which the positive law commands already be commanded by nature itself; rather it is enough that it be consonant with nature, and that nature teach that it is fitting in those circumstances.

Thesis VI

Fornication, whether wandering, or of one with one, and this whether transitory or constant, is prohibited by the law of nature; and even if to this there is added an agreement for nourishing and educating offspring, the condition of the thing is not substantially changed.

I. In marriage copulation takes place between those mutually obligated. We have already proved that this is good. In fornication, on the contrary, copulation takes place between those of whom the one does not have power over the other, and who therefore are not obligated, but unbound. It is asked what the law of nature establishes concerning this.

In the thesis we distinguish three things. For fornication is, first, wandering, that is, access now to this woman, now to that one, or to this man and that one, as happens in prostitution; second, it is of one man to one woman and conversely, and that in two ways: for such conjunction either is transitory, or it is constant, and this is called by the special name concubinage (whether the concubine is kept at home or outside, it is all the same to theologians). Moreover, to concubinage, and indeed to simple fornication, there can be superadded an agreement for nourishing and educating offspring, if offspring should supervene; but intercourse can also take place and be repeated without such an agreement.

We say, first: that any fornication whatever is illicit by positive divine law is manifest, since it is both prohibited by divine law and is numbered by the Apostle among those sins which exclude from the Kingdom of God. But it has been called into doubt by some whether, by the law of nature at least, it is always illicit. There exists the proposition condemned by Innocent XI, March 2, 1679: "It seems so clear that fornication according to itself involves no malice and is evil only because it is forbidden, that the contrary seems altogether discordant with reason."

II. Therefore we say, secondly, that fornication of any kind whatever (we now set aside the superadded agreement for nourishing and educating offspring) is opposed to the law of nature. The first argument can be sought from the common sense, not indeed of all men, but of men rightly using reason and having a more or less sound moral sense, such as Christians are. Now men of this sort abhor fornication not for this cause alone, that they know it has been prohibited by God, but because they regard it according to itself as indecent, dishonorable, pernicious, and contrary to the law of nature. A judgment of this sort, therefore, is indeed the judgment of reason healed by faith; but it is not a judgment which rests upon faith, which manifests the positive law of God, but rests upon the light of reason, which shows what is repugnant to nature. For a positive prohibition alone cannot be the reason why we flee from something as dishonorable in itself and repugnant to nature; for even something indifferent in itself can be prohibited. But the consensus of all who rightly use reason in those matters which are necessary for human and social life is a testimony of truth. Therefore.

Second argument. That is opposed to the law of nature which is repugnant to human nature itself. But human nature, at once sensitive and rational, requires this: that reason rule, and sense be subject to reason; and therefore those things are repugnant to the law of nature and are prohibited by it in which, the ordination of reason having been disregarded, sense alone dominates. But the ordination of reason is disregarded, indeed one goes against that very ordination of reason and sense alone

dominates, when of some action or manner of acting there is no end of itself fitting to reason; indeed, when the end intended by nature of itself is excluded, and the end remains pleasure alone.

This, however, must be observed: that in order that a judgment be made concerning the natural honesty or dishonesty of some action, that must be considered which the action itself is of itself, or which belongs to it by reason of itself, not what is or can be accidentally, namely by reason of contingent circumstances or of the intention of the freely acting agent, unless through these it happens that the essence of the thing is changed, or that another moral essence succeeds. For the law of nature commands that which is good by its essence and prohibits that which is evil by its essence; therefore it looks at things or actions according to that which they are of themselves.

III. Let us now speak specifically of wandering fornication, that is, taken in its breadth so that it is the access of an unbound male to any unbound female whatever, and conversely of a female to any male whatever. Here a manifest disorder appears. For this conjunction has no end fitting to reason; indeed it is opposed to the end intended of itself by nature in the concubitus of man and woman. For the end of concubitus intended by nature itself (for those contracting can intend another end) is the procreation of offspring, but of offspring to be educated, so that man may exist in that mode which his own nature requires. But α) insofar as it is a woman who prostitutes herself to several men, procreation itself is impeded; β) insofar as it is a man who mingles with several women, or again a woman with men, the procreation of offspring intended by rational nature is not had; for offspring, which is a human being, must not only be begotten but nourished and educated by the parents. But fornicatory concubitus of itself lacks the due order to an end of this sort. For when two persons copulate fornicarily, their conjunction a) is transitory; from which it follows of itself that, from the very account of the act or union, provision is not made for the education of future offspring, and therefore this conjunction lacks the due order which it ought to have toward the end intended by nature; b) insofar as a man mingles with several women and the same women mingle with several men, certain offspring is not had, or this promiscuous use of itself brings in uncertainty of offspring; but that is wholly opposed to its due education. Besides, this fornicatory conjunction does not have as an end fitting to reason the mutual service and assistance of man and woman, or the family; indeed it excludes that very thing by the fact that it is a transitory copulation short of mutual obligation. It does not have as its end the repression of concupiscence; indeed it is altogether opposed to this end, because it indulges concupiscence at will. Nor d) can any other rational end, fitting of itself to this union, be devised. But the only end is the satisfaction of lust or of sensual pleasure; and wandering concubitus, insofar as it is such, of itself looks to this, that lust be satisfied. Therefore the intercourse of an unbound man with any unbound woman whatever, and conversely, is repugnant of itself to rational nature.

IV. But, secondly, is only this wandering concubitus with several persons repugnant to the law of nature, or also the concubitus of one with one, such as is also found in concubinage? Certainly it is; for if that which is of itself, not accidentally, is considered, in fornication even with one woman, the same disorder according to species appears in it as in manifold fornicatory intercourse. For it too is not ordered to the due education of offspring, but, this being excluded, to pleasure alone. For in the intercourse of man and woman, which by nature is ordered to the procreation and education of offspring, the conjunction of each must be such that of itself, or from the nature of the thing, there is certain mutual provision and care for offspring, and for that reason they obligate themselves mutually

to common life. But in fornicatory intercourse there is of itself no such certainty of provision; rather of itself provision is altogether uncertain, because the mutual obligation of the man and the woman is excluded, which is the natural foundation of that certainty.

V. But what if to fornication or concubinage there is added an agreement for nourishing and educating offspring? Would satisfaction not thus be made to the exigency of nature? I do not think so. For, first, the first and second arguments which we gave under n. II would still have force; then, through an agreement of this sort, the condition of the thing, as regards the primary end of the work from the institution of nature (Thesis II, VI), is not substantially changed. Namely, the obligation of nourishing and educating offspring ought to inhere in the very conjunction of man and woman; for this is the end assigned by nature to the work toward which it tends. But that agreement is extrinsic to fornication or concubinage, and, no otherwise than other agreements entered into by choice, can be dissolved. Concubinage itself also can, indeed ought, to be dissolved at the will of those coming together; but once it has been dissolved, the observance of that superadded agreement will by that very fact totter. Therefore there is nothing which, in this hypothesis, makes the sustenance and education of offspring certain and secure. Certainly even fornicators and concubinarians are bound by the law of nature to nourish and educate offspring; but because nature demands this from all, therefore those coming together are bound to place themselves in that state which is suited to attaining this end. A state, I say; for there is question of a stable obligation. But such a state is not concubinage, which of itself is changeable and dissoluble at will; nor does the added agreement sufficiently contribute, since it does not change the essence of the conjunction, can be dissolved at the will of both, and, when concubinage ceases, is very probably in danger of ceasing. Therefore, before the intercourse of man and woman, there must precede the power of the one over the other and a mutual permanent obligation; in this thing the matrimonial union is situated.

And indeed the very law of nature dictates that common offspring is to be nourished and educated in common by its progenitors. Either, therefore, each seriously obligates himself or herself to this from the beginning, and by this very fact will obligate himself or herself to a stable mutual union, and there will be had, what nature requires, a matrimonial union; or each does not obligate himself or herself to this, and thus the observance of the law of nature will not be placed in safety.

Parergon: At What Time the Nuptials Were Celebrated between the Blessed Virgin and St. Joseph

I. Since in Thesis III we disputed concerning the marriage of the Blessed Mother of God with St. Joseph, we think it will not be foreign to the matter if, as a certain complement of the matter, we also touch upon this question, which in these our days has been sharply debated among Catholic doctors: not indeed in order that we may impose an end upon the question, but lest in this our treatise readers should lack acquaintance with a question which is of no small moment.

II. First it must be supposed that learned interpreters of the Scriptures are now in this opinion: that it was placed in the custom of the Jews, at least in the later age, with respect to the celebration of marriages, that a twofold action was distinguished in it: the prior, by which the man betrothed (ἐμνηστεύετο, אֵרַשׂ) the wife; the other, by which the man received her from those in whose power she was (ἔλαβεν, לָקַח) and led her home. This latter action was not accustomed to follow the former immediately, but some greater or lesser space of time intervened between the two.

The distinction of this twofold action, which is said to have had place among the Jewish people in the last centuries before Christ, if we believe the Rabbis, must be said to have been in use also in the first age, namely in the time of Moses, at least now and then; or it must be said that even then it was permitted to separate the action of receiving the bride from the betrothal. For although generally the action by which marriage is entered into is accustomed in the Old Testament to be signified by this formula, by which the man is said to receive a wife or to receive someone to himself as wife (Gen. IV, 19; VI, 2; XII, 19; 1 Kings XXV, 39; 2 Paral. XI, 21; XIII, 21; Esd. X, 44; Nehem. XIII, 25; Hos. I, 2; etc.), nevertheless mention is also made of that twofold action distinguished according to time, as in Deut. XX, 7: Who is the man who has betrothed (μεμνήστευται, אֵרַשׂ) a wife and has not received her (οὐκ ἔλαβεν αὐτήν, לֹא לְקָחָהּ)? Moreover this latter action is that to which the name of nuptials is given.

Yet it is certain that in antiquity all things were also completed by one action: the asking of the bride, the giving and receiving, and the solemnity of the nuptials, as is clear in the marriage of Tobias and Sara (Tob. 10-17). Nor did any delay intervene, so far as the circumstances allowed, between the betrothal and receiving of Rebecca, the wife of Isaac (Gen. XXIV, 51-67).

It must further be supposed that that betrothal, which the Rabbis teach to have been distinct and separate from the receiving or nuptials in the later age, was not of the same account as our espousals are. For by that betrothal a right in the thing was obtained by each spouse, so that intercourse which had been had by the bridegroom with the bride before he had brought her home would not be judged fornicatory but marital, and the offspring would be judged legitimate. Wherefore a bridegroom who wished to send away a bride not yet led home had to send her away, no otherwise than a legitimate wife, by giving a bill of repudiation. Nevertheless, although that intercourse was judged legitimate, with account taken of the right of marriage, it was nevertheless reputed less honorable, indecent, base, as signifying a mind poured forth too much toward lust; wherefore by the law of honesty the man was prohibited from knowing his bride while she was still remaining in the house of her parents. You have these things clearly set forth by the distinguished Father Patrizi in his Dissertation published separately, *On the First Mission of the Angel to Joseph*. To tell the truth, we have not yet been

persuaded that what certain learned men, following the Rabbis, hand down concerning such a distinction prevailing in the later age between betrothal and nuptials is true, namely that some not very short time was accustomed to intervene between them, and in the meantime the mingling of the spouses was held dishonorable. And indeed, if you deny this latter point, no question now remains, and therefore, when you hear that the Virgin was betrothed to Joseph, you at once understand her to be truly his wife, without defect of any right whatsoever. Therefore the question which we treat supposes (without affirming) that which the Rabbis and learned men hand down, the disputation being instituted with those who receive it.

III. These things having been premised, it is asked whether the mission of Gabriel to Mary (Luke I, 26), and therefore the conception of Christ, which immediately followed it, occurred before the nuptials of Joseph with Mary, that is, after the betrothal of both had indeed been completed, but before the Blessed Virgin was received by Joseph and led home, or after the nuptials had been completed. There are those who affirm that it occurred before the nuptials; there are those who deny it. Among those affirming, in our age the distinguished Father Patrizi holds the first place, who in interpreting the Scriptures has acquired the greatest praise for himself, so that he is second to none of his equals, indeed is readily judged the prince of all. Among those denying, the distinguished Vincent De-Vit stands out, who with set purpose attacked the opinion of Patrizi (*Life of St. Joseph*, written by the priest Vincent De-Vit, second edition with additions, Modena, 1868). Let us weigh the arguments of each part.

IV. And first indeed the affirmative opinion cannot be confirmed from the fact that, by Luke, the Blessed Virgin, when she was greeted by the Angel, is called only betrothed; for, as the same Patrizi notes, this same appellation is made by Luke of Blessed Mary at the time at which no one doubts that the nuptials had been completed (Luke II, 5). Therefore the first argument is proposed thus. St. Joseph did not accompany the Blessed Virgin when she undertook the journey to visit Elizabeth; but if the nuptials had already been completed, and Mary and Joseph were living together, Mary would not have undertaken, without her husband as companion, a sufficiently long journey, such as that from Nazareth to the city of Judah (that is, as several interpreters with Reland judge, the city of Judah to the south of Jerusalem). Therefore. The major is proved from the ignorance of the mystery of the virginal conception in which Joseph was after the Virgin had returned to Nazareth, so that for this reason he thought of sending her away. For if he himself had gone together with the Virgin to the house of Zachariah, he certainly would have received knowledge of that mystery, which Elizabeth had made known with great cries. The minor is proved because it hardly seems becoming that a recently married maiden should commit herself to a long journey without the company of her husband and enter another's house.

The second argument. When the Blessed Virgin conceived Christ, she and Joseph had not yet come together: *before they came together she was found having in her womb* (Matt. I, 18). But the expression *to come together*, used of a woman and a man after mention has been made of betrothal (ibid.), signifies that the man and the betrothed woman come together into the same house for the sake of perpetual common life; but that verb is very rarely employed to signify marital intercourse (cf. Patrizi, loc. cit.). Therefore the nuptials had not yet been completed, for by these the bride was led into the house of the man, or they came together into one place.

The third argument, which is the principal one, is drawn again from the words of Scripture, which are to be accepted in their proper signification. Therefore they say: it cannot happen that before the virginal conception that thing occurred which Scripture clearly testifies was done afterward. But Matt. I, 18 ff. teaches that Joseph, when the Blessed Virgin was already bearing in her womb, had not yet received his wife, but received her after the Angel taught the mystery and shook off every fear; for Joseph received her in order to obey the Angel commanding (v. 24). Now this phrase, to receive a wife, openly signifies the nuptials themselves. Therefore the nuptials were made after this first mission of the Angel to Joseph; therefore they had not been entered into before the Blessed Virgin was greeted by the Angel.

V. The argument of the opinion denying that the virginal conception occurred before the nuptials (if we wish to select the more efficacious arguments) is twofold. The first supposes what the adversaries also grant: that the nuptials, if they were made after the virginal conception, could not have been made except in the fourth month from that same conception. For as soon as the Virgin conceived, rising with haste she went to Elizabeth and remained there almost three months; after which also the carrying of the womb is accustomed to appear. Therefore the argument is proposed thus. Christ willed to be born of a woman joined to a man, in order that he might provide for the honor of his Mother and of the offspring born; since, when he was to be brought forth into the light, the mystery of the virginal conception and birth could not yet be known commonly. But the honor of the Virgin would not have been provided for if, after three months from that conception, the nuptials had been entered into, but only if they had been entered into before that same conception. Therefore. The major is proved both by the authority of the Fathers observing this (cf. Maldonatus on this place) and by the sense of the faithful, and from consideration of the fact itself, for which no stronger reason than this can be devised: why God, willing to be born of a Virgin, nevertheless willed to be born of a married woman, so that he himself was also commonly thought to be the son of the man of that same Virgin (Luke III, 23). For the other goods following from these nuptials could also have been obtained by another way. But the honor thereby furnished to nuptials seems to have been a certain effect rather (although intended secondarily) than the end of this economy. The minor is proved. Although intercourse between spouses before the nuptials was held legitimate as to the validity, so to speak, of the conjugal act, yet, the adversaries themselves admitting it, it was judged dishonorable and base, so that it could also deservedly be punished. Now, once the nuptials had been entered into in the fourth month, and the offspring had been brought forth into the light after six months from the nuptials, one of these two things would have had to be said by those ignorant of the mystery: either that the Blessed Virgin had conceived from adultery, or at least that she had acted against the law, since she had had intercourse with her spouse before the nuptials. Although the former would have been especially unbecoming to the Blessed Virgin, nevertheless no one fails to see how the latter too would have been opposed to the modesty and estimation of the most chaste Virgin. Shall we think that God did not take care lest his Mother and her husband be affected by this base disgrace? Therefore.

The other argument is said from the Scriptures, yet by the aid of a certain reasoning, and refining that argument we propose it thus. Joseph, ignorant of the mystery, wished to send away the Blessed Virgin secretly (Matt. I, 19 ff.). Namely, the Evangelist brings forward two reasons why Joseph wished to send away Blessed Mary secretly: *since he was*, he says, *just, and was unwilling to expose her, he wished to send her away secretly*: so that from the fact that he was just, he wished to send her away; but

from the fact that he did not wish to expose her, to defame her, he wished to send her away secretly. But why this, unless in order that he might provide for her honor? This indeed we are taught clearly enough by Matthew, who gives this reason for the secret sending away, as such: namely, because Joseph did not wish to expose her, that is, to defame her. Now, first, that can rightly seem to be affirmed: that this secret sending away, which Joseph was considering, was nothing other than his own secret departure from the Blessed Virgin. Indeed, first, that we may remove a scruple, consider, I ask, that these phrases can be equivalent to each other: to send away a wife, and to depart from her. The Apostle teaches us this (1 Cor. VII, 10, 11), where the same sense underlies these two verbs in these phrases: that a woman not depart from her husband, and that a man not send away a woman. This being posited, we say that, in this sending away which Joseph was considering, we must not think of any handing over of a bill of repudiation, or of an active sending away which would have had to be made by handing over a bill of repudiation. For the adverb secretly, attached to the sending away, sufficiently indicates that there is no speech of a sending away by a bill of repudiation. For even if this had been done among a few, say among relatives, or if the bill had been given secretly to the Virgin alone, nevertheless this act was of itself of public right; because it was a legitimate act, which could also be brought forward in a public judgment, wherefore the way was open to the exposure or defamation of the Virgin. Nor should you think that accidentally the bill could have remained hidden. To put off this opinion, consider the intrinsic circumstances of the fact. Namely, the Blessed Virgin did not enter marriage spontaneously, but by law, and by the same law she was bound to be joined to the nearest agnate; and therefore, if she married Joseph, she married him for this reason: because by law she pertained to him. Wherefore if Joseph had given Mary a bill of repudiation, it could not have happened that her relatives would not ask from him why he was casting Mary away or why he was unwilling to celebrate the nuptials; so that for this reason the matter easily would have been brought to public judgment. Joseph could not escape these troublesome questions unless by secretly withdrawing himself in flight into a distant region without a plan of return. Therefore, if Joseph wished to send Mary away secretly, not to expose her, he could only have thought of some departure from her.

If these things are proved, it is easy to proceed further and to pursue the argument in this manner. But the secret departure of Joseph could indeed have provided for the honor of the Virgin if it had been carried out after the nuptials, but by no means if before them. Therefore, since he wished to depart in order to provide for her honor, it must be said that the nuptials had already been completed when Joseph was thinking of the sending away or departure. Indeed, suppose the nuptials had not yet been entered into and Joseph had departed. When the offspring was brought forth by the Virgin before the nuptials, which had never been completed, the Virgin herself and the offspring would first have been exposed to the same disgrace which was spoken of in the former argument. Then the most holy Mother would have been exposed to a greater, indeed a greater disgrace. For others, seeing the offspring before the nuptials, and not seeing the spouse at all but understanding that he had gone away, since the question would spontaneously offer itself, "Why did the spouse (whose justice, besides, could have been known) depart while the nuptials were unfinished and not yet return?" would have thought themselves to have at least a probable argument for judging that he had for this reason left the bride: because he knew that she had conceived, but not from himself. Wherefore the departure of Joseph would rather have been a cause why the fame of the Virgin would undergo a more certain danger. On the contrary, if Joseph had departed after the nuptials, men could indeed

have suspected evil concerning him, but not concerning the Mother, who would have given birth at a legitimate time; especially since then, no probable reason to the contrary existing, the fame of honesty which the Virgin enjoyed among her own would have exerted all its force for repelling any suspicion whatever. Joseph certainly weighed these things; wherefore, if he considered a sending away, choosing rather the loss of his own honor than of the honor of his wife, it must be said that he thought of departure from a married woman, and therefore that the nuptials, when he was thinking these things, had already been completed, and for that reason before the virginal conception (arg. 1).

To this returns the argument of Eusebius of Caesarea in the *Questions on the Gospels*, defending this very opinion (cf. Mai, *New Collection of the Holy Fathers*, vol. V, part 1, p. 2).

Finally, this too may be observed. When a daughter-heiress had to marry a near agnate, probably the leading of the bride into the house of the bridegroom was not deferred, but it happened immediately after the betrothal, or each at once lived together, especially if the mother of the daughter also was dead. For with whom did the betrothed daughter remain? If with relatives, why not with him to whom she had been betrothed? Will you say that Mary, betrothed, still remained in the temple under the care of the priests? You will compose that with greater difficulty with her going all the way to the house of Elizabeth. But we most probably believe that her mother was already dead.

VI. Thus far we have set forth the arguments of each side. Moreover the adversaries have nothing to reply directly to the arguments of the second, denying part, by which they truly satisfy them. For even they themselves concede that intercourse between spouses before the nuptials was illicit, nor do they know how to explain in what manner Joseph could have provided for the honor of the Virgin if he had sent her away while the nuptials were unfinished.

On the contrary, the arguments of those affirming seem to admit of a suitable solution. As regards the principal argument taken from the words *receive Mary thy wife*, and *he received his wife*, different persons respond differently (cf. De-Vit, cited work); to us this response seems sufficiently suitable. Namely, the adversaries argue as if, in Matthew, these words *receive thy wife* signified that act by which the marriage is completed, by which someone in the Old Testament was said to receive a wife or to receive someone to himself as wife. But that is what we deny. For the phrase in Matthew is: παραλαβεῖν Μαρίαν τὴν γυναῖκά σου; παρέλαβεν τὴν γυναῖκα αὐτοῦ. The Latin interpreter indeed could not express the article; but certainly in Greek the article is not idle. Therefore we observe that it is one thing to receive some woman as wife, or as one's wife, or to oneself, εἰς γυναῖκα ἑαυτῷ; another thing to receive some woman (or, the name being expressed, Mary), τὴν γυναῖκα αὐτοῦ; just as in Italian it is one thing *prendere Maria in sua consorte*, another *prendere Maria la sua consorte*. This latter phrase, since the article can be resolved into a relative, is identical, as to sense, with this: *prendere Maria, la quale e sua consorte*. Therefore the words of the Angel yield this sense: do not fear to receive Mary, ἥτις ἐστὶ γυνή σου, who is thy wife; which certainly stands farthest away from the sense which would be expressed by this phrase: do not fear to receive Mary as thy wife. Therefore the sense of the words of the Archangel is this: do not fear to receive Mary, who is thy wife; not, however, this other: do not fear to receive Mary as thy wife.

The words of the Angel having thus been explained, it is clear, first, that the proper formula of entering marriage, *to receive a wife*, does not occur there; it is clear, secondly, that, on the contrary, it is supposed by the Angel that Mary is already the wife of Joseph: *who is thy wife*; and therefore from these very words especially an argument is elicited for the contrary opinion.

Nevertheless perhaps the difficulty is not yet solved; for another phrase remains to be explained: *to receive Mary*. For it is asked of what receiving there is speech here; nor does any other receiving seem able to be understood than that which was performed after espousals, so that for this reason that apposition τὴν γυναῖκά σου can signify thy bride, or she who is destined for thee as wife. But we deny that it is required by the context that the verb παραλαμβάνειν (which frequently has the same force as the simple λαμβάνειν) be interpreted of conjugal receiving. Namely, since there no longer occurs this expression: the receiving of a wife, or receiving as wife, but only the receiving of her who is wife, it is permitted to apply another interpretation which neither is repugnant to the word receive, nor extorts that sense which, if the preceding arguments are true, is certainly false. For this right belongs to disputants until the falsity of their opinion has been demonstrated. Therefore we observe that up to this point Joseph had done nothing externally, nor in any way had he broken off his relations with the Virgin by any external act. He was still turning over the whole matter in his mind, and his entire act had remained within (*he wished to send her away, while he was thinking these things*); so that by will indeed he had already sent away his wife, but this will had not proceeded to an external act. To Joseph thus disposed the Angel stands by, immediately addressing him, in order to remove him from that will. The command to receive is opposed to the will to desert; but because this was contained in the mind only, there was need of no other receiving than that by which that will would be put off: namely, a receiving of the mind is commanded, by which Joseph would approve his marriage and would wish to remain in it. "But what is it to receive? Surely to retain at home; for already he had sent her away in mind, but, he says, retain her though sent away." Thus Chrysostom, homily 4 on Matthew. But if this interpretation of the verb *to receive* seems to you less proper, remember that, when something absurd or certainly false would follow if the words were accepted in the proper sense, it is permitted to recede a little from the proper signification of the words.

The other arguments are less troublesome. For as regards that which is drawn from the words *before they came together*, since the adversaries themselves also teach that this verb συνελθεῖν sometimes occurs among the classical writers in the signification of marital intercourse, it is not repugnant that here too it was used in this sense. Certainly Jerome (on this place) accepted that word in this sense. Hence he denies that Mary and Joseph ever came together.

But to the first argument it may be answered, first, that it is not certain that Blessed Joseph was not a companion to his wife on the journey. For what if we say that, since he did not wish to be detained by his hosts, lest he be compelled to remain there for a long time, which perhaps his wife had already proposed, he sent her away before she herself entered the house? But at least he returned to receive her. Let us grant this too. Then therefore Elizabeth, congratulating him, signified to him the mystery of the Virgin. As you see, we are dealing in hypotheses. But this hypothesis, I think, rests upon a false foundation. For it is supposed that Elizabeth, in the manner of women, was desirous of making known the secret of the Lord. On the contrary, the care with which Elizabeth herself, after the conception of John (Luke I, 24), concealed the grace of God, and the silence of the Blessed Virgin herself toward her husband, show that they had learned from the Lord not to reveal to others the mysteries wrought in them, unless by some special reason they were moved to this by God himself, as happened when Mary greeted Elizabeth; and in that meeting it is not certain that other persons were present. The revelation of so great a mystery, which a human witness could not have confirmed, was being left to God. Therefore there was no reason why Elizabeth should manifest this to Joseph when he came to her [1].

[1] Here the rashness of the more recent rationalist interpreter Heinrich Aug. Wilh. Meyer would have to be corrected; he, at chapter 1 of Matthew, v. 18, and again at chapter 1 of Luke, v. 38, observes that the narrative of Matthew concerning Joseph's doubt and the narrative of Luke concerning the Annunciation to Mary cannot be composed together, but that the one is excluded by the other, so that one or the other must be false. But why? Because, first, Mary would have acted psychologically against the nature of women by concealing from her husband the revelation received; and, secondly, she would also have behaved against her own duty, namely of wife to husband, by not manifesting to him a matter of such moment and one which concerned him so greatly. But if Mary had had to wait for God to reveal the mystery to Joseph, she ought to have been warned of this by the Angel.

Namely, 1. what the Most August Mother of God would do, who by supernatural perfection and holiness exceeds all men and Angels, is to be argued from the natural, and generally faulty, loquacity of women! 2. Who has ever numbered this also among the duties of a wife toward her husband: that one spouse is bound to manifest to the other those things which God immediately works in that spouse above the order of nature? But it concerned Joseph to know this. Certainly not on account of any right which belonged to Joseph to the knowledge of this mystery; for such a right would finally have been a right of man toward God acting in his own creature as it pleases him, a right demanding from God the manifestation of his works, which right is absurd enough. But it concerned Joseph to know this lest, without knowledge and without fault, he should attempt something which least of all befitted the divine Mother and her offspring. Namely he whose interest it was that Joseph know the mystery was God himself, in order that the work begun by him, according to the order of Providence freely established by him, might obtain a happy outcome. But in order that this should happen, it was enough to warn Joseph when doubt began to enter his mind. Nor, 3. was there need that Mary be taught by the Angel that knowledge of the mystery would be communicated from heaven to Joseph; for the most wise Virgin, imbued with the interior light of nature and grace, knew most certainly that God would do what the order of his Providence required. Therefore it was enough for her to commit herself to that same Providence with full confidence.

Besides, 4. this author did not see how inept is that which he supposes. Namely, he supposes that the narrative of the angelic colloquy made by Mary to Joseph ought to have repelled every doubt from the same. Certainly the Blessed Virgin did not think thus, and deservedly. For divine faith in this fact was necessary for Joseph, in order that he might execute the parts entrusted to him in that divine affair; but only divine testimony begets divine faith. Ought Joseph to have had such testimony from his wife alone, and did she herself have to believe that her testimony should be regarded as such by her husband? It is evident that unless God himself had made Joseph certain, there would never have been sufficient reason for him to believe that which had been divinely done in his wife. Therefore the most prudent Virgin acted most prudently in committing the whole matter to God.

But, secondly, what prevents us from believing that the Blessed Virgin, as wife, accomplished that journey without the company of her husband? Do the adversaries not wish that the Blessed Virgin, as betrothed, entered upon this journey alone? But if this was not unbecoming for one betrothed, why would it not be becoming for one married? But do not from this gather that the Blessed Virgin undertook the journey without any company; for a maidservant could have been at hand [2]. Perhaps you will object the poverty of the Virgin, with which domestic service does not agree well; which poverty you seem to learn from the offering of the same Virgin on the day of her purification (Luke II, 24), when those things are compared which are found in Lev. XII, 8; for it is certain that her hand did not find, nor could she offer, a lamb. But I wish you to observe that from Leviticus V, 11 itself it is clear that the condition of those who offered two turtledoves or two young doves was not the lowest

among the Hebrews, but rather the middle one. And indeed there is reason why we should believe that the Blessed Virgin, a daughter-heiress for the whole inheritance (whose parents besides, if we apply faith to certain ancient narratives, were not without superfluous goods), had something in goods, since for this reason she married, that the goods of her father might be preserved in his family. But her husband sustained life by the carpenter's art. Say rather that he exercised the carpenter's art: that alone we know from the Gospel. For neither was the sole necessity of sustaining life the reason among the Hebrews why arts of this sort were exercised. For the Rabbis will teach you that, when after the captivity the Jews had given themselves to commerce, the usage prevailed among them that anyone, while he could, should learn some art. Therefore also in the age of Christ you will find some in the Scriptures exercising an art not more noble than the carpenter's art, whom without cause you would think to have been poor. Indeed you have Simon the tanner, with whom Peter is hosted (Acts X, 6); Alexander, probably an educated man, a coppersmith (2 Tim. IV, 14); Paul himself, who had spent his whole youth in learning the disciplines of the Hebrews, exercising the tentmaker's art, which he certainly did not need for the sustenance of life, and with him Aquila, with whom he remained as a guest (Acts XVIII, 2, 3). Therefore there is no reason why you should fear to assign a maidservant to the Blessed Virgin; and this was also the opinion of the mystical doctors of the preceding age (cf. in the *Exercises* of St. Ignatius, the Contemplation on the Nativity of Christ).

[2] The distinguished Hug (*Gutachten über das Leben Jesu von Strauss*, p. 86 seq., new edition) affirms that it was not permitted to daughters who were not yet under the power of a husband to undertake a long journey especially; but that a husband could grant the faculty, a companion from the relatives having been added.

Having weighed all these things, we incline to that opinion which affirms that the nuptials of the Blessed Virgin with St. Joseph were made before the conception of Christ. Far be it, however, that with the distinguished De-Vit we should desire that opinion, which we approve less, hereafter to be exiled from commentaries on the Scriptures. No private person has the right to punish with ostracism an opinion which most learned and most Catholic men maintain. But although your opinion may seem to you most probable (most probable, I say; for in questions of this sort the certitude which some boast is at the most nothing but a certain moral certitude, that is, a great or very great probability), it does not thence follow that the same will also seem so to the rest.

Chapter II: On Marriage as Sacrament

Thesis VII

In the word of God handed down there is contained the Catholic doctrine that Christian Marriage is truly and properly a Sacrament.

I. If by the perpetual and universal tradition of the Christian Church (which surely the decrees of Councils, solemn professions of faith, liturgies or sacramentals, the works of Theologians and Fathers represent) this doctrine is proved to be contained, namely that Christian Marriage is a true and proper Sacrament of the new law, that ought to be enough and more than enough for the Theologian, so that this truth may be said to be demonstrated; if indeed those things are true which concerning the force of Tradition we both teach in the Schools and defend against heretics. Moreover this is easily demonstrated. A true and proper Sacrament is that to which there univocally belongs the definition of those things which in the Church are held as sacraments, namely which are efficacious signs of sanctifying grace; that is, it is that which is a sacrament as Baptism, the Eucharist, etc., are. But by divine Tradition it is certain that Christian Marriage, which namely is contracted by Christian persons, is to be held in the number of these sacraments.

II. Indeed, that we may bring forward an argument which shows the agreement of both the Greek and Latin Church at once, it is certain that the heretical sects which in the fifth century, when namely each Church, Latin and Greek, was still united, departed from the Catholic Church, always had among themselves seven sacraments in number, and among these marriage; and although they disagree among themselves in other dogmas, nevertheless in this all agree. Therefore we gather that those sects received this sevenfold number from the Church and carried it with them.

Therefore in the fifth century the whole Catholic Church had marriage in the number of those things which are properly called sacraments. But this is sufficient that apostolic tradition be demonstrated. You have the proof of the antecedent from the following testimonies, provided you observe that sects of this sort were always tenacious of those things which from the beginning they received from their parents and abhorred changes. Now the faith of the Nestorian Syrians is testified to by Sulaka the Patriarch, in the profession of faith which, while still a monk, he issued at Rome in 1553: "We also believe in holy baptism, and in the sacrifice which is the body and blood of Christ, and in the holy priesthood, and in marriage." Simon Assemani reports the faith of the Jacobites and Copts (*Bibliotheca Orientalis*, tome II, dissertation *On the Monophysites*, n. 5): "As regards the sacraments, it is clear from their ritual and pontifical books, etc., that the sevenfold number of them, such as is acknowledged by the Catholic Church, is held most sacred among the Jacobites." Vartan, Bishop of the Armenians, who published his works about two centuries before the Council of Florence, is also a witness that the Armenians thought the same before the Council of Florence; for he says (cf. Galanus, tome 2, p. 440), in the admonitions to the Armenians, c. 6: "Paul the Apostle instructed his disciple Dionysius concerning the seven sacraments of the Church. Christianity rests upon the seven sacraments of the Church... The first sacrament is baptism, the second the sacrifice of the Mass; the third the blessing of the ointment, which the Latins call chrism; the fourth is order; the fifth is marriage, etc." Likewise in the seventeenth century the Greek Church, against Cyril Lucaris favoring the Protestants, issued the profession of its faith, saying among other things: "Anathema to Cyril, fabricating new dogmas and believing that the seven Sacraments of the Church, namely baptism, chrism, penance, eucharist,

priesthood, extreme unction, and marriage, are not from the institution of Jesus Christ, nor from the tradition of the Apostles and perpetual practice." Therefore the consequent which we gathered is certain. Cf. Schelstrate, *Acts of the Oriental Church against the Heresy of Luther*.

III. But that we may enlarge this argument, let us consider singly the testimonies of the Church. Therefore, if in the Church, especially the Latin Church, we make our way from the latest times to the older, there stands forth first the Tridentine decree, session XXIV, canon 1, and the Florentine decree in the decree of Eugene IV to the Armenians; in these Marriage is numbered among the seven sacraments of the Church, which are called sacraments only properly, and it is said truly and properly to be one of the seven sacraments of the Evangelical law. Then there is at hand the profession of faith issued by Michael Palaeologus in the ecumenical Council of Lyons II (year 1274), in which you have these things: "The same holy Roman Church also holds and teaches that there are seven ecclesiastical sacraments: one, namely, baptism; another is the sacrament of confirmation... another is penance, another eucharist; another the sacrament of order; another is marriage; another extreme unction." Lucius III had preceded these (year 1181) in the Council celebrated at Verona (*Ad abolendam, On Heretics*), saying: "All who do not fear to think or teach otherwise than the Most Holy Roman Church preaches and observes concerning the sacrament of the Body and Blood of our Lord Jesus Christ, or concerning baptism, or concerning the confession of sins, marriage, or the remaining ecclesiastical sacraments... we bind with the bond of perpetual anathema." Already before this, in the same century, the leading Theologians of the School had taught the same opinion: Hugh of St. Victor (about the year 1140), *On Sacraments in General* and *On the Sacraments of Faith*; and the Master of the Sentences (about 1150, in the fourth book), to whom all the rest of the theologians gave assent, teaching that a sacrament of the Church is the visible form of invisible grace, so that it bears its image and exists as cause (dist. 1); and that there are seven sacraments of this sort, among which they numbered marriage among the faithful (dist. 2) [1]. At the beginning and thus the one contracting marriage is more acceptable to God than he had been in the preceding instant, because to enter marriage is a good work, and the power of the sacrament, through the merits of Christ, works an increase of grace. But he would have pleased God more if he had wished to persevere celibate or a virgin. Moreover, to obtain grace with God can have a certain special signification, namely to be made, on account of some work, more acceptable to God than if the opposite, although licit, had been done. Therefore, if the grace of God is taken thus, it can be said that the other sacraments confer grace, but marriage only a remedy, which nevertheless is an effect of sanctifying grace. of the same twelfth century Otto, Bishop of Bamberg, in a Sermon (in Migne, P.L., vol. CLXXIII, p. 1555), after enumerating the Sacraments of the Church, baptism namely, etc., says: "the sixth is marriage, that is, matrimonial union." Again, at the beginning of the same twelfth century, the same doctrine was handed down plainly enough by Rudolph Ardens, who has these things in the *Homilies on the Sunday Epistles and Gospels*, homily 2: "What is marriage? The legitimate conjunction of male and female, retaining an individual custom of life. What are the goods of marriage? Three: fidelity, offspring, sacrament. It is a sacrament because it is the sign of a sacred thing... Therefore the bridegroom and bride who are about to approach the sacrament of nuptials ought to repent of past excesses and confess their sins." Certain ancient orders or rituals command the same thing. Cf. Martene, order 14. The same thing, on account of reverence for the sacrament, William, Bishop of Paris, prescribed in his Constitutions in the year 1208. Moreover, the duty of repenting and confessing for rightly receiving the sacrament of nuptials shows this to be a sacrament properly so called. Therefore this

opinion was commonly known and certain in that age. Likewise at the beginning of the twelfth century Hildebert, Bishop of Tours, in Sermon 2 (Galland, tome 14, p. 334 ff.), n. 3, says: "Therefore there are three sacraments in the city of our God which both preceded the others in time and are known to obtain the primacy in the restoration of the sons of God. The first of these is marriage, the second baptism, the third the sacred libation of the Lord's table. Upon these, in the youth of the world, a form was impressed by God, etc."

[1] The Master indeed immediately adds: "of which some furnish a remedy against sin and confer helping grace, as baptism; others are only for a remedy, as marriage; others sustain us by grace and virtue, as the eucharist and order." By these words the Master seems to deny that marriage confers grace. But since, as St. Thomas observes in the same place, the definition of a genus ought to agree with all the species, and in the definition of sacrament by the Master himself it is placed that it exists as cause of grace, his opinion cannot be one which simply denies that grace is conferred through the sacrament of marriage. But that which is called a remedy will be a certain grace, which nevertheless, on account of a certain special reason, can be honored by this singular name and distinguished from grace taken generally. Thus St. Thomas interprets the saying of the Master in the same place, q. I, a. 1, ql. 2, ad 3: "It must be said that each thing is denominated from that to which it is ordered. But the grace which is conferred in marriage, insofar as it is a sacrament of the Church celebrated in the faith of Christ, is ordered directly (although not exclusively) to repressing concupiscence, which pertains to the act of marriage; and therefore the Master says that marriage is only for a remedy; but this is through the grace which is conferred in it." Perhaps the Master considered that which is special in marriage with respect to the grace of God before the other sacraments. Namely, he who receives any other sacrament becomes either simply acceptable to God or more acceptable to him, and always pleases him more than if he had not received the sacrament; nor does the opposite please God more than the reception itself of the sacrament, at least of itself. But he who contracts marriage does not please God more than if he had chosen the opposite, that is, life in continence. An increase of sanctifying grace is indeed conferred through marriage, with helps suitable to that state,

St. Thomas indeed, in IV, dist. II, q. I, a. 1, ql. 2, reports the opinion of certain persons saying that "in marriage some grace is not conferred, but that it is only for a remedy against concupiscence." Either this opinion must be accepted in the way in which we accepted the doctrine of the Master in the Note, whom they seem to have followed as to the manner of speaking, or it must be held to be a certain imprudent aberration from the common doctrine. Certainly, as St. Thomas argues in the same place, the very doctrine admitted by those same Theologians, namely that marriage is a sacrament of the New Law, and that the sacraments of the New Law are causes of grace, is evidently repugnant to this other doctrine, that no grace is conferred through marriage. Wherefore aberrations of this sort, which touch the manner of speaking rather than the thing itself, are not witnesses of dissent from the doctrine of others, but are witnesses of a doctrine not yet clarified and illustrated by the scholastic method through proper and distinct concepts; and this also happens in other questions. Durandus also later joined those Theologians of whom Thomas makes mention, but, the School protesting, he afterwards corrected his opinion.

Therefore from the twelfth century it is certain that ecclesiastical preaching in the Latin Church had been sufficiently explicit: the marriage of Christians is truly and properly a sacrament.

IV. Moreover, in the preceding age there also exists a continuous series of tradition all the way to Apostolic times, handing down at least this, most openly and without doubt: namely that the marriage of Christians is of divine institution and is entered into with God as author; that it is a sacred thing; that it is joined with sanctification and grace; that it was sanctified by Christ; and now and then also teaching that marriage is truly and properly a sacrament.

Indeed, a) there exist either Orders or Rituals (cf. Martene, *On the Ancient Rites of the Church*, book I, part 2, chapter IX, article 6 ff., and Goar in the Euchologion of the Greeks), or Sacramentaries, which extend in a long series all the way to the Gelasian Sacramentary, which is said to have been derived from the Sacramentary of St. Leo. Now in the Sacramentary of Gelasius (cf. Thomasius, *Codices of the Sacraments*, book III, *Sacramentary of the Roman Church*) there is represented the nuptial action which takes place within the solemnities of Masses, consisting of the prayers and blessings of the Priest; and in it you have these things: "God is he who connects spouses in legitimate society; the wife is joined by the gift of God to marital fellowship." And God is entreated that "he pour upon the spouses the help of his blessing; that in conjugal fellowship, with equal affection, with similar mind, they be joined by mutual holiness; that he deign to confirm their nuptials as those of the first man; that he sanctify the beginnings of the woman; that she, associated in good and prosperous fellowship, may keep the commands of the eternal law and may marry faithful and chaste in Christ." Once the blessing has been completed, the spouses receive communion from the altar. But from these Ritual books, whose authority in the Church is very great, since they represent the public testimony of the Churches, it is manifest that marriage is exhibited as a thing flowing from divine institution, a thing which is made with God as author, a thing joined with sanctification and grace; namely, that man and woman are joined to each other by mutual holiness and marry in Christ.

b) The Fathers, even the most ancient, teach α) that "the Church conciliates marriage, the oblation confirms it, the blessing seals it, the Angels announce it when sealed, and the Father holds it ratified" (Tertullian, *To His Wife*, book II, chapter 9); β) that "it is fitting that bridegrooms and brides make marriage according to the judgment of the Bishop, that the nuptials may be according to the Lord and not according to cupidity" (Ignatius Martyr, *Epistle to St. Polycarp*, chapter 5); γ) that "marriage itself ought to be sanctified by the priestly veil and blessing" (Ambrose, epistle 19 to Vigilius); that "it is after the manner of sacrilege if by any transgression that blessing is violated which the priest imposes upon the woman about to marry" (Siricius, Roman Pontiff, to Himerius of Tarragona, n. 4). Therefore, in the address of Peter to the ecclesiastical assembly, which he is said to have had after he handed over his Roman chair to Clement, as is narrated in the Clementines (cf. either the epistle of Clement to James prefixed to these in the edition of Cotelerius, or, in Dressel, the other epitome of Clement of the preachings of Peter, n. 151), these words occur, spoken to the presbyters: "Those things which belong to presbyters are these: Before all things, let them quickly join the young in nuptials, by forestalling the snares of the cupidity burning in youth. But neither let them cast away care concerning the marriage of those now old; for in some, even when they have grown old, strong cupidity is present." Namely, the marriage of Christians is subject to the care and government of priests. Wherefore Clement of Alexandria, *Paedagogus*, book 3, indicates that presbyters in the Church were accustomed to be present at Christian nuptials; for, reproving women adorned with false hairpieces and approaching the nuptial blessing, he says: "Upon whom will the presbyter impose hands? Whom, moreover, will he bless? Not the woman who is adorned, but another head by means of another's hair." But from these things it is certain that the rite which is exhibited in the orders is most ancient and reaches Apostolic times, or has been derived from the Apostles; then it is certain also from the opinion of the Fathers that marriage is a thing belonging to the Church, a sacred thing, joined with sanctification.

c) The Fathers again teach that divine grace coheres with marriage, as Tertullian, loc. cit., chapter 7: "If therefore a marriage of this sort is ratified before God, why should it not also turn out

prosperously, so that it is not so harassed by pressures and straits and impediments and defilements, having already from a part the patronage of divine grace?" Therefore this is for marriage to be ratified before God: namely, to have the patronage of divine grace. Maximus of Turin, homily 23:

"Christ goes to nuptials, in order that those which long ago he constituted by power he may sanctify by the blessing of his presence." Innocent I, epistle 9, concerning a simultaneous bigamist, hands down these things: "We establish, with the Catholic faith giving support, that that was marriage which had first been founded by divine grace, and that the coming together of a second woman, while the former survives and has not been cast out by divorce, can by no compact be legitimate." Moreover marriage founded by divine grace is that which was contracted first. Therefore divine grace coheres with Christian marriage.

d) Monuments confirm the doctrine of the Fathers handed down thus far. In the work of the distinguished man Garrucci (*Glasses*, etc., table 26) there exists a twofold representation of nuptials; in each, the man and woman join right hands; in one, between them there stands the Monogram of Christ; in the other, between the same persons, a column adorned with gems, which is the symbol of the Church, whose gems are the Apostles, with the inscription: *May you live in God*. "Happy are the nuptials at which Christ is present," says Chrysologus, sermon 157. There exists a Greek coin to be referred to the fifth or sixth century, in which bridegroom and bride join right hands, Christ existing in the middle, who, embracing both, joins them, with the inscription Θεοῦ χάρις, "the grace of God." Nazianzen had already expressed this (epistle 193) a little otherwise: "I join youthful right hands to each other, and both to the hand of God."

V. But does the notion of sacrament properly so called, explicitly asserted of Christian marriage, occur in the monuments of the ancients which remain to us? That they may persuade this, some appeal to the words of Tertullian, *On Prescription*, chapter 40, by which they judge that he numbers marriage among the sacraments properly so called. "The devil," he says, "whose parts it is to overturn truth, emulates also the very things of the divine sacraments in the mysteries of idols. He himself also washes certain persons, namely his believers and faithful ones; he promises expiation from the laver (after the laver), and thus even initiates Mithras; there he signs his soldiers on the foreheads; he also celebrates the oblation of bread... What of the fact that he also establishes the supreme Pontiff in one marriage?... He therefore so emulously affected to express in the affairs of idolatry the very things from which the sacraments of Christ are administered, etc." Behold, they say, the Christian sacraments: baptism, penance, confirmation, eucharist, nuptials, which the devil emulates as an ape. But to establish the supreme Pontiff in one marriage is nothing other than to establish that the Pontiff be the husband of one wife, which Paul had prescribed, and which, with the devil persuading, unbelievers were imitating. Cf. the same author, *To His Wife*, book I, chapter 7.

But Augustine speaks more clearly. For in *On Nuptials and Concupiscence*, chapter 10, he teaches that not only fecundity and fidelity, but a certain sacrament of nuptials is commended to the married faithful. But he says that the effect of this sacrament is indissolubility, just as character is the effect of baptism. "Of this Sacrament, without any doubt, the thing is that male and female, joined in marriage, persevere inseparably as long as they live. Thus there remains among the living a certain conjugal thing which neither separation nor union with another can take away; but it remains for the guilt of crime, not for the bond of covenant; just as an apostate soul, departing as it were from the marriage of Christ, even when faith has been lost, does not lose the sacrament of faith which it

received by the laver of regeneration." And in *On the Good of Marriage*, chapter 24, he compares the sacrament of marriage to the sacrament of ordination: "The good of nuptials, which belongs to the people of God, is also in the holiness of the sacrament, through which it is unlawful even for one departing by repudiation to marry another... nor is the conjugal bond dissolved except by the death of the spouse. Just as, if an ordination of clergy is made for gathering a people, even if the gathering of the people does not follow, nevertheless the sacrament of ordination remains in those ordained; and if by some fault anyone is removed from office, he will not lack the sacrament of the Lord." Wherefore in the same place, chapter 18, he says: "In the nuptials of Christians the holiness of the sacrament has more force than the fecundity of the womb." But a sacrament which belongs only to the faithful, which is the cause of a permanent effect after the manner of a character, which is compared to baptism and order, you will not interpret more suitably than if you understand a sacrament properly so called. Especially since this manner of speaking, *the thing of the sacrament*, is customarily employed by Augustine when he has speech concerning sacraments properly so called. Nor is St. Hildebert of Tours opposed to this interpretation; indeed he supports it, when in the Sermon cited above, n. 4, concerning this manner of speaking of Augustine he observes "that, all the other things which are required in legitimate marriage being omitted, Augustine ascribes sacrament to its stability; someone not imprudent, as I think, might say that this was said by prerogative rather than singularly (that is, not only in this, but chiefly in it): for an authority not to be contemned hands down that a sacrament is the sign of a sacred thing." Then he goes on to enumerate those things in which marriage is a sign of a sacred thing.

But especially Cyril of Alexandria must be appealed to, who thus discourses in *On John*, book II, chapter 2: "Christ himself, having been invited with his disciples, came to the nuptials, not so much in order to feast as in order to work a miracle, and besides to sanctify the principle of human generation, so far, namely, as pertains to the flesh. For it was fitting that he who was about to renew the very nature of man should not only impart a blessing to those who had already been called into birth, but should also pre-establish grace for those who were afterward to be born, and make their entrance into being (τὴν εἰς εἶναι πάροδον) holy." Therefore Christ not only imparted a blessing to those already born, namely through baptism, but besides sanctified the very principle of human generation, that is, marriage, and by this sanctification pre-established grace for those to be born, so that their birth would be holy. These things of themselves signify the supernatural sanctity of marriage, by which its act, or the generation of children, also is holy: which sanctity of a permanent thing is itself permanent of itself; and when this is posited, marriage becomes a true sacrament. Moreover Epiphanius teaches the same thing, although less clearly, heresy LXVII: "Who would not recognize that nuptials are venerable and, with the grace of God breathing upon them, obtain the heavenly kingdom, even from this, that the Savior himself was invited to nuptials, that he might bless them?" The Fathers of Ephesus likewise teach, Act 1, saying: "Christ then, by dispensation, blessed the nuptials themselves, when in Cana of Galilee he deigned to be present, being called with the holy Apostles." From these things you see that, just as Christ is said to have sanctified the waters by his baptism, so he is said by his presence to have sanctified nuptials. If you weigh this comparison rightly, you will easily understand that, just as the sanctification of the waters, according to the Fathers themselves, was a sanctification conferring sacramental power, in the same way the sanctification of nuptials must be accepted.

Now, if the opinion expressed in all these monuments of the earlier age that have been brought forward (IV, V) is compared with the opinion expressed in the monuments of the later age (III), which we enumerated above, it is clear, first, that speech in each series is about the same thing; secondly, that the opinion expressed in the more ancient monuments is related to the opinion of the later ones as a generic and more or less determined notion is related to a specific and more determined notion. But this specific and more determined account, which appears in the later monuments, was apprehended and implicitly asserted by all those formulas which exist in the older monuments. Therefore the same doctrine which is explicitly asserted in the later monuments was also held in the earlier age. The minor is proved. For it is necessary that the ancients, speaking of marriage as it is in the concrete, apprehended its notion not only generically, but also specifically, or the determinate mode by which it is a sacred thing and joined with sanctification; for any thing is determinate in itself and exists in a determinate mode. Therefore a sacred thing is sacred in a determinate mode. But it could not happen that for so long an age, when there was question of a matter frequent in daily use, the account of sacredness which is in marriage would be apprehended only in a confused mode still determinable, without the wise perceiving that the confused concept was to be determined more, lest marriage be confused with other sacred things of another species; without therefore a question arising concerning its proper and determinate notion, and doubts and diverse opinions existing. Nor could it happen that thereafter, from the eleventh century, a certain determinate mode by which marriage is sacred, if it had recently been devised, would be proposed to the faithful without any controversy as a known thing. But there exists no trace in the preceding centuries of questions or diverse opinions on this matter, and from the eleventh century a certain determinate mode by which marriage is a sacrament is proposed without any controversy. Therefore in the earlier ages the determinate account of sacredness which belongs to marriage was apprehended, and the faithful, or at least the teachers of the faithful, were conscious of this thing. But this determinate account of sacredness which was attributed to marriage in the earlier centuries could not be other than that which afterwards is explicitly expressed in the later monuments; otherwise there would have arisen in the Church a doctrine not only new, but also contrary to the ancient doctrine. Therefore the earlier formulas represent that same thing, although a little more obscurely, at least as regards us, which the later formulas represent; therefore the doctrine exhibited by the definitions of Councils is represented by an uninterrupted series of testimonies which is connected with the Apostolic age.

But if you add that in the series also of the ancient monuments the notion of Sacrament properly so called repeatedly shines forth (cf. n. V, Augustine and Cyril), you will have a confirmation, although not a necessary one, of the identity of the thing known both by the later and by the more ancient. Therefore from apostolic tradition proceeds the doctrine that Christian marriage is a sacrament properly so called. And so by a twofold kind of arguments Catholic tradition is demonstrated in this matter: that is, both by the consensus of all Christians in the fifth century (II), and by the analysis of the doctrine of every age all the way to Apostolic times or times near to them.

VI. Yet a difficulty not to be despised occurs. For it is asked, first, why the Fathers before Augustine, disputing with the Gnostics and Manichaeans, who rejected marriage as introduced by Satan, and bringing forward also testimonies of the Scriptures, why the Fathers, I say, when they attack this error with arguments drawn from divine authority, nevertheless never bring that into the middle, namely that marriage is a sacrament? Moreover, there disputed on this matter Irenaeus, book I,

Clement of Alexandria, *Stromata*, book III, Tertullian, book I, *To His Wife*, Titus of Bostra, book II, against the Manichaeans, Epiphanius, heresy 23 of Saturnilus, 32 of Epiphanes, 45 of the Severians, 67 of the Hieracites, and Didymus of Alexandria, *Against the Manichaeans*, etc. It is asked, secondly, why the Fathers disapproving the nuptials of the faithful with unbelievers, such as Tertullian, book II, *To His Wife*, Cyprian in Augustine, *On Faith and Works*, chapter 19, and the Fathers of the Council of Laodicea, canon 10, and of the ecumenical Council of Chalcedon, canon 14, did not appeal to the dignity of the sacrament, which seems to be the most powerful reason. It is also asked, thirdly, why Jovinian, who gathered together all arguments (cf. Jerome, book I, *Against the Same*) in order to extol marriage and make it equal to virginity, did not bring forward the account of sacrament. Namely, from all these things it seems that the doctrine was unknown to the earlier centuries: that marriage is a sacrament.

To the first it must be confessed that the ancient Fathers, when they attack that error of certain Gnostics and Manichaeans, do not use explicitly, and under this formula of words which we now would use, an argument taken from the dignity of a true and proper sacrament, but appeal both to the divine institution of marriage (Gen. II; Matt. XIX), and to the words of the Apostle (Hebr. XIII, 4; 1 Cor. VII, 2, 28 ff.; 1 Tim. V, 11), and also to the blessing which Christ imparted by his presence to the nuptials in Cana of Galilee. But, first, that argument sought from silence, since it is negative, loses all force if against it, as has been done, positive arguments can be brought forward. Secondly, we said deliberately: explicitly and under that formula of words which we now use. For since the Fathers must be judged to have attributed the dignity of sacrament to marriage when they say that it was sanctified by Christ by the blessing of his presence, and since they object this sanctification against the heretics, it cannot simply be asserted that the Fathers did not use that argument. Indeed, on the contrary, it must be held that when the Fathers objected that blessing against the heretics, which the Greeks frequently do, they objected to them the account of a true sacrament. For just as they signified that the true account of sacrament is present in baptism when they spoke of the sanctification imparted to the waters in the Jordan by Christ, so they must be thought to speak of true sacramental sanctification when they say that Christ, by his presence, blessed and sanctified nuptials. For the rest, thirdly, the argument taken from the proper dignity of a true sacrament was in no way necessary for the Fathers; rather, it was enough to urge the divine institution. Indeed, the matter was being dealt with against heretics who, permitting to themselves any wandering concubitus whatever for the sake of pleasure, nevertheless condemned the procreation of children and nuptials, as Epiphanius and Clement of Alexandria testify concerning the Gnostics in the places cited, and Augustine concerning the Manichaeans in *On Heresies*, heresy 46: "They admonish their hearers that, if they use spouses, they should nevertheless avoid conception and generation, lest the divine substance which enters into them through foods be bound by the chains of flesh in offspring." And against Secundinus the Manichaean, chapter 22: "For you do not so much detest concubitus as nuptials." Cf. also Titus of Bostra, cited work, book II. Now this base opinion erred simply in that which belongs to natural right, and therefore to overthrow it, it was enough to teach that the procreation of offspring and marriage are according to nature and honorable, which all the Fathers furnish; and also from the Scriptures, which those heretics received in some manner, it was enough to show that the procreation of offspring and marriage, which nature demands, were confirmed by divine institution. And this was directly opposed to their opinion, who taught that to take a wife and procreate children was from Satan.

To the second, we respond first that the dignity of the sacrament of itself does not prevent these nuptials from being permitted, as was done from the beginning of the Church; wherefore neither in the nearest centuries was this argument too much to be urged, especially lest the preceding Fathers seem to be condemned as injurious toward the sacrament. For the rest, where the necessity of permitting it was lacking, and it was lawful for Bishops, without scandal and disturbance of the faithful, to guard the honor of the sacrament most fully, it is false that an argument was not also drawn thence for prohibiting these nuptials, although they had not yet invalidated them. For in the Council of Elvira it is indeed said, canon 15: "On account of the abundance of girls, Christian virgins are by no means to be given in marriage to the Gentiles, lest an age swelling in its flower be dissolved in adultery of the soul." But in canon 16 it is added: "But it has pleased us that they be given neither to Jews nor to heretics, because there can be no society of a faithful person with an unbeliever," certainly in a sacred thing; which reason is not one that may be denied to be sought from the dignity itself of the sacrament. The same reason is also contained implicitly in the opinion of Cyprian, which Augustine reports in the cited place: "St. Cyprian in the epistle *On the Lapsed* (compare it), among the evil morals of Christians, counts joining the bond of marriage with unbelievers, which he asserted to be nothing other than prostituting the members of Christ to the Gentiles; these in our times are now not thought to be sins, because in truth in the New Testament nothing has been commanded concerning this, and therefore it has been believed either to be lawful or has been left as doubtful." But since the Laodicean and Chalcedonian canons bring forward no special reason, they also exclude no suitable one.

3. As regards Jovinian, we respond that he too denied the distinction between the innocent and penitents, or equated penitents with the innocent (Jerome, cited work, book II, in proposition 1), and nevertheless, in order to show this parity, did not gather an argument from the fact that penance is a sacrament. Namely, he was instituting a comparison between the merits of each, the innocent and the penitent, which each could acquire for himself in his own state, and between the reward which he contended had been promised as the same to all because of their works, not between the rites by which some state was consecrated. Wherefore neither did he appeal to the account of sacrament in marriage, because he was comparing the state of marriage with the state of virginity, or the merits which in each state man and woman could attain, and he gathered the equal merit of the virgin and the spouse from the value of the works of each before God.

Thesis VIII

By the written word of God also it is shown that Christian marriage, by reason of its state, has sanctifying grace conjoined to it; and that, when it itself comes to be, it is also the cause of this grace, is at least strongly urged from the words alone of the Scriptures, the analogy of faith being applied.

I. Let us come to the Scriptures. In Eph. V. 22 seq., as the Council of Trent bears witness, it is intimated that marriage is a sacrament. This must be explained, and it must be inquired whether a true demonstration of Catholic doctrine can be drawn out of this passage. Three partial questions must be distinguished: 1. whether marriage is a sacrament in some general respect; 2. whether it is of itself conjoined with sanctifying grace proper to its state; 3. whether the rite itself, by which marriage comes to be, is, under God, the cause of that grace.

As to what regards the first, after the Apostle has explained the mutual relation of man and woman by the mutual relation of Christ and the Church, he concludes thus, with the words of Adam from Gen. II. 24: *For this cause shall a man leave his father and his mother and shall cleave to his wife, and the two shall be in one flesh: This is a great sacrament* (τὸ μυστήριον τοῦτο μέγα ἐστί); *but I speak in Christ and in the Church* (εἰς Χριστὸν καὶ εἰς τὴν Ἐκκλησίαν). Now the pronoun *this* (in the words *this sacrament*) indicates that the appellation of sacrament is made of the preceding thing, which has already been shown and made present; but what precedes generally is the sentence of Adam, and what immediately comes before is this: that the two would be in one flesh. Therefore these words of Adam contain a mystery, or the thing expressed by these words is a mystery or sacrament. Moreover it must be observed that Adam, by those words *for this cause*, with which he begins the last part of the speech, joins the following things by a causal bond with the things preceding in Gen. II. 22, 23. But these preceding things are not only those words spoken of Eve: *bone of my bones and flesh of my flesh*; for from these alone it is certainly not clear how there follows that which is then added: *a man shall leave father and mother*, etc. Rather, the preceding things are the whole deed which preceded, namely that God gave Eve as wife to Adam and joined her with him in such unity, as Adam himself also expressed. But when Paul had interpreted mystically of the Church those same words of Adam (*bone of my bones*, etc.; to be *of the bones and flesh* of someone designates in the Scriptures whatever degrees of necessity; cf. Fr. de Hummelauer on Genesis, at this place), v. 30, *because we are members of his body, of his flesh and of his bones*, that is, of Christ, and had thus transferred them to signify the marriage of Christ with the Church, he immediately continues by using the words of Adam, yet with the conjunction changed: ἀντὶ τούτου, *a man shall leave father*, etc. For in Hebrew it is עַל כֵּן, which the LXX render ἕνεκα τούτου. But ἀντὶ τούτου can conveniently be translated: *after the likeness of this*. Namely, just as the Church is the spouse of Christ, so (after the likeness of this union) *a man shall leave*, etc., by which the relation of type and ectype is signified. Thus the Apostle returns to that which he had taught from the beginning of the discourse, that the union of Christ with the Church is the type of marriage.

Now no one doubts that all the words of Adam are to be taken in the literal sense of the marital union of man and woman, since this is the proper and immediate sense of the words, and the occasion on which they were uttered demands this sense; moreover Christ himself taught this interpretation, Matth. XIX. 5. But that these words, *a man shall leave*, etc., *they shall be two in one flesh*,

also have a mystical signification, that is, that the thing immediately signified by these words also signifies something else, the Apostle teaches us, calling these words, or the thing expressed by the words, a sacrament, and declaring that it is great *in Christ and in the Church*, that is, in the union of Christ with the Church, which he had explained above as the conjunction of Bridegroom with Bride. Therefore the union of Christ and the Church is the term or object to which that mystery is referred, εἰς Χριστὸν καὶ τὴν Ἐκκλησίαν; wherefore the union of man and woman is certainly a sign of this union. For it is called a mystery because in it lies hidden the signification of a hidden thing, of which sort is the espousal of the Word with the Church. Thus Jerome explains the mind of Paul on this passage: "The same thing he interprets by allegory in Christ and in the Church...

Not, as very many think, can the whole history which is written in Genesis concerning Adam and Eve easily be referred to Christ and the Church, but only that which is set down in the present passage: *for this cause*, etc. For the first man and first prophet, Adam, prophesied this concerning Christ and the Church: that our Lord and Savior left his Father, God, and his mother, the heavenly Jerusalem (*I came forth from the Father, and have come into the world*, John XVI. 28), and came to the earth on account of his body, the Church, and fashioned her from his own side, and on account of her the Word was made flesh. And because not all sacraments are equal, but one sacrament is greater and another lesser, for that reason he now says: *This is a great sacrament*; and at the same time this is an indication of him who infers: *but I speak in Christ and in the Church*"; as if he were saying, according to the interpretation of Nazianzen: "I know that this passage is full of ineffable sacraments and seeks the divine heart of an interpreter; but I, according to the smallness of my understanding, think meanwhile that it is to be understood in Christ and in the Church." Cf. also St. Thomas, discoursing on this passage in the same way.

Therefore the words of Adam, which in the literal sense signify the marital union of man and woman, mystically, with Paul as author, signify the marriage of Christ with the Church. Marriage, therefore, is a sign of this thing. And so marriage is a theoretical sign of a sacred thing, of which sort is the union of Christ with the Church. It is, moreover, a great sign. Why? Certainly because it signifies a great thing. Is it also because it signifies in a certain wonderful mode? This will be clear from what is to be said. Therefore, since the generic notion of a sacrament is that it is a sign of a sacred thing, in this sense certainly marriage is called a sacrament, because it is the sign of that most sacred thing.

II. But we must proceed further and ask whether marriage is only a theoretical sign of the union of Christ with the Church, or whether it is also conjoined with grace and signifies it. The question is, namely, whether by divine institution there is conjoined with marriage, by reason of itself, a grace fitting the state of marriage, which is conferred when marriage comes to be. But we are taught sufficiently clearly by Paul that marriage among Christians is of this sort. We suppose that the marriage of which he himself speaks is certainly the marriage of Christians; for those whom he addresses are Christians, and they are the same persons to whom the example of Christ and the Church is proposed as a thing known. But whether the doctrine of Paul pertains only to Christian marriage, we shall say later.

And so, A) if a brief analysis is made of the words of the Apostle from v. 22 onward, one may observe, 1. that that marriage is considered by the Apostle which is of divine institution; for it is considered as one of one man with one woman and indissoluble, vv. 23, 29; such, namely, as was declared by Adam in the prophetic words: *for this cause*, etc.

2. That the nature of a sacrament or sign is exhibited by the Apostle as inhering in marriage by divine institution, inasmuch, namely, as God himself assumed marriage into a sign. For he repeats it from the prophetic words of Adam, which words the Apostle knew were to be attributed to God, since they are attributed to God himself by Christ, Matth. XIX. 5. Hence although other mutual relations besides that which is proper to spouses, for example, that of father to son and conversely, can represent some relation of the Church to God and conversely, nevertheless it is not therefore lawful to conclude that there belongs to this relation what is asserted by Paul of marriage by reason of the sacrament, that is, of such mystical signification, unless you first demonstrate that that union also of father and son has been assumed by God as a sacrament or sign of some relation or union of his to the Church or to others.

3. That the relation which intervenes between man and woman is so explained by the Apostle that the man is the head of the woman (v. 23), the woman is the body of the man and subject to him (vv. 24, 28). But this relation is permanent, just as the relation of head to body is permanent. Therefore some state is signified.

Moreover, 4. with Paul as author, a certain proportion exists between this relation of man and woman and the relation of Christ and the Church; for the man is the head of the woman, as Christ is the head of the Church (v. 23), and the woman is subject to the man in all things, as the Church is subject to Christ (v. 24), or the woman is the body of the man, as the Church is the body of Christ (vv. 23, 28). Namely, the union of man with woman is similar to the union of Christ with the Church; it is, namely, a union representing the union of Christ with the Church, and therefore it is a state representing something wholly holy and supernatural, and for that reason this state itself also, by reason of representation, is holy and supernatural. According to Paul these things pertain to the essence of marriage; for from them he gathers the proper offices of spouses, namely, because they are such - the man the head of the woman, as Christ of the Church, the woman subject to the man, as the Church to Christ - the man must conduct himself in a certain way toward the woman, and the woman toward the man.

Now, 5. the offices which Paul gathers from this sort of state are the love of the man toward the woman (v. 25), and the fear of the woman toward the man (v. 33), which fear is itself also a certain love, but joined with a certain reverence and subjection. But that love is supernatural; for its norm, which is proposed, is wholly supernatural, namely the love of Christ and the Church (vv. 25-28), and the formal reason on account of which it is demanded is supernatural; for it is demanded from this, that the man is the head of the woman as Christ is the head of the Church, namely from this, that the union of man and woman is a union representing the union of Christ and the Church. And the final reason of the same is also supernatural, namely, that through acts in the exercise itself the love of Christ toward the Church and the subjection of the Church toward Christ may be represented. For to this also pertain the words of Paul: *Men, love your wives, as Christ loved the Church*; for they ought to act according to its norm, so that they may represent it, just as by reason of the state they represent the union of Christ with the Church. Besides, no other love than supernatural love could have been commended to the faithful in this economy from the example of Christ.

Moreover, 6. the love which is commended to spouses is a special love, that is, one proper to the state of marriage; for it is not commanded to them because they are Christians, but because the man

is the head of the woman and the woman subject to the man. But the man existing as head of the woman and the woman subject to the man represent Christ and the Church. Therefore the love is permanent, just as the state remains. But, 7. in this is situated the proper office of marriage; therefore to the same also belongs the power or principle of this supernatural love proper to the same state, and this Paul manifestly supposes when he commands and commends the act.

Therefore the state of marriage, because it is such a state representing the marriage of Christ with the Church, has by reason of itself joined to it a permanent principle of supernatural love proper to it, that is, sanctifying grace proper to it, permanent, by which man and woman are able to conduct themselves toward one another as Christ toward the Church and the Church toward Christ, and so to represent the love of Christ and the subjection of the Church. I have said sanctifying grace, for the principle of permanent love is sanctifying grace, which besides gives a right to those actual helps which are suitable and necessary for that work on account of which habitual grace is given.

Therefore the sacrament of marriage, signifying the union of Christ with the Church, represents it also as to the mode in which the union comes to be, namely according to grace and holiness, because it is joined with sanctifying grace so that it may refer to the union of Christ with the Church. Wherefore marriage, when it comes to be, also signifies the grace annexed to it. For that contract or rite by which marriage comes to be signifies the very union of the spouses, and the contract or rite by which marriage comes to be among Christians signifies such a union as comes to be among Christians. But this is a union representing the union of Christ with the Church, a holy union or one conjoined with grace; therefore a twofold signification must be distinguished in marriage: one which is the signification of the union of Christ with the Church; the other which is the signification of the holiness or grace annexed to it, by which that union is perfectly represented.

Marriage, therefore, is a marital union supernaturally holy, with which sanctifying grace proper to that state is connected, and which marriage itself, when it comes to be, signifies.

III. But the question finally remains, whether God alone immediately effects in the spouses (disposed, of course) that grace which marriage signifies, or whether the rite itself of the nuptials is, under God, the cause of it, as the other sacraments are. We do not contend that this is openly taught by the Apostle in this place; nevertheless it is intimated, inasmuch as the Apostle teaches those things which, although of themselves they do not suffice, nevertheless, the account of the Christian economy being had, which he himself rightly must be said to suppose, certainly urge the matter. We say, therefore, that, when those things which the Apostle teaches are considered, and account is had of the character of the Christian economy, it is urged that the rite by which marriage comes to be is the cause of grace.

Certainly, 1. it is clear from what has been said that sanctifying grace is annexed to marriage by divine institution; for it is clear that it is annexed for a special reason, because marriage is the sign of the union of Christ with the Church, which signification is from divine institution. Therefore, 2. it is clear that marriage, when it comes to be, signifies by divine institution the grace annexed to it. For marriage itself, when it comes to be, signifies that union of spouses which comes to be by the force of mutual consent; but a holy union comes to be by divine institution, that is, grace is annexed to the union. Therefore just as it is from divine institution that this union is supernaturally holy, so from the same institution it arises that the rite essential to it, by which marriage is entered upon, signifies such a union.

3. It is clear that rites instituted by God for signifying grace to be conferred on men are in the New Law efficacious of the same; for this is the proper character of the New Law, that it not only signifies, as the Old Law does, but also effects grace. Or, in other words, it is clear that it is proper to the New Law that sanctifying grace, the ordinary bestowal of which God instituted for certain states and offices, namely, be conferred through sensible rites or through sacraments properly so called. But the ordinary bestowal of sanctifying grace has been instituted by God for those who are joined in marriage; moreover the sign of this grace is the sacrament of marriage from the divine institution itself; therefore it is also an efficacious sign.

IV. There are, besides, those who bring forward other testimonies of the Scriptures to prove or urge the same thing: namely, 1 Cor. VII. 14; Coloss. III. 18; 1 Tim. II. 15. But in the first passage it is not sufficiently clear why there should be speech there of the holiness of marriage, insofar as it is a sacrament. For the words *otherwise your children would be unclean, but now they are holy* seem to be joined with that which he had warned before, that the faithful spouse should not depart from the unbelieving spouse; for otherwise their children previously begotten would be regarded as though spurious, while, if the spouses remain together, the children are held to be wholly legitimate and without any ignominy [1]; indeed, he says, they are holy, because through the faithful spouse they have been led to Christ.

[1] And indeed Gelasius I, in the *Treatise against the Pelagian Heresy*, hands down the interpretation of this passage, *the unbelieving husband has been sanctified through the faithful woman*, etc. He weighs first, namely, that since the two are in one flesh, because the body of each faithful spouse is the temple of God, according to a certain mode, through the conjugal unity of the flesh, the sanctification of the unbelieving spouse also touches the body, and that this society is far distant from that partnership which in both spouses has been enslaved to idols. Then he observes that through the prayer of each faithful spouse some mercy is bestowed even upon the unbelieving spouse, and through this he is declared to have been made, according to a certain mode, a participant in the divine favor. This especially happens when, by confidence of marriage, striking his heart with holy words by an assiduous voice, the faithful spouse frequently insinuates faith and hope in God, and then also when, by the example of holy conduct, as Peter admonishes (1 Pet. III), the spouse leads him to the love of God and of virtue. Therefore the sanctification of which the Apostle speaks is that which, with the faithful spouse assisting, not rarely befalls the unbelieving spouse through the grace of God. In an analogous mode the same Pontiff interprets the following words concerning the uncleanness and holiness of the children.

But in the other passage, from the fact that the Apostle teaches that a woman may marry whom she wishes, only *in the Lord*, and therefore that marriage should come to be *in the Lord*, it does not follow that marriage is a sacrament. "That phrase *in the Lord*," says Augustine (*On Adulterous Marriages*, c. 25), "can be taken in two ways: either as remaining Christian" (namely, that she marry in such a way that she does not desert Christ, or expose herself to the danger of deserting him), "or as marrying a Christian"; and Tertullian likewise interpreted it in both ways, the former in L. II. *Ad Uxor.*, c. 2, the latter in *De Monogamia*, c. 7.

The same must be said of the third passage cited, where the Apostle commands women to be subject to their husbands, as is fitting, *in the Lord*. From this it does not appear how you would certainly gather this sense: as is fitting for those women who have contracted marriage, not as Gentiles, but sacramentally. I do not know what the fourth passage proves by itself: *the woman shall be saved*, says the Apostle, *through the generation of children, if she has remained in faith and love and sanctification with sobriety*; this can be said of any state of the faithful, namely that he will be saved who fulfills the offices of his state in faith and love, unless nevertheless you combine that passage with the testimony cited by us.

V. Therefore marriage, which would come to be at least according to the primitive institution, was always a sacrament taken in the broader sense, insofar as it is a sign of a sacred thing; but marriage is not a sacrament taken in the stricter sense, insofar as it is an efficacious sign of grace, except in the New Law. But why? The general reason is because sacraments properly so called exist only in the New Law. The Tridentine Fathers, Sess. XXIV, c. un., preformed the argumentation which we have used. Wherefore here there is, as it were, a process of perfection of marriage according to St. Thomas, Suppl., *On Marriage*, q. 42, a. 2. Marriage, namely, in the state of innocence was instituted for the office of nature (yet of holy nature); in the state of fallen nature another end also was superadded to it, namely, that it might be as a remedy for concupiscence; but in each state it was a sign of the union of Christ with the Church, and for that reason a sacrament taken in the broad sense; in the New Law, with that twofold end preserved, it was besides instituted as a sacrament properly so called.

VI. A certain difficulty occurring here must be cleared away. And, 1. indeed, it would be wrongly objected that whatever Paul here says to spouses about love and subjection, the example of Christ and the Church being applied, he could also have said to others, for instance to fathers and sons, without its therefore being lawful to gather that there is some sacrament between them. For, as we have already admonished, Paul presupposes this: that the union of spouses has been assumed by God as a sacrament or sign of the union of Christ with the Church, and from this he infers their offices. But this cannot be said of the others.

Yet, 2. it can be objected thus. The words of the Apostle, *This is a great sacrament*, were true from the beginning, when it was said: *for this cause a man shall leave*, etc., and in this way marriages were contracted. Wherefore the argument is made thus. From the words of Paul we gather that marriage is an efficacious sign of grace because it is a sacrament of this kind; but it was a sign of the union of Christ with the Church already from the beginning and thereafter; therefore from the beginning and thereafter it conferred grace. But the consequent is false; therefore also the antecedent.

I answer. From the Apostle we have that the union of man and woman, of which Adam speaks (but Adam does not properly speak of his own marriage; for he himself did not leave father or mother, but speaks of subsequent marriages), is a sign of the union of Christ with the Church; but from him we do not have that it was always in the same mode a sign of this thing. And in truth the marriage which the Apostle considers is of one man with one woman and indissoluble. But such a marriage was not found per se in the Old Testament; therefore it is sufficiently clear that at least those marriages which were made in the age of the Old Testament - much more those among idolaters, more vicious than among the Hebrews - were not considered here by the Apostle. Moreover, formerly, in the economy of shadows and figures, it was the sign of a future thing; now, in the economy of truth, it is the sign of a present thing. But what was proper to the preceding Mosaic economy was to confer only legal sanctity; what is proper to this present economy is to confer intrinsic grace. Therefore, since formerly, by reason of the very proper character of that economy, grace was not given through sensible signs, while now, on the contrary, it is given, this distinction, drawn from the native character of each economy, certainly could intervene between the nature of the sign which belonged to marriage before Christ and that which belongs now: namely, that formerly marriage signified by reason of union only, while now it signifies by reason of an intrinsically holy union.

Therefore I answer to the major of the argument. We do not say that Paul teaches universally that marriage is intrinsically holy because it is a sign, nor do we gather this. Rather, we say that that

marriage of which Paul speaks, which is certainly the marriage of Christians, is regarded and represented by him as intrinsically holy and connected with grace, because it is the sign of the union of Christ with the Church; and, the character of the Christian economy being considered, we contend that that marriage of which the Apostle was directly speaking was held by him as a true and proper sacrament. The response to the minor is clear: for only the marriage of one man with one woman and indissoluble was also from the beginning a sign of the union of Christ with the Church, but according to the character of the diverse economies. Hence the consequent is denied, namely, that from the beginning it ought to have conferred grace (that is, ex opere operato).

Moreover, although after the sin of Adam subsequent marriages down to Christian marriage were not intrinsically holy or necessarily of themselves connected with grace and causative of it, nevertheless the marriage of the first parents was connected with grace by reason of the primitive state and ordered to the begetting of holy human beings. Wherefore, although it was not a sacrament in the way in which it now is, it was certainly intrinsically holy by reason of the state in which it came to be. Furthermore, Christ recalled Christian marriage to the dignity of that first marriage, of which God himself was the institutor; therefore rather it ought to follow that now Christian marriage is intrinsically holy, although not in the same respect, just as the reason of sanctification in the present economy is other than it was in that former one.

Wherefore Christian marriage is called a great sacrament also for this reason, that in a special mode, namely through a holy union, it represents the marriage of Christ with the Church.

Thesis IX

The arguments which are brought against the doctrine asserted in the two preceding theses are empty.

I. Against the truth asserted in these two Theses several things are commonly objected. The principal ones are these. 1. The act of marriage is base; but it is not fitting that the act of a sacrament be base. Indeed, 2. the act of marriage is not free from fault, for the Apostle grants it according to indulgence or pardon, 1 Cor. VII. 6; but Augustine says, *On Original Sin*, c. 38, that when pardon is granted, fault is denoted. And Didymus of Alexandria, *Against the Manichaeans*, teaches that men before Christ had marriage with sin, which sin Christ took away from nuptials just as he took sin away from other things. 3. Marriage is less noble than Virginity; but Virginity is not a sacrament; therefore much less is marriage. 4. In a sacrament an exterior religious ceremony is required; there is no such ceremony in marriage. 5. It is not enough, in order that something be a sacrament, that it be the sign of a sacred thing and have annexed to it a promise of grace, as is clear in martyrdom. 6. A sacrament of the New Law, taken strictly and properly, is a sign of grace not from its own nature, but from divine institution; but, etc. 7. If marriage confers grace, it follows that one who passes from the state of celibacy or virginity, which is more perfect, to the state of marriage, which is more imperfect and less acceptable to God, acquires grace from God, which seems absurd. 8. In marriage the contracting parties lawfully make an agreement about a dowry, which is not lawful in the sacraments. 9. A sacrament effects what it signifies; but marriage does not effect that which it signifies, for it signifies the union of Christ with the Church, which it does not effect.

II. I respond to the first. The act of marriage is honorable in itself, just as the legitimate procreation of children is honorable, and honorable is the act which nature itself urges. But what is base is that which is joined to it accidentally, that is, the movement of concupiscence rebelling against reason; yet this baseness of concupiscence by itself alone is not moral, and when it is employed for an honorable end, we use an evil well, as Augustine says (see what was said in the *Treatise on God the Creator*, Th. XLIV). Nor did St. Jerome speak except improperly when, defending virginity against Jovinian, L. I, n. 7, he says: "If it is good not to touch a woman, it is evil to touch her; for nothing is contrary to good except evil"; these last words are Tertullian's in the book *On Monogamy*. But it cannot be called evil except insofar as it is improperly understood as a lesser good. The same Jerome in the same place denies that he thinks every intercourse filthy, and says that he is not ignorant of honorable nuptials and an immaculate bed... "But we receive nuptials," he says, "in such a way that we prefer virginity." Thus Augustine, *On the Good of Marriage*, c. 8: "Therefore marriage and fornication are not two evils, of which one is worse; but marriage and continence are two goods, of which one is better." As regards Jerome, his epist. 48 to Pammachius should be read, in which he purposely defends himself from the charge that his praise of virginity was in some way a condemnation of marriage. For Jerome had been ill spoken of at Rome because of the writings against Jovinian. Cf. also his epist. 123 to Ageruchia and Augustine, *Retractations*, L. II, c. 22. Moreover, it must be observed that when Jerome compares marriage to virginity, he insists especially on the consideration of its use; for by reason of this he places nuptials in the lower place. Wherefore in the census of virgins he also places spouses abstaining from the act of marriage, and he opposes them to those who use it. But, that we may answer the difficulty more fully, copulation is not the act of the sacrament of marriage when it comes

to be and confers grace, but an act of the sacrament in *facto esse*, or as permanent, as we shall explain in the following Thesis.

III. To the second. The indulgence which the Apostle grants regards not marriage itself, but only the use of marriage apart from the direct intention of offspring, for avoiding fornication. But that indulgence or pardon does not denote fault; for pardon or indulgence which supposes fault is that which is remission; but here there is no speech of this sort of pardon. "It is not lawful to doubt that nuptials are not a sin. Therefore the Apostle does not grant nuptials according to pardon; for who would hesitate to say that it would be most absurd to say that those to whom pardon is given have not sinned? But he grants according to pardon that intercourse which takes place through incontinence, not for the sole cause of procreating, and sometimes with no cause of procreating, which nuptials do not compel to happen, but obtain to be pardoned," says Augustine, *On the Good of Marriage*, n. 11. It is, namely, the due concession of a less perfect act so that a greater evil may be avoided; hence it is opposed to command. The Apostle does not command that act of itself, because of itself it would be more perfect to abstain; but he commands or counsels on account of the danger of incontinence; therefore he counsels not from the motive of the perfection of the act, but from the motive of human frailty, to which indulgence must be granted. But that spouses rightly use marriage on account of this direct end alone of avoiding incontinence, the Apostle here supposes, and above he teaches it, v. 2.

Augustine indeed judged that that intercourse of spouses which takes place on account of incontinence (for the sake of pleasure), and not for the sole cause of procreating, is venial sin. "Conjugal intercourse for the sake of begetting has no fault; but that for satisfying concupiscence, yet with one's spouse, because of the faith of the bed, has venial fault; but adultery or fornication has lethal fault" (l. c., n. 6). St. Thomas partly agrees with him, Suppl., *On Marriage*, q. XLIX, a. 5. But since marriage was instituted also as a remedy for concupiscence, if spouses come together for the sake of pleasure, intending this likewise, that they avoid incontinence in themselves, since this is a most honorable end, even if they do not intend the generation of offspring, provided they do not positively exclude it, they are to be charged with no fault. Read the approved moral theologians.

IV. To the third. If state is compared with state, the state of continence is more perfect; but nothing prevents a state which of itself is more imperfect from being consecrated by a sacrament, and under this respect from surpassing the other, if there is some special reason for that state. But the special reason for marriage is that it is instituted for the common good, for the propagation of the human race. Therefore it was fitting that by sanctifying grace marriage should be consecrated and should become in the New Law a sacrament, marriage on which the family and the whole of society depends, by which the creative action of God is continued through the propagation of children for his worship, so that thus, under the guardianship and direction of the Church, to which the sacraments have been entrusted, the whole human family might be in its very beginning.

To the fourth. The exterior religious ceremony is that rite (which one it is we shall say in Th. XI) by which marriage comes to be, and by which the union of Christ with the Church and the holy union of spouses is represented.

To the fifth. There is indeed required besides a divine institution, by which something is instituted as sign and cause of sanctification, as a rite actively sanctifying as the instrument of God sanctifying; but this has place in marriage, not in martyrdom.

To the sixth. Marriage from its nature is indeed apt for signifying, but actually, from divine institution, it signifies the union of Christ with the Church and the grace which it confers. But it makes no difference that that which is assumed to be a sign is already something existing in nature and a work of nature.

To the seventh. Bellarmine responds (*On Marriage*, l. I, c. 5): "It is one thing to compare state with state, another to compare state with sacrament. The state of continence is higher and more perfect than the state of marriage and of greater grace and merit; nevertheless the sacrament always increases grace in whatever state it is received. Wherefore one who is continent, while he contracts marriage, grows in grace; but if that same continent person, for the sake of God, had despised human nuptials, he would have found more grace with God than is that which is given through the sacrament of marriage." Thus, for one to whom it is open to do two works, one more perfect, the other less, he who does that which is less perfect, when he is not bound to the more perfect, obtains an increase of grace; yet he would have obtained a greater increase of grace if he had done the other, more perfect work.

To the eighth. A dowry is not given on account of the sacrament or on account of the sacramental contract, but on account of the burdens to be borne in the undivided society of life, which follow marriage not insofar as it is a sacrament, but insofar as it is a certain contract producing a determinate society.

To the ninth. Enough has already been done. For marriage, when it comes to be, signifies the union of spouses, and that union as holy, which is the representation of the union of Christ with the Church.

Thesis X

By an indivisible bond, in the marriage of Christians, the contract, that is, the marital union, and the sacrament are bound together; these are not two things, but two necessary aspects or formalities of the same thing. Wherefore among Christians the conjunction of man and woman, if it is not a sacrament, neither is it marriage; and if it is marriage, it is also a sacrament.

I. Marriage can exist of itself without being a sacrament properly so called. Such it was before the new economy was instituted, and such it still is among unbelievers, among whom it exists for the office of nature, for procreating and educating offspring, and as a remedy for concupiscence. Among unbelievers, therefore, marriage is nothing except a certain natural contract, or the marital union of man and woman instituted by nature itself, determined by the free consent of the contracting parties. But among Christians it is, besides, a sacrament. Wherefore these two can be distinguished by reason in Christian marriage: the contract (by which name the consent of each, which is the cause, and the abiding bond thence arisen, is signified), which would exist even in pure nature, and existed before Christ, and exists among unbelievers; and the sacrament, which is found only in Christians contracting. But the question is whether, just as by reason, so also in reality these two can be distinguished in Christian marriage, not indeed by complete separation, so that even the sacrament could exist without the contract (what that would be no one could attain), but at least by incomplete separation, so that the contract could be valid without the sacrament. Some theologians judged that there could be a true marriage among Christians which would not be a sacrament, and this opinion was willingly embraced by those who wished the priest to be its minister. But the Catholic doctrine is now sufficiently manifest: these two are inseparable, and indeed not insofar as they are two things which always demand to be together, but insofar as they are really one and the same thing, and therefore are only aspects or formalities, and indeed necessary ones, of the same thing. We say, namely, that the very same thing which is marriage among Christians is a sacrament, and that which is a sacrament is marriage, and that, if the thing itself is not a sacrament, neither is it marriage; that is, the consent of those who attempt to contract has no value, and no marital bond exists, but only base concubinage. Therefore it must be demonstrated that marriage among Christians is the sacrament itself and is necessarily a sacrament; for when these things have been proved, the truth of the Thesis will be clear.

II. And so, 1. Christian marriage and the sacrament itself are not two things but one. Marriage can be considered *in fieri*, which is the contract itself, and in the permanent *facto esse*, which is the bond arisen from it. Moreover the sacrament, when it comes to be, is not a thing other than the contract itself, and when it remains, it is not a thing other than the bond itself; therefore. The assumed point is proved. a) The mutual handing over and acceptance of power over the other is the matrimonial contract and is the cause of the matrimonial bond; but the same, Eugene bearing witness, is the efficient cause of the sacrament. Therefore marriage and sacrament are one thing. The consequence is proved. For matrimonial consent makes only one thing, namely that to which both consent, which is mutual power or the bond, that is, marriage; but their consent is also the cause of the sacrament; therefore the sacrament is the same thing as marriage. Or will you say that matrimonial consent, although it is one action physically, is nevertheless virtually multiple, so as thus to produce two distinct effects? But either those effects are so related that one is only the mode of the other, or that

both are two things. If you say the first, this very thing is what we contend, when we assert that marriage and sacrament are the same thing, namely that the nature of sacrament is an intrinsic mode of the marriage of Christians. If you say the other, we deny that matrimonial consent is a virtually multiple cause in such a way as to produce two distinct things; for consent, taken as a whole, objectively effects nothing other than that to which consent is given, for it is ordered only to this. Therefore if another thing comes to be, another cause of it also will have to be assigned. On the contrary, the same one consent, if by the institution of God it obtains a supernatural mode, will be able to effect that one thing which it makes, augmented by a supernatural mode, so that the contract is a sacrament. Therefore if the cause of the sacrament is mutual consent, the marriage which comes to be and the sacrament are the same thing. But if the marriage which comes to be is not a thing other than the sacrament which comes to be, the marriage also *in fieri* will be a sacramental action, by which the sacrament comes to be, as is clear of itself; therefore.

b) This sacrament is called in the direct case marriage; but by this appellation not only the matter of the sacrament is directly represented, as happens in the appellation of the sacrament of Penance, but the whole sacrament is signified. For: "It is a dogma of faith," says Pius VI in the Brief to the Bishop of Motula, 16 Sept. 1788, "that marriage, which before the coming of Christ was nothing other than a certain indissoluble contract, after the coming of Christ became one of the seven sacraments of the Evangelical Law instituted by Christ the Lord, as the sacred Council of Trent defined under penalty of anathema against heretics and impious men raving mad in this age." Likewise Pius VII, in the schema of the Pontifical Constitution (Roskovani, *Marriage in the Catholic Church Subject to Ecclesiastical Power, with a Very Ample Collection of Documents and Literature*, vol. 2, p. 20 seq.): "For it is clear that marriage, which the Tridentine Synod defined to have been elevated by Christ the Lord to the dignity of a sacrament, is that very thing by which a man becomes one flesh with his wife, that which was wedlock in the old law, that which bears in itself the mystery of the union of Christ and the Church, that which from the beginning was instituted by God for the office of nature, namely the nuptials themselves or the society of nuptials, finally the conjugal bond itself, that is, the matrimonial contract itself. This certainly is what the Catholic Church has always held and holds." This manner of speaking is not used with regard to the other sacraments, of which only a certain matter existed before Christ. For it is not said, nor can it be said, that that same washing, for example of John the Baptist, became a sacrament in the New Law, or that that same contrition or penance which existed before became a sacrament of the New Law. Rather, it is said that by the accession of a new rite instituted by Christ these were elevated to the dignity of a sacrament. But there is another manner of speaking concerning Marriage. Namely, that which before the coming of Christ was nothing except a certain indissoluble contract, the same became a sacrament after Christ; that is, there did not accede to it some rite instituted by Christ, by which the sacrament would be constituted, as the use of the power of the keys accedes to acts of penance; but the whole contract itself became a sacrament. For that reason what is marriage, that same thing is sacrament; therefore Christian marriage and sacrament are not two things, but one.

c) The sacrament conferring grace is that which signifies the union of Christ with the Church; for this is the thing of which the Apostle speaks in Eph. V, and that to which sanctifying grace belongs is that by which that union is perfectly represented. But this, in *facto esse*, is the bond by which spouses are bound and become one flesh; in *fieri*, however, it is the contract itself or consent by which a man leaves father and mother and cleaves to his wife, and conversely the consent of the wife (Ephes. V).

But that is nothing except marriage, and nothing else; therefore the sacrament is nothing other than the very marriage which Christians celebrate. Thus Leo XIII in the Encyclical on Christian Marriage: "For this reason marriage is a sacrament, because it is a sacred sign and efficacious of grace, and bears the image of the mystical nuptials of Christ with the Church. But the form and figure of these nuptials is expressed by that very bond of highest conjunction by which man and woman are joined together, and which is nothing else than marriage itself."

III. 2. Christian marriage is necessarily a sacrament. It is clear that the discussion is about marriage which is truly such, namely a legitimate contract from which the bond of mutual obligation arises. The necessity which is asserted is not from the nature of the thing, but from divine institution. It is proved, a) from the divine institution itself of the sacrament. It is clear from the things demonstrated that God elevated marriage among Christians to the dignity of a sacrament; for since Christ instituted the sacrament of marriage and willed it to exist among Christians, and this sacrament is nothing except marriage itself or the matrimonial contract, it must be said that marriage itself was elevated by Christ to the dignity of a sacrament. Therefore this proposition, already demonstrated, is true: the sacrament of marriage is nothing except the very marriage which is celebrated among Christians. But the question is whether this other proposition also is true: Christian marriage is necessarily a sacrament, so that by the very fact that the matrimonial contract comes to be, the sacrament cannot fail to come to be, and if the sacrament does not come to be, neither does marriage come to be. The question is, namely, whether Christ willed not only that the sacrament should come to be by the contract itself, just as he willed that baptism should come to be by the washing of water and by the invocation of the Trinity, but also that every legitimate contract should be a sacrament.

Now, that we may demonstrate the affirmative part, we argue thus. If Christ elevated marriage to the dignity of a sacrament, he certainly joined in marriage these two things: the aspect of contract and the aspect of sacrament. Moreover it must be presupposed that this conjunction was made by Christ by a certain antecedent absolute will, that is, independently of the will of men. For the institution of the sacraments pertains to the antecedent and absolute will by which the essence of the sacramental rite, or the efficacy of some rite for producing grace, is constituted wholly independently of the contingent will of men. Therefore, since the conjunction of the efficacy of grace with marriage pertains to the institution of the sacrament, and this is done by an antecedent absolute will, the conjunction of each aspect, contract and sacrament, was made by God by an absolute will. Therefore by his institution, which is directed immediately to the very thing which is elevated to the dignity of a sacrament (not by some simple precept given to human wills, by which indeed the use of the sacrament, not the institution itself, is established), Christ effected that Christian marriage is a sacrament and willed this to be, as it were, an intrinsic mode and property of Christian marriage. But this absolute institution joining the aspect of contract and of sacrament was made for every Christian marriage. For when Christ elevated marriage to the dignity of a sacrament, he did not elevate this or that marriage, but simply marriage, namely that which was instituted from the beginning, which is the sacrament or sign of the union of Christ with the Church (Eph. V), by which God himself joins man and woman (Matth. XIX). Nor did Christ institute some rite which of itself, according to the intention of the agent, can be referred to diverse ends; but he willed the matrimonial contract itself, which cannot be employed for anything other than that it be the marital union between man and woman, to be a sacrament. Therefore whatever among Christians, to whom alone the sacraments of Christ pertain, can be called marriage - namely every Christian marriage - has been elevated to the

dignity of a sacrament. Therefore that absolute institution joining both aspects, contract and sacrament, is universal, comprehending any marriage whatsoever. And so, just as by Christ's institution the sacrament is nothing except marriage itself, so by the same institution the marriage of Christians, as such, and therefore every marriage of this kind, is a sacrament.

But from these things it follows, 1. that the dignity of a sacrament pertains to the essence of Christian marriage by the institution of Christ. For Christian marriage cannot fail to be that which by Christ, with an absolute will independent of the will of men, was made to be an efficacious sign of grace; nor can it fail to be that which Christ determined, by the same will, every and always Christian marriage to be. It follows, 2. that the disjunction of contract and sacrament does not depend on the will of men, so that there could be a contract of marriage without being a sacrament; for the conjunction of both aspects, contract and sacrament, was made for any marriage whatsoever by the absolute will of God. A man can indeed bring it about that it is not actually a sacrament, because for this the intention of the minister is also required; but he will not be able to bring it about that those two are disjoined, or that there exists a marriage which is not a sacrament. For that Christian marriage is a sacrament, is a sign of the union of Christ with the Church, is an efficacious sign of grace, this belongs by Christ's institution to the essence of Christian marriage; but the existence of the thing is indeed placed in the choice of the minister, not its essence.

IV. You will say: the intention of the minister can bring it about that that thing which would be a sacrament is not a sacrament, for example washing with the invocation of the Trinity; therefore it can also bring it about that marriage is not a sacrament, but only pure marriage, just as that is a pure washing and invocation of the Trinity. I respond: I distinguish the consequence. Therefore it can bring it about that it is not a sacrament, yet is marriage: I deny. It will be able to bring it about that it is not a sacrament, and therefore neither will it be marriage: I concede. Christ instituted that the sacrament of baptism be effected by the washing of water and the invocation of the Trinity; namely he instituted the rite of initiation and willed it to be perfected in this way, that is, by the washing of water and the invocation of the Trinity. But he did not institute that every washing with invocation of the Trinity, even freely posited, should by this very fact be a sacrament. But he did institute that any marriage whatsoever celebrated among Christians be a sacrament; namely he attributed to it the power of conferring grace. Wherefore if it is marriage, no one can prevent it from being a sacrament; and if it is not a sacrament, no one can bring it about that it be marriage. For when an essential property is lacking, no one can bring it about that the thing be; but it is an essential property of Christian marriage by the institution of Christ that it be a sacrament; nor can there be, against the absolute will of Christ, a marriage among Christians which is not a sacrament. And so, from the fact that marriage is a sacrament, it does indeed follow the manner of the other sacraments in this respect: that it depends on the intention of the minister of the sacrament of marriage whether it is or is not a sacrament; and if that intention which is required for the confecting of the sacrament is lacking [1], it is not a sacrament. But at the same time, because of the institution of Christ, neither does the contract come to be, although that exterior material action is performed, and although there is the intention of doing it.

[1] What sort of intention there ought to be here is not the place to dispute; the moral theologians will teach it. We suppose that intention which, according to Catholic doctrine, is sufficient.

You will say: If Christ had instituted that every washing of water with invocation of the Trinity is a sacrament, nevertheless, if intention were lacking, there could have been washing and invocation without a sacrament; therefore likewise as regards marriage. I respond: I deny the consequence. The reason for the distinction depends on the nature of the action of each sacrament. Washing (say the same of invocation), if it is posited, cannot fail to be washing, since it is a purely physical action; therefore, unless God, using his omnipotence, had willed to prevent washing from existing whenever the due intention of the sacrament is lacking, he could not institute by an absolute will that every washing is a sacrament. But the sacramental action of marriage is a moral action producing a moral effect, namely obligation and right, and the same can physically be had without producing this moral effect. Therefore, Christ's institution being posited, when the intention of the sacrament is lacking in the ministers, an act can be physically posited by each without nevertheless being efficacious consent or contract; and thus it is always true that it is not marriage if it is not a sacrament. There is, namely, a certain divine nullification of consent, lest it be efficacious and effect marriage unless it is also a sacrament. Therefore the reason why the former act, not making a sacrament, also does not make a matrimonial contract is this: because by Christ's institution it is of the essence of marriage that it be a sacrament; wherefore it cannot exist unless it is a sacrament. And therefore the minister can indeed bring it about that the sacrament not exist, if the due intention is lacking; but with the sacrament lacking, he cannot bring it about that marriage remain, or the matrimonial contract, but only that material action of the words by which contracting is customarily done.

V. b) The same is confirmed from the doctrine of the Apostle to the Ephesians, c. V. For Paul there intimates that Christian marriage is a sacrament (Th. I); but Paul speaks universally of any Christian marriage whatsoever. For he discourses of man and woman, of the man who is the head of the woman, of the woman who is subject to the man; but this is the notion univocally common to every marriage. Moreover of these he affirms that they represent the union of Christ and the Church, and he intimates that their conjunction is effected sacramentally. Therefore every Christian marriage, according to Paul, is a sacrament, and therefore cannot exist without being a sacrament.

VI. c) The same is proved from the constant sense of the Church, which has always judged every Christian marriage to be necessarily a sacrament. A sense of this kind is clear from these things. The Church has always judged that authority belongs to herself over any marriages whatsoever of Christians as regards the bond itself; she ruled them by her laws, she established impediments for them, and for clandestine no less than for non-clandestine marriages. But the Church also judged that authority belongs to herself over the bond of marriage only because it is a sacrament. Thus Pius VI, after the words cited above under n. 1, immediately concludes: "Hence it comes about that to the Church alone, to which the whole care concerning the sacraments has been entrusted, belongs every right and power of assigning its own form to this contract, elevated to the more sublime dignity of a sacrament, and consequently of passing judgment concerning the validity or invalidity of marriages"... "These causes (matrimonial causes) pertain to the judgment of the Church alone for no other reason than because the matrimonial contract is truly and properly one of the seven sacraments of the Evangelical Law." Therefore the Church has always judged every marriage of Christians to be a sacrament. But this is the same as judging that marriage of this kind is necessarily a sacrament; for what belongs always and to every one is proper and necessary.

d) These are the words of Trent, Sess. XXIV: "But the grace which would perfect that natural love [of spouses], and would confirm the indissoluble unity and sanctify the spouses, Christ himself, the institutor and perfecter of the venerable sacraments, merited for us by his passion"; on account of which grace marriage is then said to be a sacrament. Therefore he so merited that this grace is actually conferred. That natural love by which man and woman unite themselves is necessarily nothing except the free consent of one to the other; for other affections can be absent, with marriage existing. Now if that natural love is present, there is also present, Trent bearing witness, sacramental grace; if grace is lacking, unless this is because of an obstacle, that natural love also ought to be lacking; otherwise the former statement would be false. Therefore contract and grace are bound together by a mutual bond, and in such a way that there cannot be a contract without being a sacrament.

VII. Finally Pius IX taught us this by his authentic magisterium in the Allocution delivered in secret consistory, 27 Sept. 1852: "No one among Catholics is ignorant or can be ignorant that marriage is truly and properly one of the seven sacraments of the Evangelical Law instituted by Christ the Lord; and therefore that among the faithful there cannot be a marriage without at one and the same time being a sacrament; and for that reason any conjunction whatever, even among Christians, of man and woman apart from the sacrament, made even by force of any civil law whatsoever, is nothing other than base and deadly concubinage, so greatly condemned by the Church; and consequently the sacrament can never be separated from the conjugal covenant." He confirmed this by condemning this proposition 73 in the *Syllabus*: "By force of a merely civil contract, there can exist among Christians a marriage of true name; and it is false either that the contract of marriage among Christians is always a sacrament, or that there is no contract if the sacrament is excluded." "It is settled," says Leo XIII in the cited Encyclical, "that in Christian marriage the contract is not dissociable from the sacrament, and therefore a true and legitimate contract cannot exist without being by that very fact a sacrament. For Christ the Lord augmented marriage with the dignity of a sacrament; but marriage is the contract itself, provided only it has been made by right."

Observe that Pius VII, in the schema cited above, has these things: "Whatever be the case concerning marriages which are entered into without sacred ministry in those places where the Tridentine Council has not been promulgated - which marriages indeed there are some who think subsist in the nature of contract, but in no way attain to the dignity of a sacrament, which question, following in the footsteps of our Predecessors, we leave undecided - nevertheless from the cited opinion, whatever finally it may be, it would by no means follow that the sacrament of marriage is a thing distinct and separable from the matrimonial covenant itself, just as from the fact that not every washing is a sacrament, it by no means follows that the sacrament of baptism is a thing distinct and separable from the washing itself conferred with due matter and under due form." In these words the Pontiff affirms the first part of our assertion: namely, that the sacrament is not a thing distinct from the contract; but he leaves undecided the other part: that a true marriage of Christians cannot exist without being a sacrament. Yet he does not leave it undecided in this sense, as if it were a doubtful thing or not sufficiently proved, but insofar as it had not yet been defined and he himself did not wish to define it, and therefore it was permitted to the disputation of Catholics. But what he did not wish to affirm, Pius IX soon afterward (whatever be the case whether this is a definition of faith) affirmed by the cited decrees; and certainly this truth can be demonstrated theologically, which Pius VII does

not deny. Moreover it is fitting to remember that that document is nothing except a schema (Roskovani calls it a *projectum*, that is, a *progetto*) of a pontifical constitution.

And so from all the things demonstrated it is clear that the matrimonial contract of Christians and the sacrament are not two things, but two formalities, and those necessary formalities of the same thing; and therefore one cannot exist without the other.

Corollary. Therefore that doctrine is altogether false, and deservedly proscribed by the Apostolic See, which is the foundation of that institution which they call *civil marriage*, namely that the matrimonial contract can be separated among Christians from the sacrament. For by the divine authority by which marriage was first instituted, it was then effected that every marriage of Christians is a sacrament; the powers of the world can indeed blaspheme the force of this divine authority, but they cannot make it void.

Thesis XI

The ministers of the sacrament are the contracting parties themselves who contract marriage; their contract, insofar as it is the mutual handing over of power, can be held as the proximate matter, and insofar as it is the mutual acceptance of the same, as the form of the sacrament. Moreover the contract is sacrament only, the grace which is conferred is thing of the sacrament only, and the bond which remains is both thing and sacrament.

I. The question concerning the minister and the question concerning the form and matter of this sacrament cannot be separated. Melchior Canus judged (*De Locis Theologicis*, L. VIII, c. 5), and sharply asserted with several arguments bearing in that age some appearance of probability, that the minister of the sacrament of marriage is the priest, and therefore that the form of the sacrament is the words uttered by him, by which he joins the spouses, while the contract is nothing except the matter of this sacrament. Once the opinion of Canus was admitted, it was easy to infer that in marriage the sacrament can be separated from the contract of Christians. But this question was being debated among Catholics. Certain others supported Canus, especially those who wished a way to lie open for them to defend the rights of secular princes over the marriages of Christians. Cf. Tournely, *De Matrimonio*, quaest. II, a. 11, § 3. Although formerly the opinion of Canus seemed probable to Benedict XIV, *De Synodo Dioecesana*, L. VIII, c. 13, nevertheless now the contrary is to be held as certain.

II. Indeed the opinion of Canus was new in the School, both because he was able to bring forward no one from the School who had certainly handed it down, and because the common doctrine of the older Scholastics resists it. For Canus appeals to three Scholastics: William of Paris, Paludanus, and St. Thomas. But the opinion of St. Thomas is wholly other, as we shall see. But what he says in IV, D. I, q. 1, a. 3 - "marriage according as it is for an office, and penance according as it is a virtue, do not have any form of words; but according as each is a sacrament consisting in the dispensation of the ministers of the Church, each has some words: just as in marriage there are words expressing consent, and again blessings instituted by the Church" - does not signify that the words of the priest pertain to the essence of the sacrament; indeed, he manifestly teaches the opposite. For the Church does not institute the forms of the sacraments; but if any words are the form of the sacrament, they are the words expressing consent. Cf. what we shall give at the end of this part. But St. Thomas does not consider the sacrament only, but the sacrament according as it is dispensed by the ministers of the Church. Marriage, however, is dispensed by the ministers of the Church, not indeed insofar as it is made by them, but insofar as it is governed by the Church, and from her ministers has a certain solemnity through blessing. He teaches the same in IV, book *Contra Gentiles*, c. 78, saying: "Insofar as marriage is ordered to the good of the Church, it must be subject to ecclesiastical rule; but those things which are dispensed to the people through the ministers of the Church are called sacraments." In these words it is manifest that something must be supplied, so that the determinate notion of a true sacrament may be had; for not whatever the ministers of the Church dispense to the people is a sacrament properly so called.

Nor does Paludanus favor Canus when he teaches in IV, D. V, q. 2, that a man and woman contracting, even if they are sinners and do not do penance, are not guilty of sacrilege. For he says: "It

does not seem that a sinner contracting marriage sins, although the essence of marriage consists in mutual consent expressed through the words of one to the other; for this consent ministers the sacrament, not the priest blessing, who only applies a certain sacramental." What could be clearer? Why, then, are they not guilty of sacrilege? They are not guilty of sacrilege insofar as they administer, because they are not ministers specially ordained or consecrated for this (cf. St. Alphonsus, *De Matrimonio*, n. 884, coll. *De Sacramentis in genere*, n. 32).

As regards William, this sort of opinion is indeed attributed to him also by others (Roskovani, op. cit., T. 1, p. 16); but there is no certain reason why he should be thought to have asserted it. For he seems to have wished to say only this: that, in order that marriage be contracted honorably and grace actually obtained, it must be celebrated in the face of the Church and the blessing of the priest must be applied. For in the *Work on the Sacraments*, *On Marriage*, c. 6, he says: "Marriage also has (note that *also*; namely, it has it also of itself) no little sanctity from the blessing or priestly prayer, without which marriage must never be celebrated; whoever have contemned or declined it, unless from just fear or some other necessary cause, are not to be held as spouses, but as fornicators, nor are their children to be reckoned legitimate. For neither is food to be taken without priestly prayer and blessing," etc. But if the blessing or prayer of the priest were essential and the form of the sacrament, even if it were omitted from just fear or another necessary cause, they would not be spouses; yet William denies this. Besides, if the blessing or prayer of the priest is necessary for nuptials as it is for taking food, it is sufficiently clear that it is not required for the validity of the act, but for a certain fitting honorableness. Moreover those who contract clandestinely in this way he does not properly say are fornicators, but that they are to be held as such; for he speaks according to the norm of the law then still in force, which in the civil forum regarded conjunctions of this sort as fornications, that is, did not regard their children as legitimate and inheritable. For thus has chapter 463, book 3, of the Collection of Capitularies of Benedict the Levite, ninth century (Migne, P. L., vol. XCVII, p. 859): "A marriage does not become legitimate otherwise than if the wife is sought from those who seem to have dominion over the woman and by whom she is guarded, and is espoused by nearer parents, and is lawfully dowered, and in its own time is blessed priestly, as is the custom (a thing of custom, not of divine law), with prayers and oblations by the priest.... For in such manner they will both please the Lord and will beget children not spurious but legitimate and inheritable." But in chapter 9 of the same treatise, William, asking "whether it is a sacrament of true name and sacramental power, if it is contracted apart from the nuptial blessing and prayer which it can have," responds: "But it is certain that it is both a sacred sign and sanctifying or consecrating by essential power or by contrariety (namely, by which it is opposed to concupiscence, according to the doctrine of the Master), as we have said, and perhaps by merit, provided the nuptial blessing is not contemned" (understand: provided it is not omitted out of contempt); "but it has no sacramental power at all, nor is it a sacrament of true name except as we have said"

(namely, he had said a little before in this same chapter that sacramental power is the power of blessing and prayer which is accustomed to be made over those marrying). "Hence also marriage among the faithful and among unbelievers is said equivocally: among unbelievers, namely, only as we have said" (that is, a legitimate conjunction opposed to fornicatory prostitution and sodomitical abomination); "but as regards the faithful, both in that way and, besides, consecrating by the power of blessing, which is proper to true sacraments of full power." These words (although they display sufficiently obscure ideas of the author in this matter), when compared with the preceding things,

seem able to be taken in such a way that the blessing of the priest is a certain sacramental, as it is commonly called, contempt of which deprives the contracting parties of the attainment of grace, and the use of which increases and completes the grace which the spouses obtain by marriage itself.

III. Moreover that the common opinion of the preceding School resists Canus is directly clear from this, that the others think otherwise, as Canus himself concedes, and that the Scholastics call the blessing of the priest, or the words which he utters, a certain sacramental. We have already heard this from Paludanus. St. Thomas, in IV, D. XVI, q. 2, a. 1, ad 1: "The words by which matrimonial consent is expressed are the form of this sacrament, but not the blessing of the priest, which is a certain sacramental." And in D. XXVIII, q. 1, a. 3, he teaches the same more expressly. Moreover St. Bonaventure, ibid., q. 2, says: "Others say" (since no writing of these exists, for neither did Canus find them, they must be said to have been theologians of the lowest note teaching in his age, unless perhaps the holy Doctor and those who thereafter copied him looked to William of Paris, to whom they attributed this opinion) "that in the sacrament of marriage grace is given by reason of the superadded blessing.... But this position does not seem to avail, because that blessing is sacramental" (that is, a certain sacramental), "and if a sacramental effects, how much more the sacrament?" Namely, if some sacramental effects grace, how much more must the sacrament itself be said to effect it, which is marriage or the consent of man and woman. Bonaventure himself, in the immediately preceding question, teaching what that is which in the sacrament of marriage is *sign only* (which indeed is the essential rite itself of the sacrament), places it in the words or nods of the contracting parties expressing consent, as does St. Thomas. Dionysius the Carthusian has the same in the same place, q. 1. And the Master, in the fourth book, disputing concerning Marriage as a sacrament, and defining it first, D. XXVI, by that definition which represents the marriage of the faithful only, then in the following distinction by a definition taken from Roman law, next teaches that its efficient cause is consent expressed by words of the present; therefore the priest does not posit the sacrament, but the contracting parties do. But an opinion new in the School, opposed to the doctrine of the whole preceding School concerning a matter which can be known by revelation alone, which pertains to the dogmas of faith, cannot be true.

IV. The intrinsic demonstration of this truth is what we handed down in the preceding Thesis. For if the sacrament is the marital union itself of Christians, the contract itself, it is necessary that the minister of this sacrament be the minister of the contract, or the one who makes the contract; but this is none other than each contracting party. But the rite posited by the priest will indeed be some blessing or consecration of the marriage, but it cannot be or be called the marriage itself. Moreover from these things it is clear that both truths, both of the preceding Thesis and of this one, are bound together by a mutual bond and derive from the same principles; and therefore those things which we shall now further bring forward for this thesis, sought from the practice and sense of the Church, also avail to confirm the preceding Thesis.

V. And so, that we may more fully demonstrate the truth of each thesis, we gather these things from perpetual doctrine and practice. a) Innocent III, *Tuas dudum, De Sponsa duorum,* has these words: "We wish you to observe this, that after legitimate consent concerning the present has intervened between legitimate persons, which suffices in such things according to the canonical sanctions, and if it alone is lacking, the other things even celebrated together with intercourse are frustrated," etc. The obvious sense of these words is: if consent is lacking, even if the other things are present, nothing

comes to be; if consent is present, even if the other things are lacking, marriage comes to be; therefore even if the act of the priest is lacking; and therefore he is not here the minister of the sacrament. You will say that, according to Innocent, consent suffices so that there be a natural contract, not so that there be a sacrament. I respond that this distinction, unknown to the ancients for the marriages of Christians (the preceding Thesis), here conflicts with the very words of Innocent, who speaks of marriage which is governed by canonical sanctions, which is nothing except a sacrament (cf. preceding Thesis, n. III, lit. c).

b) The Council of Trent, Sess. XXIV, in the Decree on the Reform of Marriage, says: "It is not to be doubted that clandestine marriages made by the free consent of the contracting parties are ratified and true marriages, as long as the Church has not made them invalid." Now according to the solemn ecclesiastical formula of speaking, the appellation of ratified marriage is made of a sacramental marriage, so that only among the faithful is marriage said to be ratified. Therefore the Tridentine Fathers signify that those marriages were sacraments. And indeed marriages of this sort the Church ruled by her laws, held subject to impediments constituted by herself, valid or invalid according as a canonical impediment stood in the way or did not, no otherwise than the other marriages, and she could invalidate them, as the Tridentine Fathers signify. But marriage as regards the bond is not subject to the power of the Church except because it is a sacrament, as we have already admonished. Now in clandestine marriages there is no action of a priest; therefore.

c) Eugene IV, in the Decree for the Armenians, handing down the doctrine of the sacraments of the New Law, says: "The seventh is the sacrament of marriage, which is the sign of the conjunction of Christ and the Church, according to the Apostle," etc. "The efficient cause of marriage regularly is mutual consent expressed by words of the present." Moreover it is inept to think that the marriage of which the efficient cause is assigned is not the sacrament, but a mere contract; because here the discussion is only about the sacraments, and Eugene had immediately before called it a sacrament, nor does he at all intimate mention of another marriage. But if mutual consent is its efficient cause, the priest is not the minister of the same, because then the action of the priest would be its efficient cause; therefore. Nor should you say that here mention of the minister is not made by Eugene; for this is simply false. For when he says that mutual consent (certainly of the contracting parties) expressed by words of the present is the efficient cause, by this very fact he says that the contracting parties are the ministers. Moreover that word *regularly* does not insinuate that there is another extraordinary cause; for this is wholly new in the whole tradition, that there is a twofold cause of marriage, one ordinary and the other extraordinary. Rather, it must be referred to these words: *expressed by words*; for consent can also be expressed by nods; indeed, in that age, with intercourse following espousals, matrimonial consent was presumed to have been signified.

d) From the Declaration of Benedict XIV concerning marriages of heretics among themselves and then mixed marriages in Holland, which declaration was afterward extended by the authority of the Apostolic See to other provinces, it is clear that there can be Christian marriages which are contracted without the presence of the priest. And from the instruction of Pius VI, extending that declaration to the Duchy of Cleves on 19 June 1793, it is clear that there can be Christian marriage when the pastor, unwilling, assists, proving it by no positive act, which is prohibited to him, or confirming it by his express consent and authority, but conducting himself merely passively and only hearing the consent of each. Thus also on 22 April 1792 the Congregation deputed for the affairs of

the Gallican Church responded; for the question was asked: "Supposing that a marriage has been celebrated without the blessing of a priest, who then (in the time of the Gallican rebellion) could not be had, whether it is fitting or not that the aforesaid blessing be supplied. To this question, already proposed formerly, the response then was: the faithful are to be exhorted that, when they can have the presence of a priest, they seek a blessing from him; he, however, will declare to them that a blessing of this sort does not in the least pertain to validity." Now that the marriages of heretics have always been held by the Apostolic See as sacraments, we are made more certain from the fact that the marriages of heretics also among themselves are per se subject to canonical impediments. Benedict XIV teaches this manifestly in the cited declaration, and Gregory XVI in the Brief to the Bishops of Bavaria, dated 28 May 1832, and Pius VII in the Brief to the Archbishop of Mainz, dated 8 Oct. 1803. But Benedict XIV calls mixed marriages a sacrilegious bond. Moreover marriage is subject to the power of the Church for constituting impediments because it is a sacrament, and it cannot be held to be a sacrilege unless the sanctity of a sacrament is violated. But as regards marriages of Catholics celebrated without a priest, if the Apostolic See had not held them as sacraments, she certainly would have ordered them afterward to be celebrated before a priest, lest the faithful be deprived of the grace of the sacrament, or would have made mention of this harm in order to lead the faithful to this celebration.

e) Likewise from the history of the Council of Trent it is clear that the Fathers required the presence of the pastor not as the minister of the sacrament, but as a qualified witness. In the first formulas of the decree no mention had been made of the pastor, but only of three witnesses. Then, when there was agreement concerning the necessity of some stable witness, it was debated whether this ought to be a scribe or public notary, or the pastor; and finally the pastor was constituted. And indeed in the words of the invalidating decree mention is made only of the presence of the pastor. But by presence alone, apart from any action, no one is the minister of a sacrament. Therefore, since only the presence of the pastor, not some action of his, is essentially required, it is clear that the pastor is not required by the Council as the minister of the sacrament, but as witness.

f) Finally the Council, in the same place, speaking of the celebration of marriage, says: "The pastor, after questioning the man and woman and understanding their mutual consent, either says: I join you in marriage, in the name of the Father and of the Son and of the Holy Spirit, or uses other words according to the received rite of each province." Tournely says (q. III, c. I): "If the Synod had purposely wished to intimate that the priest is the minister of the sacrament of marriage, and that the words by which he joins the contracting parties are the form or quasi-form, it could not have used more significant words." But rather the contrary must be said. Indeed it would be foreign to the usage of the Church that a sacramental form, in which is the principal force of the sacrament, and which, when the words are changed, can easily be changed also as to sense, be permitted to the choice of each province.

You will say: the Tridentine Fathers knew the rites of the individual provinces and held them as legitimate. But 1. that is asserted altogether gratuitously; 2. the words of the Council, which have perpetual force, avail also for the future and for rites that would exist (cf. the Ritual of Paul V). Did the Tridentine Fathers know these also? Besides, although no one is ignorant that accidental changes can happen to the forms of the sacraments, nevertheless, when the Church wishes to teach the faithful the form of some sacrament, she proposes it absolutely, adding, if necessary, that the same

form remains if the words are changed a little, not the sense. But here no form is proposed absolutely; even that which is expressed is proposed disjunctively with others. Therefore the Fathers most openly intimated that the form of the sacrament of marriage is not the words of the priest.

VI. But that it may be clear that this doctrine is ancient, Tertullian has these things concerning clandestine marriages in the book *On Modesty*: "Therefore among us hidden conjunctions also, that is, those not previously professed before the Church, run the risk of being judged next to adultery and fornication." Namely, such conjunctions were not judged to be such of themselves, but they brought in suspicion of this thing. Hence even among the Montanists the action of the priest was not held as essential. But since Tertullian says these things in praise of his own sect, which he commends for severity, much more must it be held that clandestine marriages were held valid among Catholics. Likewise in the collection of canons of their synod, which Ebedjesu, Metropolitan of Soba and Armenia, wrote at the beginning of the fourteenth century (in Angelo Mai, *SS. VV. Nova Collectio*, T. X, p. 44), tract. II, c. 2, it is prescribed that nuptials be made with the blessing of priests, and they are said to be consummated thereby, and thus the nuptials of Christians are distinguished from the nuptials of Jews and Gentiles. Nevertheless in c. 3 it is said that if priests are lacking, four or five witnesses are to be called, the *Our Father* is to be recited, the ring is to be given, and thus the espousal is to be perfected until they come to the priests: "But if the priest shall not come before the time of the bridal chamber, in like manner also let them perfect the chamber" (that is, let them consummate the marriage). From these things it is clear that the action of a priest, even among heretics anciently separated from the Church, was not held as essential for effecting the marriage of Christians.

As regards the ancient rituals, Martene reports these things generally concerning these ancient rites (*On the Ancient Rites of the Church*, part II, c. 9, a. 1): "Constitution for celebrating nuptials. When the day arrived, the bridegroom and bride to be blessed were presented by parents or attendants to the priest at the doors of the Church. Then, after they had given each other right hands, he required consent from each, in which the ancients placed the whole essence of the sacrament of marriage.

For unheard among them were those words of the pastor: *I join you in the name*, etc., in which some of the more recent Scholastics constitute the form of this sacrament. Yet these are lacking in two ancient manuscript rituals of the monastery of Bec, in the Rheims pontifical of 300 years (the work was published by Martene in the year 1709), in the ancient ritual of Bourges, and in almost all the others which will afterward be exhibited by us. To these we can add the constitutions of Richard, Bishop of Salisbury (year 1217), in which I read these things: Likewise we command that priests teach the persons contracting this form of words in French or in English: I, N., receive you, N., as mine. And similarly let the woman say: I receive you as mine. For in these words the great force consists and marriage is contracted." From these things it is clear that blessings of the priest of this sort were anciently held as a certain sacramental, as the Scholastics afterward called them; therefore.

VII. This certainly was the opinion of St. Thomas. For in IV, D. XXVIII, q. I, a. 3, speaking of marriage as a sacrament, he says: "Consent expressed by words of the present between persons legitimate for contracting makes marriage, because these two are of the essence of the sacrament; all other things, however, are of the solemnity of the sacrament, because they are applied to this end, that marriage may be made more fittingly." And ad 2: "In marriage our acts are a sufficient cause for inducing the proximate effect, which is obligation, because whoever is master of himself can bind himself to another. And therefore the blessing of the priest is not required in marriage as though of the essence

of the sacrament." You see here that marriage is considered by St. Thomas not simply as it is a contract, but as it is at the same time a sacrament.

Wherefore D. XXVI, q. 11, a. 3, ad 1 says: "Just as the water of baptism has this, that it touches the body and washes the heart, from the touch of Christ's flesh, so marriage has this from the fact that Christ by his passion (in which he espoused the Church to himself) represented it, and not principally from some sanctification of the priest."

VIII. They object, however. 1. Priests according to the Apostle, 1 Cor. IV. 1, are dispensers of the mysteries of God, that is, of the sacraments; therefore. I respond, a) that by the name of mysteries the Apostle there designates not precisely the sacraments but the mysteries of faith, or evangelical doctrine. For Paul looks to this, that he may prescribe for the Corinthians the mode of rendering honor to the heralds of the Gospel, since some were extolling them too much, others depressing them too much. Therefore he says that they are to be regarded as ministers of Christ and dispensers of the mysteries of God. b) Priests, or the ruling Church, dispense marriage, insofar as she rules it and by her laws determines the manner in which it can rightly be contracted.

2. Those who confect the sacraments intend to do what the Church does; but the Church acts through her ministers, and the ministers of the Church are priests; therefore also the minister of the sacrament of marriage is the priest.

I respond that these words, *what the Church does*, are not to be taken in such a way that the Church is said to act insofar as the universal Church or her supreme head administers the sacraments through her ministers as through an instrumental cause; for the principal cause in the sacraments is only God. Rather they are to be taken thus: that the Church is said to act insofar as something is done in her and through her, that is, through those who in her are ministers of sacred things, and according to her doctrine and institutions. Therefore this would be the response to the argument in form. He intends to do what the Church does, that is, what is done in the Church according to the faith of the Church: I concede. What the Church does, I distinguish: what the universal Church or her visible head does as a principal cause: I deny the supposition; what the Church teaches is to be done and those do who in her are ministers either because of special consecration or by divine deputation because of baptism: I concede.

3. The words which the Council of Trent commands to be uttered by the pastor - *I join you in marriage* - ought to pour forth a true sense. But no true sense would be in them if the priest were not the one who makes the sacrament; therefore.

We respond that those words pertain to the solemnity of the sacrament, not to the essence. "The blessing of the priest is not required in marriage as though of the essence of the sacrament," says St. Thomas in the cited place. And indeed, since it is clear that the Church has held and holds as true marriages and sacraments also those which are made without the presence of any priest, it is altogether necessary that we say that those words of the priest do not pertain to the essence of the sacrament. Nor, however, is the sense false. For they do not signify only: *I declare you joined*, but *I solemnly join you*; or, *I hold your conjunction ratified in the face of the Church*. Therefore those words have a true sacramental sense: I deny. They have a true ritual sense of an authentic declaration in the face of the Church: I concede.

4. Omitting certain Roman Pontiffs' decrees, either spurious or doubtful, such as that of Evaristus (cause XXX, q. 5, c. 1), which, if it proved anything, would prove that the presence of the priest is required for the honorableness of marriage and is commanded by the Church; and omitting those decrees which prove nothing and are referred to by Gratian in the *Decretum*, they argue from the manner of speaking of the Fathers, who make mention of priestly blessing, derive the sanctity of marriage from it, and proclaim its necessity. I respond: from those testimonies of the Fathers we indeed have that marriage is a sacred thing, conjoined with grace; that when it is entered into it must be moderated and governed by the authority of the Church; that in order that it be contracted honorably and the effect of sacramental grace be actually obtained when it is contracted, it ought to be celebrated before the Church under the auspices of the priest; that those marriages which are entered into otherwise are dishonorable and labor even under the suspicion of concubinage. But there is nothing besides by which we are taught that the priest himself administers the sacrament, especially since the Fathers so speak as to signify that the blessing accedes to marriage already constituted, as Tertullian does; and since they speak even of that blessing which was denied to second nuptials, of which sort is that of which Ambrose speaks; and if there are any doubtful testimonies, they ought to be explained from the clearer expression of the sense of the Church in the following ages. Although in the Roman Sacerdotal published in the year 1494 these words are found after the consent of each has been understood: "Let the priest utter the words which are the form of the sacrament," nevertheless these words, *which are the form of the sacrament*, were deleted in its later editions, and in the Roman Ritual published by the authority of Paul V these words were substituted: "Let the priest command them to join right hands with one another, saying: I join you in marriage in the name of the Father," etc., "or let him use other words according to the received custom of each province," according to the prescription of the Council of Trent.

5. The form of a sacrament ought to signify the effect of the sacrament. But the words of the contracting parties, *I receive you as mine* or *as my own*, signify no grace. I respond that these words, which of themselves signify the natural union, were elevated by the institution of Christ to signify the holy union which comes to be through grace, when they are uttered by Christians.

6. For the words in which the form of the sacrament is contained, other signs, nods, writings, cannot be substituted; but the contract of marriage can be entered into even in these ways and indeed by procurator; therefore the form of the sacrament is not in it, and therefore it is in the words of the priest. I respond: if that most universal principle is taken so that it avails for any sacrament whatsoever and therefore also for marriage, the principle is begged, for this is what would have to be demonstrated. Moreover, since Christ elevated marriage itself to the dignity of a sacrament, with no other superadded rite, it followed that the matter and form of the contract would also become the matter and form of the sacrament, and that what is enough for marriage to exist would also be enough for it to be a sacrament. But it is proper to contracts that, besides words, they can be entered into also through other signs and through a procurator; therefore.

7. The Church permits marriages to be made between a Catholic man and a heretical woman, and conversely; but if the contracting parties were the ministers of the sacrament, they would perpetrate sacrilege, and indeed a double sacrilege; wherefore the Church ought altogether to prohibit these marriages. I respond: it is false that the Church simply permits these unions; indeed, generally she has always condemned and forbidden them, as so many Briefs and Rescripts of the Apostolic See in causes of this sort testify. Hence Benedict XIV, in a Brief given to the Primate and Archbishops of Poland in the year 1748, on 29 June, bears witness that this is the manner of acting of the Apostolic See received by constant usage: that "as often as it happens that the Apostolic See is approached either for obtaining the simple faculty of contracting marriage between persons, of whom one professes heresy, or besides for obtaining at the same time a dispensation concerning some degree or other canonical impediment which intervenes between the contracting parties, neither permission nor dispensation is granted unless this express law or condition is added, namely, heresy first having been abjured." Pius VII says in the Brief to the Archbishop of Mainz that the same unions, on account of the difficulties of places and times, are tolerated by the Church. Therefore the Church only declares that those marriages, unless some other canonical impediment stands in the way, are valid; but it is one thing not to invalidate an act, another to permit it. Cf. also the Brief of Pius VIII to the Bishops of the Rhine, dated 25 March 1830, in which it is decreed that mixed marriages contracted in those places, when the Catholic pastor is not present or when the form prescribed by Trent has not been observed, from then on, that is, from 25 March 1830, unless some other canonical diriment impediment stands in the way, are to be held as ratified and true marriages; nevertheless he says that the Church abhors those marriages and that the Apostolic See has always taken care that the canonical laws prohibiting them be religiously observed.

It is indeed true that at times the Church has permitted those marriages, as the same Pontiff Benedict testifies in the same place: "but if some examples are found of Roman Pontiffs who granted either permission for contracting marriage or even dispensation over some impediment, without the condition of first abjuring heresy being added, we say first of all that concessions of this kind have been very rare, and indeed that most of them were made for marriages to be contracted among supreme Princes, and not unless a most grave cause urged, and one pertaining to the public good; moreover that appropriate cautions were always added," etc. Moreover, when this permission has been made, the Catholic contracting party does not sin, since the act is lawful; nor does the heretic sin because he contracts with a Catholic woman, for this is rather a good, nor because he cooperates in a mixed marriage, because this, in the hypothesis, is lawful. But he can sin for other causes, just as the Catholic also can. Cf. the *Opus Theologicum Morale* of Ballerini, tr. V, sect. 1, n. 94.

8. Before Trent, intercourse following after espousals concerning the future, by a presumption of law and of law, against which no proof is to be admitted, perfected marriage, etc., cc. *Veniens*, *Is qui*, *Adolescens*, *De Sponsalibus et Matrimoniis*; and before the abrogating decree of Leo XIII, 15 Feb. 1892, the same was presumed in places where the decree of Trent had not been promulgated. Now marriage of this kind either was a sacrament, or it was not. If it was, therefore its form was intercourse, which is absurd; if it was not, therefore there can be Christian marriage without being a sacrament, contrary to what we affirmed in the preceding

Thesis. I respond that that marriage was ratified and a sacrament; but its form and matter was consent expressed extrinsically through intercourse, which expressed consent was presumed by law and of law. Hence this marriage was called presumed, l. c.; cf. q. XLVI, a. 2, in the Supplement.

IX. Therefore it has been proved that the priest is not the minister of this sacrament, but the contracting parties themselves, and therefore that the form is not the words of the priest, but is posited by the contracting parties themselves. But the question is in what the form and matter of this sacrament must be placed. A sacrament either consists only in some passing action, such as absolution, or also in a permanent thing, as the Eucharist. But even that sacrament which consists in a permanent thing supposes a passing action by which it comes to be, which action is itself also a sacrament; hence a sacrament of this kind is a sacrament *in fieri* and *in facto esse*. Now marriage is a sacrament *in fieri* and *in facto esse*. Therefore, although marriage is a permanent sacrament, it is necessary that, when it comes to be, there be some action by which it comes to be and which is the sacrament. But concerning this the question is asked, what its form and matter are. Since the sacrament of marriage is made by the contracting parties, and the contracting parties posit no action other than the contract, it is necessary that the action in which the passing sacrament consists be the contract itself. Indeed the efficient cause of the sacrament of marriage is mutual consent expressed by words of the present, as Eugene IV teaches. This being posited, there are especially two opinions.

The first says that, since in marriage there is no other thing than the contract, its matter and form will be that which is in the other contracts; but the matter of contracts is that which is given and accepted; in marriage, however, bodies are handed over and accepted; therefore these are the matter of the sacrament. But the form is the words by which the handing over and acceptance come to be and are signified.

Lugo responds, *De Sacramentis in genere*, disp. 2, sect. 1, n. 15, that that which in contracts is given and accepted is the matter about which the contract is concerned, not the matter or some intrinsic element of the action which is called contract; but now such matter of the contract of marriage is sought, as it comes to be.

Therefore there is another opinion, that in the expression itself of consent, or in the contract itself, can be found the matter *ex qua* and the form. Some explain this thus, because the words or equivalent signs signify and make the handing over and acceptance. Now the handing over of power, of itself, by its nature, is presupposed to acceptance, and therefore of itself is determinable; but acceptance, of itself, by its nature, accedes to the handing over, and therefore itself of itself completes the contract. Therefore the words or signs, insofar as they express mutual handing over, have themselves as matter; but insofar as they express acceptance, they have themselves as form. Thus Sanchez, *De Matrimonio*, l. 2, disp. 5, n. 6, with Bellarmine and Suarez and others whom he cites. This does not please others, because acceptance does not seem more determined than handing over; nor, in other contracts which are perfected by words, are these customarily distinguished as matter and form. Lugo, l. c., n. 29, observes that in every contract there is a handing over of some right and an obligation assumed, which is mutual in onerous contracts; that the handing over of the thing, by which handing over dominion of the thing is obtained, follows the contract, but that sometimes by the contract alone, before the handing over of the thing, dominion is obtained (from canon and Roman law), and that the fact that it is otherwise or so in more cases depends on the determination

of positive law; and certainly in marriage, before the real handing over of bodies, dominion is obtained by one over the other. Hence it follows that the very words of this contract, by which the right is given, are equivalent to the handing over of the thing itself, for they work the same effect. Therefore we have that the words of this contract are equivalent to two acts: namely to handing over and to obligation. Insofar as they are handing over, you have the proximate matter of the contract; insofar as they signify and beget a perpetual obligation of one to the other, you have the form of the contract. The difficulty in this explanation is what Lugo properly understands by the name of obligation; for in the other contracts obligation is something prior to handing over, for the contracting parties bind themselves to giving or doing something. Perhaps it is the obligation to perpetual union proceeding from mutual handing over. Let the reader choose what is more pleasing to him. But that in the very words (or signs) of the contract the matter and form are contained, St. Thomas had already taught. Moreover this is the opinion which Benedict XIV asserted in the Letter to the Bishop of Goa. And St. Thomas seems to have thought this, who in IV, D. XXVI, q. 2, a. 1, ad 1 says: "The words by which matrimonial consent is expressed are the form of this sacrament"; and ad 2 he says: "just as penance has no other matter except the very acts subjected to sense, which are in place of the material element, so it is concerning marriage." But the acts of the contracting parties are nothing except consent and the signs of the same, or expressed consent; therefore these are both form and matter under a diverse respect, insofar as they signify one thing and another.

X. In every permanent sacrament there is found that which is sacrament only, that which is thing only, and that which is thing and sacrament at the same time. Sacrament only is that which signifies and is not signified by another; thing only is that which is signified and does not signify; thing and sacrament is that which is signified and signifies. Thus in baptism the exterior rite is sacrament only; grace is thing only; the character is both thing and sacrament (St. Thomas, III, p., q. LXVI, a. 1). Likewise "in marriage," says the same Doctor, Suppl., q. XLII, a. 1, ad 5, "there are these three, because the sacrament is the obligation which arises of the man toward the woman from such acts" (the abiding bond), "but the ultimate thing contained" (namely grace, which it produces) "is the effect of this sacrament; but the thing not contained is the thing which the Master determines" (that is, the conjunction of Christ with the Church, which the sacrament does not make, but signifies). Indeed the extrinsic rite, or expression of consent, signifies and makes the holy union of the spouses and signifies the union of Christ and the Church; therefore, because this rite signifies something and is not signified by another, it is sacrament or sign only. But because through this rite grace is signified and produced, that grace is the thing of this sacrament, and because it signifies nothing else, it is thing only. But through that rite there comes to be the union or permanent bond of the spouses, which therefore is signified by that rite; moreover it itself signifies both the union of Christ with the Church and the grace or holiness which is owed to it, and by which the union of Christ and the Church is represented in a supernatural mode. For to this bond, by the institution of Christ, grace is owed, which, when that bond comes to be, is conferred and remains with it; this grace is sacramental, and although it can indeed be lost through sin, nevertheless when penance follows it is demanded by the same abiding bond. Therefore the bond is both signified and signifies; hence it is thing and sacrament at the same time.

Therefore, when marriage is called a sacrament, both the contract and the bond are understood; these are not two disparate things, but the first is the cause of the other, as Eugene says, or the first is marriage *in fieri*, for through the contract itself the spouses are united, and the other is marriage *in*

facto esse. But the special reason must be observed by which the appellation of sacrament is made of permanent marriage. For the abiding bond is not some character, as in three sacraments, nor is it a sacrament as the body of Christ under the species is; but it is a sacrament because it signifies the union of Christ with the Church and demands grace, and it is an abiding sacrament because the bond remains.

Appendix

According to those things which have been said, it is permitted to expedite the following questions.

I. You will ask, first: whether, apart from the consent of both, marriage can, by the absolute power of God, subsist. The reason for doubting is that the essence of marriage consists in the mutual obligation, or mutual power of one over the other, whose cause is consent; but certainly God can supply the force of the secondary cause and transfer the power of one into the other: therefore. But although God can confer upon one dominion over another without the consent of the latter, He does not seem to be able to do this with regard to marriage. For let this mutual power be posited apart from the consent of both; I ask: when the man and the woman come together, does each spouse approach the other with marital affection, approving and willing this mutual obligation and power, or not? If they are united without marital affection, therefore they are united with fornicatory affection, not approaching one another as his own or her own; moreover that affection is intrinsically evil (as we have already proved): but God cannot give power for an intrinsically evil act. Nor should you say that it is not evil, since God has given the power over the body; for from this power divinely made there follows only that the man can approach the woman as his own, and the woman likewise the man as her own, which is to be united with marital affection, willing or approving the mutual obligation. Therefore it is necessary that, when they come together, antecedently at least by an antecedence of nature, each should will that mutual obligation and power; but this is mutual consent into the marriage itself. Therefore. Wherefore consent must be said to be of the essence of marriage.

II. You will ask, secondly: whether the marriage of unbelievers, when both are baptized, becomes a sacrament. I answer: the marriage of baptized persons is a sacrament; but, once baptism has been received, the preceding marriage, persevering, is the marriage of baptized persons: therefore. Nor is the necessary consent lacking; for by the very fact that they will to be baptized they consent at least implicitly to that indissolubility of the bond which is proper to the marriage of baptized persons; for a ratified marriage is indissoluble by a special reason on account of its signification. But those consenting to that indissolubility consent also to the bond; wherefore the consent of each, made explicit by that external sign which is the reception of baptism, is the new matter and the new form of the sacrament, while it comes to be. Cf. Sanchez, L. II. D. 9.

III. Question III. Whether the marriage of a faithful person with an unbeliever, when it is valid, is a sacrament effecting grace at least in the faithful person. The question is not concerning signification alone, but concerning the efficiency of grace. Sanchez answers in the same place, D. 8: "It must be said that on neither side is it a sacrament, because marriage in both spouses is one sacrament numerically, just as it is one marriage numerically: therefore if in one it is not a sacrament, neither will it be in the other." And indeed, according to the opinion of Gregory XIII, in a letter given January 25, 1585, these marriages do not seem ratified; for he says, speaking of marriages formerly contracted by both parties while unbelievers, but afterwards when one had been converted: "we, therefore, considering that conjugal unions of this sort contracted among unbelievers are indeed true, but nevertheless are not to be deemed so ratified that, when necessity counsels it, they cannot be dissolved, etc."; but marriage as a sacrament is ratified.

But the contrary opinion also seems probable. And first, indeed, no repugnance appears. For there is one contract, which is the cause of grace; but it effects grace in him who is capable of it. Now it is not repugnant that one should receive grace and the other not; nor is it repugnant that an unbeliever be an extraordinary minister of some sacrament, as is clear in baptism: therefore it is not repugnant that both administer the sacrament, and yet that it be efficacious of grace only with respect to the faithful person. Indeed, secondly, if the faithful person were deprived of sacramental grace in this case, it is not sufficiently clear why the Church in the first centuries, and here and there at intervals also in the latest centuries (cf. Perrone, *de Matrim.* L. II. Sect. I. c. 7. a. 2. p. 334), permitted conjugal unions of this sort with so great a loss to the faithful. Thirdly, and most especially, if the marriage of a faithful person with an unbeliever is a pure natural contract, it will be subject not to the laws of the Church, but to civil laws; and then indeed it will be able to be prohibited by the Church for the faithful person, on account of the right which she herself has over the person of the faithful; but it is not sufficiently understood why the Church alone could invalidate it. For, as Pius VI bears witness, the reason why the Church alone can invalidate is this, namely, because the contract is a sacrament; if therefore that contract is purely natural, it will not be able to be invalidated by the Church alone. And indeed (supposing those things which we shall say concerning the power of princes in the last chapter), why will the prince not be able to invalidate a purely natural contract, which is altogether equal to that which would be made among unbelievers? But now it is not safe to deny that the Church alone can invalidate this contract; for it is certain that all the diriment impediments which now exist, among which this one also is found, have their force from the Church; and when in the last centuries, in certain missions, she granted the faculty for these marriages, she introduced no mention of the secular power, according to whose norm action would have to be taken, although she accurately expressed all the necessary conditions. Cf. Perrone, l. c. But Gregory XIII does not deny that this marriage is ratified, namely after one of the spouses has been converted; indeed he implicitly affirms it, but denies that it is so ratified, etc.

Chapter III: On the Properties of Marriage

We now approach the more inward questions which are concerned with the properties of marriage. These are unity and indissolubility. We shall pursue one by one the matters which pertain to each.

§ I: On Unity

Thesis XII

Simultaneous polyandry is unlawful and invalid by the law of nature. Successive polyandry and polygamy is lawful and of itself honorable.

I. Polyandry is the conjunction of one woman with several men. It is simultaneous or successive. We teach that simultaneous polyandry is unlawful and invalid by natural law itself (concerning successive polyandry we shall speak on the following page). For that conjunction which positively excludes all the ends of marriage cannot be marriage; but such is simultaneous polyandry. Indeed, the first end is the procreation and education of offspring, and thus the good of marriage is offspring; the other end is the restraining of the concupiscence of each spouse, and thus the other good of marriage is the remedy of concupiscence; likewise the end is domestic society, which can be understood under the good of marriage which is fidelity; and besides, from divine institution there is the signification of the union of Christ with the Church; and thus, with the remedy of concupiscence included, the fourth good of marriage is sacrament (cf. Th. II). But the first end is excluded. And first indeed, although not altogether and always, insofar as a woman mingled with several men and using them in turn is, by the physical law of nature, generally infertile: "Several women can be made fruitful by one man; but one woman cannot by several: this is the force of the principles," says Augustine, *de Bono coniugali*, n. 20. Therefore the power over her body which a woman would hand over to several men, insofar as she hands it over to several, would of itself tend to this, that the woman should become infertile, and that the men should have a right to an act of itself impeditory of generation; but this directly conflicts with that power in whose mutual handing over and acceptance marriage is contained, for it is a power for an act whose primary end is the procreation of offspring. Then, moreover, from that power over her body handed over by the woman to several men, it comes about that the men have a right to that by which the father of the offspring is rendered uncertain, and by which therefore the offspring cannot be educated by the father. They have a right, I say, whatever may be the case about use; for marriage consists in a right. But that is of itself altogether repugnant to the end of marriage, which is the education of offspring. And so through this union the primary end of the use of marriage is excluded, and indeed positively, since the conjunction itself of itself is repugnant to that end.

Nor can a woman subject to several men satisfy all when they ask, so as to avoid their incontinence; nor can she be subject to several men enjoying equal right and independent of one another, and render the fidelity due: therefore this other good, which is the remedy of concupiscence, is at least very greatly impeded. But there can be no peace in a family in which there are several heads; for the woman, who is subject, cannot recall the men to unity. "For by a hidden law of nature those things which rule love singularity. But things subject are subject not only singly to single things, but, if natural or social reason admits it, even several to one, not without fittingness," Augustine, l. c. Wherefore this other end also is wholly taken away. But the union of Christ with the Church, which is of one with one, that is, of one head fitting one body to itself, so that it is one because the head is one, can in no way be represented by the union of several with one, that is, of several heads with one body. But that is repugnant to positive divine law. Therefore there is no marriage of this sort.

Therefore this conjunction is so contrary to the law of nature, and also to divine law, that not only is the marriage unlawful, but it is also invalid by that same law.

II. But what we say concerning invalidation must be explained a little; for the natural law seems indeed to have the force of prohibiting; yet it does not immediately appear how it is able also to invalidate. Certainly the law of nature prohibits homicide, and nevertheless a prohibited action, if it is done, is not invalid; moreover, as Suarez objects to himself (*de Legibus* l. 2, c. 12, n. 2), the efficacy of the law of nature is the same in all things, and it does not have special words by which it prohibits, so that on account of the diversity of those words we should say that sometimes it invalidates and not always, as can be said in positive law. Nevertheless, that there are certain things which the law of nature not only prohibits but also invalidates is easily agreed among all doctors, and this has the sense of the Church; for in this way, for example, a marriage between mother and son is judged null by the law of nature, and a contract entered upon through grave fraud is null, etc. It remains, therefore, that it be seen whether there are rules, and what they are, according to which it must be judged that something is not only prohibited by the natural law, but also invalidated.

And first it must be presupposed that the invalidation of an act has place not in the physical order but in the moral order. For the invalidation of an act comes back to this, that although the act (whether prohibited or otherwise) is done, nevertheless nothing is done, that is, it does not obtain its effect, just as if it had not been done; this cannot happen in the physical order, as is clear in the cited example of homicide, but it can have place in the moral order, when rights and obligations are at issue. For the effect which would be either of an acquired right or of an obligation undertaken, as in contracts, when an invalidating law intervenes, is null, although the interior and exterior action is done integrally, with the full will of acquiring the right or of binding oneself.

Now Suarez, l. c., nn. 4 seq., proposes chiefly two rules for discerning when acts are invalid by the law of nature. The former is: "when the act is prohibited by the law of nature because of a defect of power or because of the incapacity of the matter." And he gives an example in the donation of the same thing after a prior valid donation and the thing handed over; for power is lacking; and also in a contract entered upon through fraud touching the substance of the thing; for consent extorted by fraud is incapable of begetting an obligation. The other rule is: "when the act is prohibited on account of the indecency or turpitude found in its matter, and the same indecency or turpitude endures in the effect itself, or after the act has been posited." It is necessary that the same indecency persevere, and not cease or be diminished by the force of another law. He gives an example in marriage between blood-relatives in the first degree, where that natural indecency which makes such a marriage prohibited endures perpetually, if such a marriage endures.

Now opposition to the principal end of marriage is the greatest indecency and turpitude; but polyandry has such an opposition, and this same opposition endures if the marriage endures: therefore even the perseverance of this marriage is prohibited by the law of nature, which is the same as for the act to be invalidated: therefore.

You will say: by the law of nature marriage after a vow, even a simple vow, of chastity is prohibited, and its indecency remains, and yet it is not invalidated. Suarez answers in the same place, n. 6, that that vow has not taken away, but has bound, the power which a man has over his body, and that marriage contracted against it, insofar as it is an actual handing over, has a greater efficacy than a promise has, and can also have an honorable use, at least by rendering the debt; and therefore it can

rightly be valid. Perhaps it is permitted to answer more simply that a vow of chastity is not properly repugnant to marriage, but to its use, and therefore there is no reason why by the law of nature marriage after a vow should be invalidated.

III. Polygamy is the conjunction of a man with several wives: one kind is simultaneous, another successive. Concerning this latter we speak first; and because the same reason holds in both, we also speak concerning successive polyandry. The question is whether to marry a second time and thereafter is lawful by divine law, so that successive unions are true nuptials by divine law and honorable of themselves. But it is necessary that they be true marriage just as the former one, if by divine law it is lawful to marry again, that is, to repeat nuptials, namely that which was previously done, which was true marriage. And so that successive polygamy and polyandry are lawful is clear from the words of Paul, 1 Cor. VII. 8: *But I say to the unmarried and to widows: it is good for them if they so remain, even as I. But if they do not contain themselves, let them marry; for it is better to marry than to burn.* And v. 39: *A woman is bound by law so long as her husband lives; but if her husband has fallen asleep, she is freed; let her marry whom she wills, only in the Lord.* It is clear, first, that the Apostle counsels widows to marry, and therefore to enter a new marriage, if they cannot contain themselves; because, namely, marriage is also a remedy of concupiscence. It is clear, secondly, in the other testimony, that the Apostle simply gives the woman whose husband has died the power of passing to second nuptials, and requires only this, that she marry in the Lord (cf. Augustine, *de Adult. Coniug.* c. 25). Moreover, what the Apostle counsels for an honorable end is certainly lawful by divine law; and that is likewise lawful which the Apostle grants as placed in our power, and which can be done in the Lord; but what the Apostle counsels is marriage, which cannot be among Christians unless divine law consents. Now, thirdly, the words of the Apostle are universal: *I say to widows, the woman whose husband has fallen asleep*, which are true both of widows for the first time and for the second time and thereafter. Therefore the following marital unions are both true nuptials and all of themselves lawful. "For who am I," says Augustine, *de Bono Viduitatis*, n. 15, "that I should think something must be defined which I do not see that even the Apostle defined? For he says: *A woman is bound by law as long as her husband lives.* He did not say: the first, or the second, or the third, or the fourth; but, *as long as her husband lives; but if her husband has died, she is freed; let her marry whom she wills* ... what can be added to or taken away from this sentence, so far as this matter is concerned, I do not know." But what the Apostle says concerning women belongs also to men by an equal reason; therefore successive polygamy and polyandry, both the first time and in other following instances, is certainly lawful.

Note that the first testimony of the Apostle is wrongly brought forward by Tournely (q. V. a. 1) to prove that the Church never recommended second and further nuptials. For in fact the Apostle does recommend them there, not indeed of themselves, but by reason of avoiding fornication; for this is the sense of those words: *if they do not contain themselves, let them marry, for it is better to marry than to burn.*

This is the doctrine of the Church. In the Profession of Faith prescribed by Innocent III to the Waldensians, you have these words: "We also believe and confess that a man with his wife can be saved, nor do we condemn second and further marriages." Eugene IV solemnly declared this in the decree for the Jacobites (Labbaeus, Tom. 18, col. 12, 19): "Since some are said to reject fourth nuptials as condemned, lest that be thought to be sin where there is none, since according to the Apostle, when the husband has died, the woman is loosed from his law and has the faculty of

marrying whom she wills in the Lord, and he does not distinguish whether the first or second or third has died, we declare that not only second, but also third and fourth and further nuptials, if some canonical impediment does not stand in the way, can be contracted lawfully. Yet we say that those persons are more commendable if, abstaining further from conjugal union, they remain in chastity; because just as we judge virginity to be preferred to widowhood, so chaste widowhood is to be preferred to nuptials in praise and merit."

IV. Thus antiquity taught. And indeed, as to second nuptials simply, Epiphanius, *Haer.* 59, and Augustine, *de Haeresibus*, refer it among the heresies of Montanus and Novatian that they condemned second nuptials; but the Synod of Nicaea openly approved them. Indeed, the ecclesiastical law itself promulgated by the Apostle, which rejects digamists from sacred orders, supposes that it is lawful for Christians to enter upon second nuptials, just as Epiphanius rightly observed, n. 4, that the Novatians erred because "they judge that those things which, on account of the singular dignity of that function, have been attributed especially to the priesthood, pertain commonly to all." Therefore the doctrine of the Church in this matter is evident. Nor should the sayings of certain ancients move us, who, in order to commend the honorable character of Christians before the heathen, proclaim that which was proper to them, namely, that they were content with single nuptials, which could frequently be seen among Christians. "Everyone either remains as he was born, or in single nuptials," says Athenagoras, *Legat.*, n. 33. And Theophilus of Antioch, L. 3: "Among Christians," he says, "monogamy is observed"; and Minucius in the *Octavius*: "we experience the desire of procreating either once or not at all." Cf. Cotelerius's note to c. 4, Mandate 1, book 2 of Hermas.

V. But as regards nuptials repeated more often, one may first bring forward the general sentence of Hermas, l. c., n. 4, teaching that "if the husband or wife of someone has departed (from this life, coll. n. 1), and one of those persons has married, he who marries does not sin; but if he has remained by himself, he will acquire great honor for himself before the Lord." Then Jerome, that greatest preacher of virginity, says, Epist. 30 to Pammachius: "I now proclaim with free voice that bigamy is not condemned in the Church, indeed not even trigamy, and that it is lawful to marry a fifth and sixth and beyond, in the same way as to marry a second husband. But just as these nuptials are not condemned, so neither are they proclaimed. They are consolations of misery, not praises of continence. All things are lawful, but not all things are expedient. I do not condemn bigamists, indeed not even trigamists, and, if it can be said, octogamists." So Augustine, *de Bono Viduitatis*, n. 5: "Concerning third and fourth and still more numerous nuptials, men are accustomed to raise a question. Whence, that I may answer briefly, I do not dare to condemn any nuptials, nor to take away from them the modesty of their number." And Epiphanius, *Haer.* LIX, n. 6: "For as the first wife was appointed by God, so the later one was granted to the weakness of men; but if he desires another besides, his weakness in this respect is tolerated." Fulgentius, *de Fide ad Petrum*, n. 43: "If it has happened to anyone first to be deprived of marriage, if he wishes to enter upon second or even third nuptials, he will have no sin from them, if he has kept them chastely." Cf. also the second Epistle of Clement to James, n. 7, and Hom. 3, n. 68.

VI. But in order that a certain disagreement which seems to have existed among the Fathers may be understood, a distinction must be made between the nuptials themselves and the affection which the one who seeks second and further nuptials bears, or is presumed to bear. Namely, he who enters second nuptials, and especially he who enters further nuptials, generally seems to pursue too much

the pleasure of the flesh and to labor under an impotent lust. I say generally; for what if, after first nuptials have been contracted, the spouse should die shortly thereafter? What if no offspring has been had or none survives? Moreover that condition of the man indeed is not praiseworthy; yet nevertheless, by that very fact, it is honorable to enter nuptials, because they are a remedy of concupiscence. Therefore several Greek Fathers, considering further nuptials under that respect, that is, directing their mind to the affection of the contracting parties poured out toward lust and judging this not sufficiently congruent with Christian sanctity, repeatedly rush vehemently upon those nuptials, especially after second nuptials, so that they seem to reprove the nuptials themselves. Hence it is that Nazianzen, who in Orat. 39, *in ss. Lumina*, n. 18, approves second nuptials, in Orat. 37 on Matt. XIX, 1-17, n. 8, says that third nuptials are iniquitous and calls those who enter fourth nuptials swinish; then Basil, in the first Canonical Epistle to Amphilochius, can. 4, calls third nuptials constrained or moderated fornication, and in can. 80, Epist. 3, says that polygamy seems to him a sin greater than fornication. Already the author of the Apostolic Constitutions (a Greek man, l. III, c. 2) had taught that "third nuptials show intemperance, and that any marriage after third nuptials is manifest fornication and indubitable wantonness." From this it came about that in the Greek Church, which in this matter was more severe than is fitting, it subjected trigamists and indeed even bigamists themselves to penance, though those thus joined were not separated; which is an indication that those nuptials were held to have been valid and also lawful, although less honorable and therefore deserving of some compensation. Notice that those who exceeded the measure of bigamy were called polygamists by the Greeks. Cf. Basil in the cited places and Balsamon in the same place. Moreover concerning trigamists Basil says in the same place, can. 4: "By custom we have received a segregation of five years for trigamists, not from the canons, but from the usage of those who preceded." Therefore he says: "That they ought not altogether to be driven away from the Church, but to be deemed worthy of hearing (it was a grade of penitents) for two or three years, and after this to permit them indeed to stand together, but to abstain from the communion of the good, and so, after they have shown some fruit of penance, to restore them to the place of communion," no mention of separation having been made. But in canon 50, which is the last of the second canonical Epistle, the same says: "There is no law of trigamy. Wherefore according to law a third marriage is not contracted.

And indeed we consider such things as defilements of the Church; nevertheless we do not subject them to public condemnations, because they are more eligible than loose fornication." Balsamon and Zonaras think that for trigamy not to be publicly condemned is the same as not to be dissolved; the Maurist editors with Aristenus judge otherwise, for they judge it to be the same as not being placed in the place of the prostrate or penitents, by comparison with can. 1 of the same Basil. But whatever may be the case concerning this question, it is certain that trigamists were not held as fornicators by Basil in this canon. But in the third canonical Epistle, can. 80, he established something else concerning trigamists and those following: "Polygamy (namely trigamy and thenceforth) the Fathers passed over in silence, as beastly and altogether foreign to the race of men. This seems to us to be a sin greater than fornication; wherefore it is fitting that they be subjected to the canons, so that, after they have wept for a year and have been prostrate for three years, they may thus be received." Moral malice, namely, is supposed and reproved in the affection, which is judged greater than some act of fornication; but in reality there is still no certain mention of nullity and separation. Basil followed the ancient Greek canons. Indeed, in can. 1 of the Council of Laodicea, second nuptials are called

legitimate; nevertheless the spouses are ordered to pray and fast for a certain time. Likewise in the Council of Ancyra, can. 19, some penance constituted for digamists is supposed. The same also is established concerning digamists and polygamists in cann. 3 and 7 of the Council of Neocaesarea. Cf. Arcudius, *de Concordia*, L. VII, c. 28.

VII. Yet the Greek Church easily advanced so far that in the tenth century it was wholly unwilling to tolerate fourth nuptials and forbade them under penalty of excommunication, wishing them themselves to be invalid, though not with all Greeks consenting, nor was this decree ever received as certain and immutable. Basil the Macedonian had already prohibited fourth nuptials by imperial authority as invalid by the law of God (Novel: that it is not lawful to enter fourth nuptials), abrogating the law of Justinian, who had permitted them according to his clemency. But his son Leo, surnamed the Wise, not content with these things, also prohibited third nuptials, yet for others, not for himself, who, after his third wife had died, since he lacked offspring, took a fourth. Thence in the year 906 arose a scandal and schism in the Greek Church, chiefly through the work of Nicholas Mysticus, Patriarch of Constantinople, which was finally removed by the Tome or Decree of union, first indeed issued in the Synod under the same Patriarch and under Constantine, the son of Leo, in the year 920, and afterwards, when all fully consented, published and accepted under Constantine and Basil in the year 996. That decree established that third nuptials indeed should be permitted under certain conditions; but fourth should be altogether prohibited, those contracting them being excluded from ecclesiastical communion so long as they remained in such a conjugal union, from which it is understood that the nuptials were held to have been null and invalid. Several letters of Nicholas Mysticus, Patriarch of Constantinople, report the same sense; he, having reproved the fourth nuptials of Leo, had stirred up that storm and therefore had been driven into exile; afterwards, however, he was restored, and under him the decree of union was composed. But although in his earlier epistles to the Roman Pontiffs he represents fourth nuptials as null by force of divine law, nevertheless in later letters to John X he signifies clearly enough that he judges that those nuptials can be entered upon by dispensation of the Church (read his letters edited by Angelo Mai in Migne, P. G. Tom. CXI). From this certain persons gather not ineptly that the reprobation of fourth nuptials among the Greeks rested upon custom and upon an ecclesiastical law invalidating these nuptials.

Therefore, lest you think that this persuasion concerning the nullity and malice of fourth nuptials from divine law had adhered to the Greeks, notice what John Veccus, Patriarch of Constantinople, with his Synod, professed in letters given to the Roman Pontiff John XXI in the year 1277. For after he had narrated that the union of the Greek Church with the Roman, begun under Gregory X, had at last been completed in the Council of Lyons, he immediately issued a profession of faith especially concerning the procession of the Holy Spirit and the primacy of the Roman See, and concerning the seven sacraments; among these he has this: "we receive marriage, concerning which the Roman Church herself holds that neither one man is permitted likewise to have several wives nor one woman several husbands at the same time; but when the law has been dissolved by the death of either spouse, it says that second and third and thereafter nuptials, legitimately made successively, are lawful." Comparing this profession of Veccus with the profession issued by Emperor Michael Palaeologus in the Council of Lyons ("second," he says, "and third successive nuptials the Roman Church says are lawful"), Joseph Simon Assemanus suspects that something has fallen out from this by which other nuptials besides third nuptials were affirmed to be lawful. For this is the doctrine of the Roman Church, which the emperor says he reports and follows.

VIII. Certainly the Roman Church never approved the doctrine of the Greeks in this matter, although formerly, when that decree of union was made, it tolerated that practice for the good of peace. For both the Roman Pontiff Sergius III, at the request of Leo the Wise, had approved his fourth nuptials; and Innocent IV, before the Council of Lyons, in letters to the Bishop of Tusculum, his legate in the Kingdom of Cyprus, orders the Greeks to hold this concerning nuptials: "Because, according to the Apostle, when the husband has died the woman has a free faculty, let the Greeks not in any way reprehend or condemn second and third and even further nuptials, but rather approve them among persons who otherwise can lawfully be joined to one another in marriage." Thus also Eugene IV established, as we have seen, with whom Benedict XIV agrees in the Constitution *Etsi pastoralis* given for the Italo-Greeks. Cf. the cited Assemanus, *Bibliotheca Iuris Orientalis*, Lib. I, c. 13.

Nevertheless the Church does not impart a blessing to the nuptials of bigamists, especially if even the woman alone is bigamous (c. *Cappellanum* 1 and c. *Vir autem* 3, *de Secundis Nuptiis*; cf. the Roman Ritual on the Sacrament of Matrimony; also canon 7 of the Synod of Neocaesarea), which blessing is customarily given within the celebration of Mass at first nuptials; because although, considered in themselves, they are a perfect sacrament, nevertheless, considered in order to the first nuptials, they have something of a defect of sacrament, because they do not have the full signification, since, the prior nuptials having been posited, there does not perfectly exist the union of one with one, as St. Thomas says, q. LXIII, c. 2; for this reason, that one is found to have adhered to several in fact, although successively; and this defect of the signification of the sacrament is the cause of irregularity.

Certain Latins, that is, Spaniards, seem to have enacted a severe law, when in the Council of Toledo, in the year 683, they prohibited the widow left by the King from marrying another, ordering her to be handed over immediately to a monastery of virgins; but this was established to avoid disturbances of the Kingdom, to which law the royal wives, when they entered marriage, subjected themselves spontaneously. The same custom seems to have prevailed among the Hebrews, as the learned judge. Cf. 3 Kings II. 13-25.

IX. From the things said it is clear that second and further nuptials are lawful by divine law and therefore are honorable; for what the Apostle grants, what he counsels, what the Church forbids to be condemned and teaches to be lawful and says to be less commendable only in comparison with a greater good, that is honorable of itself.

But the reason is evident: for when the spouse has died, the surviving spouse is of his or her own right and fit for marriage no less than before; the end of marriage likewise can be intended and obtained; and the remedy which it furnishes for concupiscence can itself alone be a reason why it is again entered. Nor should you say that this argument is called a sophism by Chrysostom (in *Serm. ad iuniorem viduam de non iterando con-*

iugio, n. 2). For the holy Doctor does not reprove this very thing which we infer, but that argument by which certain persons, from the fact that it is honorable to marry the first time, inferred that it is likewise honorable to do this a second, third, and thereafter, indeed that the one who uses marriage more frequently is to be praised by a stronger right, as if the state of marriage surpassed widowhood. For the rest, the same Doctor, at the beginning of this sermon, after he had said that second nuptials are lawful, but nevertheless that one marriage far surpasses repeated marriages, had admonished that in this comparison, when we say that one thing surpasses another, no one should think that this very thing which we say holds the lower place is a vice.

Thesis XIII

Simultaneous polygamy is unlawful by divine law and invalid for Christians.

I. Now concerning simultaneous polygamy. Moreover, this is the doctrine of the Council of Trent, can. 2: *If anyone shall say that it is lawful for Christians to have several wives at the same time, and that this is prohibited by no divine law, let him be anathema.* And among the diriment impediments of marriage is the impediment of bond. Moreover, that the law is divine, and that it effects no marriage with another woman or another spouse while the prior spouse is living, is proved first from the words of Christ, Matt. XIX. 9: *Whoever shall put away his wife, except for fornication, and shall marry another, commits adultery; and he who shall marry her who has been put away commits adultery.* These words of Christ Innocent III explains thus, c. *Gaudemus, de Divortiis*: "If therefore, once a wife has been put away, another cannot be married by right, still more while she herself is retained; through which it clearly appears that plurality in either sex, since they are not judged by unequal standards, is to be reproved with regard to marriage." This principle must be held in the matter of marriage, which Innocent here reports, namely that the man and the wife are equal, not indeed in all things (cf. Thomas, q. LXIV, a. 5; q. LXII, a. 4), but with regard to power over the body of the other and the obligation corresponding to it, according to the words of Paul: *the woman does not have power over her own body, but the man; likewise the man does not have power over his own body, but the woman*, 1 Cor. VII. 4. And so, that we may return to the text of Matthew, lest we anticipate questions not necessary here, we note that a multiple interpretation of those words *except for fornication* has been devised: that is, unless it be a fornicatory union, not a true conjugal union; or unless on account of the adultery of the wife, with which posited it is lawful to dissolve the marriage; or unless on account of the adultery of the wife, on account of which at least it is lawful for the man to separate himself from the wife. Which of these is the true interpretation and consonant with the tradition of the Church we shall dispute afterwards. For now let it suffice to note that, with the first interpretation admitted, any bringing in of another woman in addition, even when the former one has been put away, is called adultery; but with the other interpretation admitted, to that extent adultery would not be had, insofar as the prior union had been dissolved, and thus there would be no place for polygamy; but with the third interpretation admitted, we can reason concerning the bond of marriage according to the sentence of Christ just as if those words did not exist, which is also valid in the first interpretation. Therefore Christ teaches that he who, having put away his wife, marries another, not only acts badly, but also acts invalidly; for he commits adultery. But adultery is not marriage; namely, the prior bond remains, which impedes a bond with another; otherwise it would not be adultery. But if he commits adultery who, the former wife having been put away, from whom separation can at times be lawful on account of some causes, marries another, therefore he will commit adultery, and much more, who, retaining the former wife, brings in another besides. But if that conjunction is adultery, then there is no conjugal bond, which is impeded only by the prior bond remaining. And indeed, if polygamy were lawful and valid, he who, having put away one, marries another could not be said to commit adultery; for the right which he previously had of marrying another would still remain; whence there would be no adultery. Wherefore by the law of Christ there is altogether no second marriage.

II. Paul teaches the same thing, from whom we receive these two things: a) 1 Cor. VII. 4: *The woman does not have power over her own body, but the man; and likewise the man does not have power over his own body,*

but the woman: namely that the power of each over the other is equal, and that each enjoys an equal right, as Innocent III in the chapter cited above admonished and Augustine declared, L. XXII, *contra Faustum*, c. 31: "For who does not know that a wife ought to serve her husband as lord? But as to the members of the body, by which sex itself is distinguished, the Apostle says: *Likewise also the man does not have power over his own body but the woman*; so that, although in the other acts pertaining to human peace the woman owes service to the man, in this matter, by which each sex is discerned by the lot of the flesh and is concerned in carnal commingling, the man over the wife and the wife over the man have in themselves a like power." Nazianzen teaches the same thing in the cited Orat. 37.

b) Ibid. 10, 11: *But to those who are joined in marriage I command, not I, but the Lord: that the wife not depart from the man* (μὴ χωρισθῆναι); *but if she has departed, that she remain unmarried or be reconciled to her husband. And let not the man put away his wife.* But Χωρισθῆναι, as is customary, has the active signification of departing; for the discourse is about the passive separation of the woman in the last words. And so divine law commands that the wife not depart from the man, and if she departs, that she remain unmarried and be joined to no one, unless she wishes again to return to the man. The discourse here is about a wife who of her own accord separates herself from the man; for one of this sort is properly she who departs. But she who is cast out by the man is called *dismissed* in the Scriptures, and besides the discourse concerning a woman dismissed by the man is in what follows.

Moreover, this woman who departs from the man is she who has a just cause of departing, for example on account of the fault of the man. This is proved evidently. For if she departed without cause, Paul would not permit her the option either of remaining unmarried or of reconciling herself with the man, but would command her to be reconciled and to return to the man; for it is the law of the Lord, as the same Apostle says, that the wife not depart from the man, and since the man has power over the wife, he cannot without injustice be deprived of his right without cause. Therefore the discourse is about a woman who justly departs from the man. But no option of any other thing is left to her except these two: either let her remain unmarried, or let her be reconciled to the man. Other nuptials are altogether interdicted: *let her remain unmarried.* But the Apostle testifies that this is of divine law: *I command, not I, but the Lord.* Wherefore the woman, if she separates herself even justly from the man, must by divine law remain unmarried, that is, not marrying another. But the same must also be said of the man, that he must remain unmarried, that is, not marry another wife, if he separates himself from his wife. This indeed is clear both from what follows: *And let not the man put away his wife*, which words, immediately joined to the preceding, seem in a more contracted discourse to command the man that same thing which was commanded to the woman; and it is also clear from that principle established earlier, that there is an equal right and equal obligation of one to the other as regards power over the body. Therefore he also, even if he justly dismisses his wife, must by divine law marry no other; much less, therefore, must he do this when no reason for separation exists. And so a man can never marry another wife while the former is living. Moreover, a woman (Rom. VII. 3), *while the man lives, shall be called an adulteress if she has been with another man*: therefore divine law, prohibiting second nuptials for the woman while the former man exists, so prohibits them as to invalidate them; for an adulterous conjunction is no marriage, and therefore God does not join what man would wish to join. Therefore the man will be an adulterer if he has been with another wife, and this other conjunction, while the former exists, is invalid.

Besides, when Paul makes mention of a man and wife, he always speaks of each in the singular: 1 Cor. VII. 2: *let each man have his own wife, and let each woman have her own husband*; 39: *A woman is bound by law so long as her husband lives; but if her husband has fallen asleep, she is freed*; Eph. V. 23: *The man is the head of the woman, as Christ is the head*

of the Church; 28: *he who loves his own wife loves himself*; 33: *Let each one love his wife as himself, but let the wife fear her husband.*

III. It is established secondly from Tradition, whose witnesses are Tertullian, in *Apolog.*, n. 15, saying: "A Christian is born a male for his wife alone." Clement of Alexandria, *Strom.* l. III: "But the same man and Lord (Christ) no longer grants polygamy. For then (in the Old Law) God required that, when the people had to be increased and multiplied. But He introduces monogamy on account of the procreation of children and the care of the house to be borne, for which the woman was given as a helper." Ambrose, *de Abraham* l. 1, c. 7: "It is not lawful for you, while your wife is living, to marry a wife. For even to seek another, when you have your own, is a crime of adultery." Augustine, *de Nupt. et Concup.* l. I, c. 10: "This is preserved in Christ and in the Church, that the living one with the living one be separated by no divorce forever. The observance of this sacrament is so great ... in the Church of Christ ... that although women marry or wives are married for the sake of procreating children, it is not lawful to leave a sterile spouse so that another fertile one may be married. But if anyone has done this, not by the law of this world, where, with repudiation intervening, it is conceded without crime to join other marriages with others ... but by the law of the Gospel, he is guilty of adultery, as also she is if she has married another. And the rights of nuptials once entered upon remain between the living to such a degree that those who have been separated from each other are rather spouses between themselves than with those others to whom they have adhered. For with others they would not be adulterers unless they remained spouses with respect to one another." The Second Council of Milevis, can. 17: "It pleased us that, according to evangelical and apostolic discipline, no one dismissed by his wife, nor one dismissed by her husband, be joined to another, but that they so remain, or be reconciled to one another. But if they have contemned this, let them be reduced to penance." Therefore you have from the Fathers that second nuptials while the prior spouse is living are both prohibited by God and are adulteries, and therefore are no matrimonial conjunctions. The Roman Pontiffs teach the same thing: Innocent I, Epist. 4 to Exsuperius: "Those who, while the wife is living, although the conjugal union seems to have been dissociated, have hastened to another coupling, cannot be seen not to be adulterers." Nicholas I, to the responses of the Bulgarians, c. 51: "Neither does the very origin of the human condition admit having two wives at one time, nor does any law of Christians permit it." Cf. also in the Decretals the Title *de Sponsa duorum*.

IV. Nor in all antiquity is any document to be found by which simultaneous polygamy was not only approved, but even permitted.

For this question must be distinguished from that one, whether on account of the adultery of the wife it is lawful to dissolve the conjugal union. Nor ought we to be troubled by the edict of the elder Emperor Valentinian, which Socrates reports, *Hist.* L. IV, c. 31, because it is not credible. For that abhorred the usage and law of Rome. Cf. the treatise of Barnabas Brissonius, *de Iure connubiorum*, in the *Thesaurus Antiquitatum Romanarum* of Joannes Georgius Graevius, Tom. VIII. There is reported there the saying of Plutarch (in the Comparison of Demetrius and Antony, n. 3), that "Antony had two wives at the same time, which no one of the Romans before had dared." But the same Brissonius

disputes thus: "But whether a concubine (who nevertheless would be a true wife, although in second place) could be joined to a wife by Quiritary law, I know is doubted. Certainly Justinian writes that neither the ancient laws nor his own concede this (therefore Valentinian did not concede it), l. ult. c. *Communia, de Manumissionibus*. Ulpian also says, l. ult. at the end, ff. *de Divortiis*, that if a patron who had married a freedwoman had brought a concubine to her, from this the conjecture was to be taken that he did not wish to have her as married; since a concubine could not be had together with a wife. The constitution of Constantine the Great prohibited the very same thing, l. unica c. *de Concubinis*: 'Let license be granted to no one, while marriage stands, to have a concubine with himself.' Wherefore Gellius shows that she who was joined and accustomed with him in whose hand and mancipium another was by reason of marriage was held shameful by the law of Numa (N. A. l. 4, c. 3), and he reports in the same place that these women who mingled their body with him who had a wife were called concubines." Read the refutation of Socrates in Baronius at the year 370, who notes that Valerian and Gallienus had already prohibited having two wives (l. 18. C. *ad legem Iuliam, de Adulteriis*), and Diocletian and Maximian (l. 2. C. *de Incestis Nuptiis*), and then Theodosius the Great had prohibited the same thing to the Jews (l. 7. C. *de Iudaeis*).

V. But what of the response of Gregory II to Boniface (epist. *Desiderabilem*): "For as to what you proposed, that if a woman, seized by infirmity (another reading: corrupted), should not be able to render the debt to the man, what shall her spouse do? It would be good if he so remained, so that he might be free for abstinence. But because this belongs to the great, let him who cannot contain himself rather marry; nevertheless let him not withdraw the works of support from her whom infirmity impedes and not detestable fault excludes." Sebastian Berardi (*Gratiani Canones genuini*, Tom. II, p. 2, c. 68) judges that Gregory was treating of marriages contracted by Germans before baptism in unbelief, which, as he himself believes, even after baptism do not become ratified, and that he answered, with the law of the Gospel set aside, according to the norm of natural honesty, which of itself did not prohibit that. This latter point indeed we cannot approve, since at the beginning of the epistle Gregory affirms that he will respond to Boniface's questions not from himself but "by His grace who opens the mouth of the mute and makes the tongues of infants eloquent," and that he will hand down "the doctrine of apostolic strength." Besides, we judge (cf. Appendix after Th. XI) that a marriage contracted in unbelief becomes ratified when baptism has been received. Nor did it befit the Apostolic See, questioned according to the prerogative of its magisterium, to respond according to the opinion of men, not according to the sentence of Christ. What then? Since we lack the epistle of Boniface asking the question, it is not permitted to bring forward an evident declaration of the matter. But from elsewhere the certain opinion of Gregory II is established: namely, that simultaneous polygamy is unlawful (in the Instruction given to his Legates in Bavaria); moreover, the Roman Church has always reproved the dissolution of a consummated marriage, as his successors bear witness. Therefore we answer that probably the matter concerned a marriage not yet consummated, which therefore was either null from impotence, as Celestine III seems to interpret this response of Gregory, c. *Laudabilem*, *De Frigidis*, or, since it was only ratified, the Roman Pontiff dissolved it by his power, and so permitted the man to enter other nuptials by right, yet advising him to take care of the one left behind, who was being separated without fault.

Finally, it is permitted to add that, if it had once been believed that simultaneous polygamy was lawful, no reason would appear why a certain aversion and sure horror would have occupied many

persons toward successive polygamy. This fact, namely, supposes that it was believed that one should be joined simultaneously only to one.

VI. It is established thirdly from the thing signified. For marriage is a sign of the union of Christ with the Church, so that the man ought to love his wife and adhere to her, just as Christ loved the Church and adhered to her; but Christ transferred His whole love to one Church, so that one should adhere to one; therefore in this way also the Christian man ought to love his wife so that he does not divide marital affection among several wives, but that one be joined to one. Namely, the likeness between Christian marriage and the conjugal union of Christ with the Church consists not only in this, that a man and a woman are united into one and become one flesh or one principle of generation, but also in the manner in which the man adheres to the wife, loving her as Christ loves the Church. But Christ so loved her that He loved her as one. This reason holds for any marriage, because this signification was instituted from the beginning. Cf. those things which we shall say in the following Thesis. But because actual signification is from the institution of God, nothing prevents God at some time, before the completed union of Christ with the Church through the incarnation, from having dispensed from the law of simultaneous monogamy, as we shall see hereafter.

VII. From the doctrine of Scripture and the Fathers you have that second simultaneous nuptials are condemned and declared invalid even in the hypothesis of separation or divorce; indeed these are chiefly and directly reproved, whence we have gathered that all are simply proscribed. Therefore those second nuptials which Christians contract after a divorce made by civil law, while the prior spouse is still living, are shameful concubinages.

Thesis XIV

Polygamy, compared with natural law, is not contrary to its first precepts, by which the things that are essential are commanded; but it is contrary to those by which the things that are congruent are urged.

This is the doctrine of St. Thomas, Suppl. q. 65, a. 1: "Everything which renders an action unsuitable to the end which nature intends from some work is said to be contrary to the law of nature. But an action can be unsuitable to the end either principally or secondarily." Therefore there can be a twofold end which nature intends from some work, and therefore also from marriage: a primary and a secondary. The primary end is that which nature chiefly intends in the work, namely that to which the work has been adapted by nature before its other works; the secondary end is a good for the attaining of which the work is indeed ordered by nature, yet lacking the prerogative of the former. The holy Doctor proceeds: "If the action is unsuitable to the end, as if altogether prohibiting the principal end, it is directly prohibited by the law of nature through the first precepts of the law of nature, which in practical matters are like the common conceptions of the mind in speculative matters. But if it is unsuitable to the secondary end in some way, or even to the principal end as making arrival at it difficult or less congruent, it is prohibited, not indeed by the first precepts of the law of nature, but by the second, which are derived from the first, just as conclusions in speculative matters have their credibility from principles known through themselves; and thus the said action is said to be contrary to the law of nature." Now weigh what he has in the same place in the response to the second: "Those things which the natural law dictates as derived from the first principles of the law of nature (which are those that in the body of the article were called second principles), do not have coercive force by way of an absolute precept except after they have been sanctioned by divine and (perhaps: or) human law."

Therefore there is a twofold class of precepts of the law of nature: the former contains precepts which command that which is necessary for the attainment of the principal end and forbid that which altogether impedes the attainment of the same end; the latter contains precepts which command that which is necessary for the secondary end or more congruent to the principal end, and forbid the opposite; and these then become absolutely precepts when the sanction of divine or human law is added. Namely, by the first precepts essential things are commanded; by the second, congruent things: the first have of themselves the coercive force of a precept; the second do not yet have it of themselves, but have it after the sanction of positive law has been added. And therefore they are indeed called precepts, because they dictate something to be done; but because they lack coercive force, they should rather be said to urge than truly to command.

Moreover, those things which are truly precepts of nature are immutable, and therefore no dispensation has place in them, as all philosophers and theologians teach.

II. Now that polygamy is not altogether contrary to the law of nature, or is not opposed to its first precepts, St. Thomas teaches in the cited place, and it is proved by an argument both extrinsic and intrinsic. The extrinsic argument is that in the old law, God permitting it, polygamy was practiced. This is clear first from the manner in which the following law is proposed. Deut. XXI. 15 seq.: *If a man shall have two wives* (כי תהיין לאיש שתי נשים), if there are two wives for a man, that is, if a man has

two wives (which is properly understood of simultaneous polygamy, and this is certainly manifest from the kind of case proposed, from which it appears that the son of either could have been firstborn), *one beloved and the other hated, and they have begotten children from him, and the son of the hated one was firstborn, and he shall wish to divide his substance among the sons, he will not be able to make the son of the beloved one firstborn and to prefer him to the son of the hated one; but he shall acknowledge the son of the hated one as firstborn and shall give him double from all the things which he has.* God wills the rights of the firstborn to remain intact, even if he is the son of the hated or less beloved woman; but this supposes that God held each woman as a true wife; for the rights of the firstborn pertain only to legitimate sons. But if God held each as a true wife, then she was such, that is, a true marriage existed between the man and those women, and therefore that conjunction was lawful. Therefore the hated one, who could even be the one married second, is supposed to be a wife, or each is held as a true wife. Therefore God did not merely tolerate polygamy, but permitted it as honorable, and for this reason in such a way that God would protect the rights even of the second woman, if her son had been born first.

Again in the same place, c. XVII. 16 seq., a precept is given with regard to the king: *He shall not multiply horses for himself* (לא ירבה־לו סוסים) ... *he shall not have many wives* (לא ירבה־לו נשים)

which may entice his soul, nor immense weights of silver and gold (the same phrase occurs); by these words one wife is not commanded, just as neither is one horse, but immoderate excess is prohibited; implicitly, however, some multitude of wives is permitted.

Indeed, secondly, many most holy men and men most dear to God had several wives, as Abraham had two, Sarah and Hagar; Jacob four, Leah, Rachel, Bilhah, Zilpah; Elkanah two, Hannah and Peninnah; David certainly several, cf. 2 Kings V. 13; XV. 16; 1 Paral. III. 1 seq.; Ashhur two, 1 Paral. IV. 5, etc. Now this must be called not simple toleration but a permission of God; for first, it is not lawful to think that the holy Patriarchs either were ignorant of what they ought to do by the law of nature, or acted against conscience; secondly, no reprehension or reprobation of this matter ever occurs in the Scriptures; thirdly, the sons of the four wives of Jacob are in the highest and equal honor in the Old Testament. Moreover, this is the interpretation of many Fathers. What of the fact that God Himself, by the law of levirate which He established, Deut. XXV. 5-9, frequently gave occasion for nuptials of this sort? For no exception is made if the brother of the deceased is already married. Therefore God permitted simultaneous polygamy in the Old Law. But God cannot permit what is intrinsically evil; but such is what is prohibited by the first precepts of natural law: therefore. But certain women were called concubines, not because they were not true wives, but because they were not mothers of the family, sharers in the honor and rights of the man. Cf. 3 Kings XI. 3.

III. It is also proved intrinsically from St. Thomas, l. c., because marriage has for its principal end the procreation and education of offspring; for a secondary end the communication of works; and, insofar as it is among the faithful, the signification of Christ and the Church. ... But plurality of wives neither totally takes away nor in any way impedes the first end of marriage, since one man suffices for fecundating several wives and educating the children born from them. It does not totally take away the second true end, although it greatly impedes it, because peace cannot easily exist in a family where several wives are joined to one man; nor can the man always satisfy wives who ask. But the third end St. Thomas says is totally taken away, yet it is not necessary to marriage by natural law. Therefore polygamy is not contrary to the first precepts of nature, which command what is essential, and consequently it is not simply contrary to nature.

IV. Indeed, in several places Augustine wishes the conjunction of Abraham with Hagar to be free from every malice: "As to the thing done, in no way must the crime of Abraham be branded concerning this concubine; for he used her for begetting offspring, not for satisfying lust, and not insulting, but rather obeying his spouse, who believed it to be a consolation of her sterility if, since she could not do so by nature, she made the fruitful womb of the handmaid her own by will. ... There is here no desire of wantonness, no turpitude of wickedness" (*de Civ. Dei* l. XVI, c. 25). Moreover, that reason of Augustine would have no force unless it be posited that this was then prohibited by no law of God, or what is equivalent, that it was then permitted by God. For certainly Augustine would not, on account of that reason, have approved marriages of this sort in the law of the Gospel. Cf. l. XXII, *Contr. Faustum*, c. 32; l. II, *Contr. Adversarium legis et prophetarum*, c. 9; l. III, *de Doct. Christ.*, c. 18; and l. I, *de Nuptiis et concup.*, c. 8: "Thus (honorably, namely, so that those to be regenerated spiritually might be generated carnally) no Christian ought to doubt that the holy fathers from Abraham and before Abraham, to whom God bears witness that they pleased Him, used spouses, when it was granted even to certain individual men to have several, where the reason was for the multiplying of offspring, not for the varying appetite of will." And in *de Bono Coniugali*, n. 33, against the Manichees, who calumniated the fathers of the Old Testament concerning several wives, he says that they committed nothing "against a precept, because they were prohibited by no law." Cf. Jerome, Epist. 123 to Ageruchia, n. 12. Chrysostom, Hom. 56 on Genesis, n. 3: "Hearing that Jacob received the elder by birth and afterwards the younger, do not be troubled; nor judge the works which were then done according to the state which now exists. For then, because they were beginnings, it was permitted to mingle with two or three or more wives, so that the human race might be propagated."

Ambrose indeed, book I, *de Abraham*, c. 4, seems to disapprove the union of Abraham with Hagar as evil; but in reality it is not so. For, that he may give the reason of this deed, he says: "But let us first consider that Abraham was before the law of Moses and before the Gospel: adultery did not yet seem interdicted. The penalty of a crime is from the time of the law, which inhibited the crime; nor before the law is there any condemnation of the guilty party, but from the law. Therefore he did not anticipate the law. Although God in paradise praised conjugal union, He had not condemned adultery." If you take adultery properly, you have from Ambrose that at some time it was lawful and was not prohibited by the law of nature; which is sufficiently absurd and repugnant to Ambrose himself in this same book, c. 2, n. 8, asserting on the contrary that this was forbidden by right and the law of nature, and that it was known to Pharaoh; but Ambrose judged here, l. c., that "the same chastity is owed by the man as by the wife." Namely, adultery in that place is for Ambrose that which in his age, on account of the law of Christ, was and was called adultery, namely the union of a man having a wife with another woman. Ambrose denies that this was prohibited in the age of Abraham; therefore he denies that he sinned against the law. Ambrose brings forward in the same place those reasons for this permission which Augustine also brings. Yet elsewhere we do not deny that Ambrose rather clearly signified that he judged that Abraham sinned in this matter, as in the book *de Paradiso*, c. XIII, n. 65; but the fault which Ambrose supposes can be venial, which does not exclude the lawfulness of the thing considered in itself.

V. Nevertheless this simultaneous polygamy is in some way contrary to the law of nature, insofar as it is opposed to the precepts commanding or urging what is more congruent to marriage. For if the secondary end is considered, it is most congruent to it that there be one woman: both because peace is difficult in a family when several wives exist, for the sharing of several persons in a beloved thing

causes jealousy and quarrels; and because it is congruent that the man satisfy the wife whenever she asks by right. And besides, although the true essence of marriage is also in the man and each of his wives, nevertheless it is congruent that, just as the wife hands over the whole power of her body to the man, so that she does not reserve to herself the right of handing it over to another, so also the man should hand over the full power of his body to the wife, so that the obligation which he contracts be equal to the power which he receives. And so polygamy is in some way contrary to nature, insofar as it is less congruent to marriage.

In order to solve the difficulties against this last conclusion, note with St. Thomas, l. c., ad 7, that the man through marriage does not give power over his body to the wife as to all things, but only as to those things which marriage requires. But marriage does not require that the man render the debt to the wife asking at any given time, as to that for which marriage was principally instituted, namely the good of offspring, but insofar as suffices for impregnation. This, however, is required by marriage insofar as it was instituted for a remedy, namely that the debt be rendered at any given time to one asking. But this is the secondary end of marriage. And thus it is clear that one receiving several wives does not obligate himself to the impossible, the principal end of marriage being considered. And therefore plurality of wives is not contrary to the first precepts of the law of nature. Again, ad 8: that precept of natural law, *what you do not wish to be done to you, do not do to another*, must be understood with the same proportion preserved. For if a prelate does not wish to be resisted by a subject, he himself ought not therefore refrain from resisting a subject. And so it is not necessary that, just as a man does not wish the woman to have another man, he himself should not have another wife. Because this is not contrary to the first precepts of the law of nature, as that is. And ad 9: it is not as contrary to the natural inclination that a man have several wives as that a wife have several husbands. Whence the affection of the wife does not so greatly flee partnership in the man as, conversely, his affection does. And therefore both among men and among other animals there is found a greater jealousy of the male toward the female than conversely.

VI. Finally, note that in order that polygamy, even with positive law prohibiting it set aside, be lawful, it is necessary that it be contracted on account of the honorable ends of marriage, not on account of unbridled lust, and in such a way that it be right for the wives to use marriage both for the generating of offspring and for the remedy of concupiscence; and who does not see that Solomon, who was joined to thousands, transgressed these limits?

Thesis XV

Finally, with regard had to the primitive divine institution, by it a norm and example of monogamy was certainly prescribed beforehand, and its congruity was signified; indeed it also seems that there a law of the same was enacted for all future marriages, although afterwards for some time there was a dispensation from that law by God.

I. The question finally is whether by the law of the primitive institution polygamy was unlawful and invalid; that is, whether in the divine institution itself of marriage a law concerning monogamy was enacted by God, making polygamy invalid. It is certain, and all easily concede it, that when God instituted the first conjugal union, joining only one Eve to one Adam, by a deed of this sort He showed that monogamy is congruent to the condition of man, and that this state is most natural to man, and that monogamy is approved by Himself as author of nature. For the first parent could have no other wives than those whom God had created; for it is too foreign to human sense for a father to marry his daughter. But God, having fashioned only one woman for the man Adam, compelled him to be monogamous. And it is altogether according to reason that God, in the very institution of marriage, wished to prescribe beforehand an example and norm of conjugal unions thereafter to be contracted according to the laws of nature. But it is asked whether in the institution itself a law properly so called was enacted by God commanding monogamy, and whether He thus sanctioned a secondary precept of natural law, so that afterwards, for polygamy to be lawfully employed, there was need of a divine dispensation.

II. The theologians dispute. Some deny this and say that polygamy was prohibited only by positive Evangelical law. They rest chiefly upon the authority of the Fathers, who seem to deny a primitive law of this sort; thus Clement of Alexandria, *Strom.* l. III, l. c., who teaches that God required polygamy in the old economy; Jerome, Epist. 69 to Oceanus, saying, n. 5: "The Apostle knew that by law it had been conceded, and by the example of the patriarchs and Moses he had known that it was familiar to the people to scatter children among many wives; the judgment of this license lay open even to the priests themselves." Augustine, *de Doct. Christ.* l. III, c. 12: "For the sake of supplying offspring there was an inculpable custom of several wives being had at the same time by one man"; *de Civit. Dei* l. XVI, c. 38: "At that time no law prohibited several wives for the sake of multiplying posterity"; *contra Faustum* l. XXII, c. 47: "Some sins are against nature, others against customs, others against precepts. Since these things are so, what, finally, is objected against the holy man Jacob concerning several wives had at the same time? If you consult nature, he used those women not for the sake of indulging lust but of begetting; if custom, at that time and in those lands this was done as a matter of practice; if precept, he was prohibited by no law." Theodoret, Quaest. 67 on Genesis: "Sarah asked Abraham for this reason to come together with Hagar, so that she herself might receive children from this source: what sin did Abraham commit? Especially since neither nature nor any law then written prohibited marrying several wives." These are the clearer testimonies which are brought forward. Cf. Perrone, *de Matrim.* l. III, sect. 1, c. 1, a. 3.

III. Others, on the contrary, teach that in the institution itself God sanctioned by a positive law the secondary precept of nature concerning monogamy; and therefore that by divine dispensation it happened that polygamy was at some time lawful. Bellarmine, *de Matrim.*, c. 11, hands down that this

opinion is common among the Scholastics, and St. Thomas seems to teach it, q. LXV, a. 2. The first argument can be this, from the authority of the Council of Trent. Sess. XXIV, *de Sacram. Matrim.*, says that "Christ taught more openly that by this matrimonial bond only two are joined, when, reporting those last words (*they shall be two in one flesh*) as uttered by God, He said: *therefore now they are not two, but one flesh*, and immediately confirmed the firmness of that same bond, long before foretold by Adam, with these words: *what therefore God has joined, let not man separate*." Moreover, Christ, in teaching, commanded the same thing which He taught; or this doctrine here is practical doctrine, prescribing what is to be done. Now if Christ, explaining the words of Adam, which are the words of God, taught more openly the unity of marriage, then God had taught the same thing sufficiently openly, that is, had commanded it from the beginning. Namely, the Tridentine Fathers do not attribute to Christ that He first taught this, nor that He first taught this openly, but only that He taught it more openly, insofar, namely, as He signified (which Moses did not note) that Adam spoke from the Spirit of God; and He inferred that they are no longer two but one flesh, and that man cannot separate what God has joined. But if in the words of Adam this practical doctrine, or law of God, was already contained, one may judge that Adam, who uttered those words, understood their sense, or that law; and with this posited, that law must be said to have been promulgated to the head of the whole of nature.

A second argument is from the practice of the Church, which Bellarmine, l. c., and Sanchez, *de Matr.* l. VII, D. 82, employ. Namely, if a polygamous unbeliever comes to baptism, he is compelled to dismiss the other women except the first; therefore the Church judges that only the conjugal union with the first was a true marriage. For if in unbelief there had been a true marriage with the second, the Church would not prescribe this, both because through the sacrament of baptism conjugal unions are not dissolved, but crimes are forgiven, as Innocent III says, c. *Gaudemus*, *de Divortiis*, and because Christian law prohibits true marriages from being dissolved, as Bellarmine notes. Besides, if the Church prescribed this only because it is not lawful for Christians to have several wives, while nevertheless judging that the marriages contracted with several in unbelief were true, she would grant power of retaining either one from the prior spouses; but she commands the first (who is supposed to be the true wife) to be retained, the others being dismissed (Roman Catechism, *de Matrim.*, n. 19; cited c. *Gaudemus*); although at intervals dispensation has been given that the other, not the first, be retained in certain cases, namely when by the authority of the Roman Pontiff a marriage contracted in unbelief has been dissolved; but then the consent must be renewed in due form, because the prior consent offered with the second woman in unbelief was null. Now either the Church judges that these second conjugal unions in unbelief are null by natural law alone, or also by divine law. But not by natural law alone; because they are opposed only to the secondary precepts, which teach what is more honorable, not what is necessary. But divine law is either the law enacted by Christ in the Gospel, or the law enacted by God in the primitive institution; but the law of Christ obliges the faithful alone directly; therefore it must be said that the law was enacted from the beginning: therefore the Church judges that a law of this sort was then enacted.

Third is the authority of Innocent III, c. d. *Gaudemus*; for he says that "it was never lawful for anyone to have several wives at the same time, unless it was conceded to him by divine revelation."

IV. If the arguments of each side are compared, it is clear that the testimonies of the Fathers brought forward for the first opinion can be taken in such a way that they do not conflict with the second. For

if some dispensation for a certain time, and that a common one, which the second opinion thinks was necessary and judges existed, was made by God, it can truly be said that for that time and those persons the law did not exist, insofar as its force was suspended; nor was there certainly any written law in the age of Abraham, as Theodoret says.

V. But if the matter is so, then as soon as the law was established, dispensation from the same was granted to all; for if polygamy was lawful after the flood, it must be said to have been lawful also before, which is also clear from the example of Lamech: for the reason for the concession was also valid then, indeed much more, namely the multiplication of the human race. But what sort of law is it, from which almost as soon as it has been established a general dispensation is granted?

I answer, first: even granting that the dispensation was immediately conceded, these things are not mutually repugnant of themselves, that a law be made which will be valid always and everywhere, and afterwards, on account of some special end, a dispensation from it be conceded for a certain time; for it is accidental whether a dispensation is added to the law immediately or after some time. Secondly: it is not certain that a dispensation of this sort was conceded immediately from the beginning. For a) the multiplication of the human race does not seem to have been a sufficient reason for granting that dispensation; for since the race itself began from one, and God willed this, it was also placed in the condition of the human race, and God must be judged to have willed this, that it be increased and propagated gradually. Indeed b) before the flood, mention is made only of one Lamech from Cain who had several wives; and he is reprehended on account of this also by those Fathers who are cited for the first opinion, as by Jerome, Epist. 79 to Salvina, by Tertullian, *de Monogamia*, c. 4, and by the Pontiffs Nicholas I, *ad Consulta Bulgar.*, n. 51, Innocent III, d. c. *Gaudemus*, Gregory IX, Epist. VI to Germanus, Archbishop of the Greeks. Cf. also Theodore Abucara, opusc. 24 (Migne, P. G. V. 97), *de Una uxore*. c) The reason for this dispensation which is brought forward by the Fathers is not the multiplication of offspring alone, but the multiplication of offspring for divine worship: "For by the same vein of charity," says Augustine, *de Bono coniugali*, n. 18-19-22, "now spiritually, then carnally, sons were to be propagated for that mother Jerusalem. ... Now indeed no one perfect in piety seeks to have sons except spiritually; but then the operation of that very piety was also to propagate sons carnally, because the generation of that people was the messenger of future things and pertained to the prophetic dispensation. Those men surpassed by a far holier mind this affection of mortal nature, who sought offspring from their nuptials on account of Christ." Whence St. Thomas says (q. LXV, a. 2, ad 4), "that with Christ coming, it was the time of the fullness of grace, through which the worship of God was diffused into all nations by spiritual propagation. And therefore there is not the same reason for dispensation which existed before the advent of Christ, when the worship of God was multiplied and preserved by carnal propagation." Namely, before the advent of Christ the people of God was propagated by carnal generation; but after Christ, by spiritual generation and the preaching of the word: so that for this reason "service should be rendered to Christ not by the office of bearing, but by the zeal of continence; not by conjugal wombs to be made fruitful, but by morals to be made chaste" (Augustine, *de Bono viduitatis*, n. 10). Wherefore, after comparing these sentences of the Fathers, we can judge at least as more probable that the dispensation of polygamy was made after the flood, by which the harm inflicted by it would be more quickly repaired; for from the very institution of the human race it was already fitting that it should be diffused everywhere; and it would be repaired by the multiplication of offspring devoted to divine worship, which is the end of generation. And therefore this power was made of itself for those who would propagate offspring in this way,

namely for the patriarchs worshipping God. But since this permission was made directly to just men and to the people of God, God seems to have extended that concession indirectly to all, even unbelievers. For the matter was placed in a public fact, but no law publicly promulgated was present, from which it could be understood that that concession pertained to the faithful alone; and unbelievers, especially with ignorance of the primitive law intervening and the law of nature not resisting altogether, could easily judge that what the just and holy did was lawful for themselves. But with these conditions existing, if God had wished to grant this privilege to the faithful alone, with all others altogether excluded, He would have declared this clearly, lest shameful concubinage be defended under some reasonable pretext arising from the very concession of God. Therefore one may judge that God permitted that the privilege granted of itself to the faithful be used also by unbelievers. But from this it followed that they themselves would be deprived of it as soon as it had been removed for the people of God, so that ignorance would indeed still excuse them, but they could no longer validly have several wives. Thus the opinions of Bellarmine and Sanchez, l. c., seem able to be composed; for the former thinks it more probable that this dispensation was granted also to the nations, not to the Hebrews alone; the latter, on the contrary, more probably judges that that power was not given to the nations, because in them the reason of dispensation did not hold, namely the multiplication of the faithful people.

VI. How, then, was this dispensation made? Bellarmine answers, after St. Thomas and Innocent III, that there was no need of some external speech or writing, but a peculiar inspiration of God was required. The reason for the first is that "as the law is, so also the dispensation is required: but the law prohibiting polygamy in the time of the Patriarchs was not written in any book, but only impressed upon minds," propagated by tradition. The reason for the second is that "the law prohibiting polygamy was not natural only because conformable to right reason, but because God by special inspiration had taught Adam what was the nature of marriage instituted by Himself, and therefore that He willed it to contain monogamy. For those secondary precepts of natural law do not have coercive force unless they are specially sanctioned by God or by some prince. ... Therefore, just as by special inspiration the law of monogamy had been sanctioned by God, so special inspiration was needed in its dispensation." This interior inspiration, says St. Thomas, l. c., "was principally made to the holy Fathers, and through their example derived to others."

VII. Therefore is a clear law of monogamy contained in those words uttered by Adam? The words of Adam are: *This now* (Hebr. זאת, this one, namely the woman brought by God, הפעם, this time, otherwise than in the preceding case, when the animals had been brought), *bone of my bones and flesh of my flesh: she shall be called woman, because she has been taken from man. Wherefore a man shall leave his father and his mother and shall adhere to his wife, and they shall be two in one flesh* (interpreters dispute who uttered these last words, whether Adam from a prophetic spirit or the inspired writer; either is the same for us). Now, first, in these words mention is made only of two, that is, of one with one. Secondly, there is a connection between the union of these two (*they shall be two in one flesh*) and the union of Adam and Eve; namely the connection which exists between type and ectype, which is signified by that causal particle *wherefore*. That is: because God formed the woman from me and gave her to me as wife, לאשה (cf. v. 22 with 24), hence by the law of nature and divine institution a man shall leave father and mother and shall adhere to his wife, and the two shall be in one flesh, just as I and Eve are one flesh. Moreover, if this connection intervenes between the union of two in one flesh and the first union of Adam and Eve, the two must be taken exclusively, so that they are only two, male and

female; for such was that primitive union. Nor could there be another, since God formed one Eve, and it was not lawful for Adam to join his daughters to himself in marriage. And indeed, thirdly, at least perfectly, one flesh is made from two if the man is united to only one woman. For they are one flesh, one man, not only by reason of actual carnal commingling, but also insofar as they are habitually one principle of generation, male and female; and they are this habitually because one belongs to the other. But this habitual unity (one flesh, one man) is not preserved perfectly if the man is coupled with several wives; for insofar as he adheres to a second woman and belongs to her, a certain multiplicity of the principle of generation is had. Therefore polygamy also is contrary to the perfect unity of marriage, by which the flesh of the man is in some way divided and separated from the wife. Moreover, that perfect unity was signified by the words *they shall be two in one flesh* is sufficiently shown from the type itself: for the unity of Adam and Eve was greatest, since she was taken from him and he was coupled with her alone. And so monogamy is proposed in these words. But since these are the words of God (Matt. XIX. 4), or, what is the same, uttered by Adam by a special instinct of God enlightening and teaching him, and they are words sanctioning right and law (for Christ in the same place appeals to them as to a law), and as St. Asterius, Bishop of Amasia, says, Hom. on Matt. XIX. 3: "whatever things happened concerning the first-formed, ταῦτα τοῦ ἀκολούθου γένους φύσις ἐγένετο, these became the nature of the following race," it follows that by these words the law of monogamy was then promulgated, which Adam certainly knew, since he knew by what spirit he was speaking.

And so the second opinion, on account of the arguments brought forward and the authority of Innocent III, seems to us certain or at least more probable. And indeed it is certain that the polygamy of unbelievers is now both unlawful and invalid; but, as Bellarmine just noted, this cannot be by natural law alone: therefore some divine law is required. But it cannot be said that the law of the Gospel directly obliges unbelievers; moreover there is no divine law besides the law of institution: therefore unbelievers are obliged by this. But even if you say that the law of Christ which regards marriage was also valid for the nations - for neither was authority lacking to Him in this matter, and the matter at issue was common to all - even in this hypothesis I would have you note that Christ did nothing other than recall the primitive law, declaring it more openly to us, as the Council of Trent speaks. Therefore the primitive law existed, which sanctioned monogamy.

From the things said you have that the arguments proving polygamy unlawful by divine law for Christians are more certain than those which prove it unlawful for unbelievers; for with respect to the faithful this is certain from faith and is demonstrated by its own arguments. Cf. Th. XIII.

VIII. It remains that we dispose of certain fallacies of a heretical man. Marcus Antonius De Dominis, Bishop of Spalato (*de Repub. ecclesiastica* l. V, c. 11, a. 58), distinguishing a twofold concubinage, one of a freeborn man with his own female slave, or one who is in his dominion, the other of a freeborn man with a freeborn woman, asks concerning the first whether the use of female slaves for receiving offspring is lawful, so that a man may have power over the body of his legitimate female slave even if he has his own freeborn wife joined to himself in legitimate conjugal union. But he says that certain examples from Sacred Scripture seem to persuade that this is lawful. The examples, namely, are of Hagar the slave, to whom Abraham went in, and of Bilhah the slave, to whom Jacob went in, although Abraham and Jacob had their own wives. But from the sacred text it is manifest that Abraham and Jacob went in to them by the right not of dominion over a slave, but by marital right;

for Scripture testifies, Gen. XVI. 3; XXX. 4, that those female slaves were given to them as wives, and therefore that a perennial union was contracted and a true marriage existed.

As to the other species of concubinage, the same author first affirms simply that it is not lawful for a man already having his own wife, because by divine law promulgated from Adam and declared by Christ, monogamy was instituted. Yet he adds: "But whether this reason would cease where a married man cannot use his wife because of some incurable disease of hers, or irrecoverable absence, or some similar cause from among those on account of which even divorce would be lawful for him, and yet he does not wish or is not able to dismiss his wife, but is wholly bound to retain her, someone will think is not clear; some also will leave room for ambiguity much more concerning a free man and one unbound and tied by no conjugal union, whether he can join a concubine to himself, where neither strength nor opportunity permits him to have as wife a matron worthy of his rank." Namely, Spalato doubts whether a concubine who is not a wife can be had by a married or unmarried man for procreating offspring. But truly this was never lawful either after Christ or before Christ. For fornicatory intercourse, which is between unmarried persons, was never lawful; nor was adultery ever lawful, which is between the spouse of another and an unmarried person or one bound by another marriage. It was indeed lawful to have several wives, with whom, namely, a perennial obligation would exist; but this is altogether different from what Spalato invents: for the concubine of whom he speaks is not a wife. Civil laws indeed formerly permitted or tolerated that; but laws of this sort have no force.

IX. But lest any difficulty be sought from the opinions of certain ancients, it must first be noted that the name *concubine* formerly had a twofold signification: namely, she was called a concubine who was in no way a wife, but a mistress; and she was also called a concubine who was a wife of an inferior grade, that is, not married with the solemnities of dowry tablets employed, nor admitted to governing the family and administering family affairs, namely, she was not a matron, who was called wife simply or lawful wife (cf. Benedict XIV, *de Syn.* l. IX, c. 12). This is gathered from Roman law, l. *Donationes*, ff. *de Donationibus*, and l. 144, *de Verborum signif.*, and Justinian's Novella 18. The same is also clear from the usage of speech in the Scriptures, as we have already indicated.

Moreover, concerning these concubines spoken of in the second place, the author of the Apostolic Constitutions speaks, l. VIII, c. 32: "Let the concubine of some unbeliever, devoted to him alone, be admitted (to Baptism); but if she also acted wantonly with others, let her be rejected." Likewise the First Council of Toledo, year 400 (cf. Gratian, in can. *Is qui*, Dist. 34, c. 17): "If anyone having a faithful wife has a concubine, let him not communicate. But he who does not have a wife, and has a concubine in place of a wife, is not to be repelled from communion, provided only that he is content with the conjunction of one woman, either wife or concubine, as it has pleased him. Living otherwise, let him be cast out, until he ceases and returns to penance." Again Isidore (cf. ibid. can. 5): "I will not say that it is lawful for a Christian to have many women, but it is not lawful even to have two at the same time, except only one, either a wife, or certainly, in place of a wife (if a spouse is lacking), a concubine." Cf. Natalis Alexander, Sec. 1, Diss. 28. For faith, by which it has always been believed that the conjugal union ought to be only of one with one, persuades that sentences of this sort must be taken in this way; and certainly the context fully admits this interpretation.

On the contrary, the words of Leo the Great in Epist. 167 to Rusticus, Bishop of Narbonne, n. 4, must be explained otherwise, that is, according to the former signification of concubine: "Not every

woman joined to a man is the man's wife, because not every son (say, a natural son from fornication) is the father's heir. But the covenants of nuptials are legitimate among the freeborn and among equals, the Lord Himself having established this long before the beginning of Roman law existed (by which also that law was enacted). And so one thing is wife, another concubine, just as one thing is slave, another free woman. ... Therefore if a cleric of any place gives his daughter in marriage to a man having a concubine, it is not to be taken as if he had given her to a married man, unless perhaps that woman (whom he called a concubine) seems both to have been made freeborn and legitimately endowed and honored by public nuptials." That is, if she is in reality not a concubine but a wife, or has passed into the dignity of a wife; but he requires those conditions not in reality so that the nuptials may be true, but because by these they were usually proved. And so he who gives his daughter as wife to one having a concubine is not to be said to hand her over to a married man. But why does Leo say that conjugal unions are legitimate among the freeborn, not between a freeborn man and a female slave? This is another question, to be treated below; but for now let it suffice to note that a servile condition in either party is an impediment of marriage, unless the other, knowing and prudent, consents to it. The law of Constantine existed (l. 2, C. *de incestis et inutilibus nuptiis*): "There cannot be marriage with a female slave; for from a contubernium of this sort slaves are born." Moreover, this law being supposed, St. Leo so interprets the will of the man, that he did not wish to join her to himself by an indissoluble bond if the woman was not made freeborn, nor endowed, nor honored by public nuptials. To understanding this opinion there also conduces what he has a little later, n. 6: "because one thing is a married woman, another a concubine; to cast away a female slave from the bed and to receive a wife of certain freedom is not a duplication of conjugal union, but an advancement of honor." And so the female slave assumed to the bed here is the same as the concubine, and it is clear from the Pontiff that she is supposed not to have been legitimately joined, because he denies that, when another has been married, a second conjugal union exists. Moreover, this is that concubine which is called a harlot. The words of Leo, n. 4 cited, before the conclusion, indicate this most clearly: "Whence, since the society of nuptials was so constituted from the beginning that, besides the conjunction of two, it had in itself the sacrament of Christ and the Church, there is no doubt that that woman does not pertain to marriage in whom it is taught that the nuptial mystery was not present," which is the signification of the indissoluble union of Christ with the Church through the indissoluble bond of the man and the woman. Therefore that woman to whom the nuptial mystery is lacking is a woman associated to a man by a dissoluble, temporary bond, that is, a concubine according to the base signification, or a harlot. But see also what we shall say concerning these words of Leo in the Appendix.

Augustine speaks of such concubines, Serm. 392: "It is not lawful for you to have concubines. And if you do not have wives, it is not lawful for you to have concubines whom you afterwards dismiss (so all manuscript codices read; the printed editions have: whom you afterwards marry as wives, with *Dismiss them so that* omitted), so that you may marry wives; how much more condemnation will there be for you, if you have willed to have both concubines and wives." Augustine always reproved this concubinage in express words. In the book *de Bono coniugali*, c. 5, he says: "It is also customary to ask, when a male and female, neither he the husband nor she the wife of another, are joined to one another not for the procreating of children, but on account of incontinence, for the sake of intercourse alone, with this faith intervening, that neither he does this with another nor she with another, whether these are to be called nuptials. And perhaps this can not absurdly be called

marriage, if even unto the death of one of them this has pleased them between themselves, and they have not nevertheless avoided the generation of offspring (although they were not joined for that cause), so that either they do not wish children to be born to them or even do something by some evil work so that they are not born. But if either both of these or one of these is lacking, I do not find how we can call these nuptials." Namely, a perpetual or indissoluble conjunction entered for the sake of avoiding incontinence is true marriage. Cf. ibid. c. 14, n. 6: "nor do concubines taken for a time, if they lie together for the sake of children, make their concubinage just."

X. Now note: since by Roman law there was no marriage of an illustrious woman, for example of senatorial or consular rank, with a base person, but concubinage between the same persons was not prohibited, and those concubinary conjunctions accordingly took place, Callistus, Roman Pontiff in the third century, did not indeed approve concubinages of this sort, but permitted that such conjunctions be bound by a nuptial covenant before the Church and thus be true marriages; for by the natural and positive law of God nothing stood in the way and nothing stands in the way of conjugal unions of this sort, and the Church is not bound by the laws of the age. Cf. the Appendix.

XI. You will ask what Augustine means when he says, l. c., in the following number: "Then to apply another woman to the will of the wife, from whom common children would be born, by the commingling and seed of the one, but by the right and power of the other, among the ancient Fathers was lawful; whether also now it is lawful we would not rashly say." He signifies, namely, that he fears lest it be rash to affirm it; but what? Namely, to have two wives, each of whom indeed is your wife, in the way it was for those Patriarchs, yet one handed over to you by the right of the prior wife, as Sarah did, who gave her handmaid to Abraham. But in that phrase, *we would not rashly say*, there is a certain μείωσις, and it is a locution not of one doubting, but modestly denying: that is, it would be rash to say it. For the opinion was certain to Augustine that a simultaneous plurality of wives was interdicted, which opinion he teaches also in this place immediately before. For he teaches that even on account of sterility it is not lawful to dismiss a spouse; but if it is done and another conjugal union is entered, adultery is committed, because the first conjugal union remains. But if it were lawful to have several wives, even though the prior conjugal union remained, there would be no adultery if another wife were received. Cf. besides the same Augustine in book I, *de Sermone Domini in monte*, n. 49, where he simply denies that very thing which here he says he will not say rashly; although in the following number he leaves in the middle another question, nevertheless akin to this one, which you may read. For the rest, it will not be beside the matter to note what Augustine testifies concerning himself in another work written long after these things: *de Adulterinis coniugiis*, l. I, n. 32, namely: "I am not ignorant that the question concerning conjugal unions is most obscure and most intricate. Nor do I dare to profess that, either in this work or in another, I have yet unfolded all its recesses, or that, if I am pressed, I can now unfold them."

§ II: On Indissolubility

Thesis XVI

Having distinguished intrinsic and extrinsic indissolubility, we first state that intrinsic dissolubility, simply permitted to the discretion of the spouses for any cause whatever, is repugnant to the law of nature; but that a certain determinate intrinsic dissolubility is indeed repugnant to the secondary rights of nature, but not to the primary ones.

I. A twofold dissolubility of a contract must be distinguished: one which is called intrinsic, another which is called extrinsic. The former is present when, by the power of the contracting parties themselves, a contract once entered into can be dissolved; and for that reason it is called intrinsic, because it is situated in the nature of the contract itself that those obligations which are contracted by consent should be dissolved by contrary will, Tit. 30, lib. 3, Instit. *Quibus modis tollitur obligatio*, § 4; although certain rites can be prescribed by positive law, so that the dissolution of the contract may be done licitly and validly. Extrinsic dissolubility is present when, by the authority of a superior, the contract is loosed, or the obligation is taken away. Hence also a twofold indissolubility must be distinguished: intrinsic, by which it happens that a contract once entered into cannot be dissolved by the power of the contracting parties; extrinsic, by which it happens that it cannot be dissolved by the will of a superior. When the former indissolubility belongs to a contract, the contract itself is deservedly called indissoluble *per se*, although *per accidens* it may be able to be dissolved extrinsically. For those things belong *per se* to a contract which arise from the very consent by which the contract is made. Therefore, when the consent is such that afterward it can validly be retracted by the contracting parties, the contract is dissoluble *per se*; and, on the contrary, when the consent is such that it cannot any longer be validly retracted, the contract is indissoluble *per se*. But this does not prevent the contract from being able to be dissolved by the authority of a superior, for instance God, to whom the contract and the contracting parties are subject; for then it is dissolved (which must be noted), not by the consent of the contracting parties, but by the power which the superior has of taking away the obligation arisen from the prior consent. Wherefore this potestative act of the superior taking away the obligation must be distinguished from that by which he would permit, or would give power to, the contracting parties themselves to dissolve the contract; for in this latter hypothesis their consent would be the cause of the dissolution.

Directly opposed to intrinsic indissolubility is the faculty in both spouses, or in either one, of giving the other spouse a repudiation, by which one is drawn apart from the other, by which also the bond is loosed and all power and obligation of one toward the other ceases.

II. It is asked whether matrimony enjoys the aforesaid intrinsic indissolubility, and by what right the same belongs to it, and whether it belongs to every matrimony whatever. We shall solve the questions one by one.

Therefore it is first asked how long the mutual obligation of the spouses must endure. And so it cannot be denied that the matrimonial contract requires a certain stability which other contracts do not require. For this belongs to its essence. Its end is the procreation and education of offspring; it is a society of souls; it is a family. But these things cannot exist unless matrimony is permanent; therefore a certain stability, or perpetuity, is required. Yet because these ends seem sometimes able to be obtained, or at least not to be opposed, although the matrimonial bond between the spouses is at

some time dissolved, it must be inquired more exactly whether, and in what manner, intrinsic dissolubility, of which alone we are speaking, is repugnant to the law of nature. And so it is certain that dissolubility of this kind will be repugnant by the law of nature insofar as it is repugnant to the essence of matrimony. Moreover, in the law of nature, primary rights, requiring that which is essential, and secondary rights, requiring that which is congruous and more fitting, must be distinguished (Th. XIV, n. 1).

III. This having been posited. 1. Intrinsic dissolubility, simply permitted to the discretion of both spouses or of either one, which could take place from any motive whatever, is repugnant to the primary rights of nature. Namely, with no extrinsic law determining certain motives, and with no intervention of an independent authority approving the dissolution, this act is governed in such a way that any spouses whatever, as often as they wish, from whatever cause, provided only that they wish it, may loose the bond of marriage, whether the will of one is sufficient, or at least the consent of both is required. This dissolubility indeed has been approved in no even slightly cultivated nation.

For although Justin the Younger, by his Novel constitution given in the year 566, granted that marriages be loosed by the mutual consent of the spouses, nevertheless this law was not received by the Greeks themselves, but another opposed to it, which Justinian had earlier issued, Novel 117. Cf. Assemani, *Bibl. iuris orient.*, Tom. III, pag. 329 seqq. And indeed, with this very broad power of dissolving matrimony existing in the spouses, the essence of matrimony is taken away in reality, although in appearance it is preserved. For the essence of matrimony is situated in the mutual power and obligation to the use of the body and to the leading of common life, and therefore in a certain stable power and obligation, which the end requires, which is the society of the family and the procreation and education of offspring. Whence through matrimony there is constituted a certain and determinate family, to which father, mother, and offspring belong. But with that power of dissolving marriage existing in one spouse, or in both together, that stable mutual obligation ceases which the ends of matrimony require. In this hypothesis, certainly, it could happen *per se* that the offspring would lack due education, if, before he is rightly educated, the marriage were loosed as often as the contracting parties please. Common life also, or the communication of works, would be taken away, and there would be no certain family, since the foundation for keeping faith would be lacking. Wherefore this power is directly opposed to the end of that power and obligation in which matrimony consists. And indeed, in truth, if marriage could be loosed at the pleasure of the spouses, wandering fornication would be introduced by this very fact (Th. VI, III); for whatever, apart from the name, is found among fornicators, or those seeking wandering concubitus, would have a place in such marriages. Certainly a society which can be loosed at the pleasure of the contracting parties cannot be the reason why those associated are bound by a bond of closest friendship, by communication of affections and goods and of life both prosperous and adverse. But matrimony is such that *per se* it can, and with nature teaching ought, to be the reason of this most inward union of souls, as is manifestly clear even from the history of the whole human race, wherever morals have not been most evidently corrupted. Therefore these two things cannot be combined: matrimonial society and an unlimited power in each spouse singly, or in both, of dissolving the marriage.

III. You will say: this intrinsic dissolubility was permitted by God to the Hebrews; for Deut. XXIV, 1 seqq., men were permitted to give their wives a bill of repudiation and to dismiss them, in such a way that they were able to marry others. Moreover, this lay open to the man because of some *foeditas*, if he

hated her, which are most universal formulas of speaking. Finally, this dismissal was done by the private authority of the man, without any judicial form, and without public authority conferring value upon the act, since the act was valid of itself. Therefore, since nevertheless the marriages of the Hebrews were true marriages, it follows that such dissolubility is not repugnant to the essence of the same.

I answer that in this sufficiently difficult matter there are three things which come into question. 1. Whether in that place of Deuteronomy there is had a true permission of God making that dismissal of which there is speech there licit, or only a toleration. 2. What was permitted or tolerated: whether only the separation and dismissal of the wife from the house of the man, or besides this the dissolution of the conjugal bond. 3. What are the causes on account of which, God permitting or tolerating, it was lawful for the man to dismiss the wife.

1. We take our beginning from the third question and first bring forward the words of the law as the Vulgate has them: *if a man has taken a wife and has had her and she has not found favor before his eyes because of some uncleanness, he shall write a bill of repudiation and shall give it in her hand and shall send her away from his house. And when, having gone out, she has married another husband, and he also has hated her and has given her a bill of repudiation and has sent her away from his house, or has certainly died, the former husband will not be able to receive her again as wife, because she is polluted and has become abominable before the Lord, lest you make your land sin.* But in the original text it is read thus: *if a man has taken a woman and has led her as wife, and it happens that she has not found favor in his eyes, because he has found in her an uncleanness of a thing*, עֶרְוַת דָּבָר, *and he has written* (LXX, καὶ γράψει) *for her a bill of cutting off*, סֵפֶר כְּרִיתֻת, *and has given it into her hand and sent her away from his house, and she, having gone out from his house, has gone and has been with another man ... the former husband, who sent her away, will not be able again to receive her so that she may be to him as wife after she has been polluted*, אַחֲרֵי אֲשֶׁר הֻטַּמָּאָה, *because it is an abomination before the Lord, and you shall not make the land sin*, etc. If you follow the Vulgate, the legislator establishes two things: first, that the man write a bill of repudiation and give it into the hand of the wife; secondly, that the man cannot again receive the dismissed wife if she has been with another. The rest is said hypothetically by Moses. But in the original text all things are said hypothetically except the last of those two; namely, the writing itself of the bill and its putting forth into the hand of the wife pertains to the hypothesis for which the law is established, and this one thing alone is prescribed, that the former man not again receive the woman dismissed by him who has been with another man. From this observation certain learned men infer (cf. Ioan. Buxtorf, *de Sponsalibus et Divortiis*) that in the law there is not had a permission or mandate concerning the bill of repudiation and the dismissal of the wife, but that the legislator only narrates a fact and does not explicitly disapprove it, and therefore that it can be said at most that this practice was tolerated. But these things have been devised in vain. In Matt. XIX, 7, 8 two things are distinguished: the permission made by Moses of dismissing, and the command of writing the bill of repudiation. Moses, namely, permitted the dismissal of the wife; but, so that this might be done rightly and might be valid, he commanded that a bill of repudiation be written and given to the woman dismissed. With these things posited, let us come to the questions.

And so, as concerns the last question, we say that it is not at all certain that a bill of repudiation could be given with impunity from any cause whatever, according to the discretion of the man.

Certainly let it be noted first that in the age of Christ there was disagreement concerning this very matter between two schools of the Jews: the school of Hillel affirming that this was lawful from any cause whatever, even the slightest; but the school of Schammai defending that it was lawful only from a grave cause, not indeed of adultery alone, for which the penalty of death had been established, but from other causes which more or less approached it and by which the fidelity owed by the woman was violated. From this we conclude: therefore, in that age this interpretation of the Mosaic law was not certain among the Jews, namely, that from any cause whatever, at the discretion of the man, it was lawful for him to give the wife a bill of repudiation; nor had there ever existed an authentic declaration of this matter, for thus there would not have been place for the question. But although not a few of the doctors of the Hebrews in the later age interpreted the words of Moses in this way, each person will easily grant, I think, that the sentence of Moses is not to be confused with the interpretations of recent doctors, who have imagined very many things most foreign to Moses.

Indeed the very manner of disputing of the school of Hillel shows that that opinion was new, since it demonstrated it by a most inept argument, contending that the words עֶרְוַת דָּבָר, which are in the construct state, and therefore signify one thing, must be taken separately, as if it were said: either עֶרְוָה or דָּבָר (cf. Selden, *de Uxore hebraica*, l. 3, cc. 18, 20).

Moreover, if the words themselves of Moses are considered, there is nothing which compels so broad an interpretation to be employed. Certainly the question returns to the force of the expression עֶרְוַת דָּבָר, *foeditas rei*, that is, some foul thing. We concede that adultery alone is not signified; but we contend that it is suitably taken of some matter or dishonest action against the fidelity of marriage. For properly עֶרְוָה is nakedness, hence turpitude. When these things are said of a wife and are drawn to signify the cause why the wife is hated by the man, it is natural to take them concerning moral turpitude against matrimonial fidelity, or concerning turpitude against the end of matrimony, for instance if she is sterile. But although the same expression occurs in the preceding chapter in the sense of physical foulness, it does not therefore follow that it, or it alone, is signified here too; for from the different adjuncts of speech the supposition of a word is varied. The history contained in the Scriptures indeed supplies nothing which would suggest that the practical interpretation of the Hebrews was different; indeed, almost no example of repudiations of this kind occurs, which permits one to suspect that the matter was not so easy (in 1 Paralip. VIII, 8 an example of this matter is exhibited). Whence it is lawful to conclude that there did not likely exist so many causes of repudiations. But the interrogation of the Pharisees, Matt. XIX, does not show that it was the persuasion of the people that it was lawful for a man to dismiss a wife from any cause whatever which had pleased him, nor does it show that the Pharisees themselves judged the same. For in order that, about to test Christ, they should ask that very thing, it was enough that they knew this opinion to be in force among some doctors of their nation; and in order that they should drive Christ into straits, they could also press the arguments of the opposing party. It is therefore sufficiently probable that repudiation had no place except from a grave cause of violated fidelity, as the school of Schammai also interpreted it, or, if you wish, also of sterility, which in a wife is a grave turpitude, even if physical. Nor is it certain that repudiation was lawful to be done without witnesses and the intervention of some public person; and perhaps the bill itself was written by a public person, as Augustine wills, lib. 19, *contra Faustum*, c. 26, although Selden (l. c., c. 25) denies that this has thus far been ascertained from the commentaries of the Hebrews. And indeed how would another man have been willing to receive her as wife unless the bill of repudiation, which she herself brought, had

been certain by some authentic sign? The same can be confirmed by the example of Joseph, who, only in order that he might spare the honor of his wife, whose sanctity he knew while he was ignorant of the cause of her conception, wished to depart secretly from her (cf. the Appendix at the end of Chapter I).

IV. It follows that we must see of what sort this dismissal was, or what was the effect of the bill of repudiation. For there are not a few among the older and more recent Christian interpreters who judge that it was nothing but separation of bed and cohabitation, with the conjugal bond remaining; so that therefore the woman could not marry another, although the man could take another wife, because at that time it was lawful to have several wives. The reasons for this opinion, besides the authority of certain Fathers, which is not very rightly brought forward, are reduced to these two. The first rests upon the nature of the matter itself. They say, namely, that the permission made by Moses was such that it was open to the man to dismiss the wife from any cause whatever; for he says, *if the woman has not found favor in his eyes, if he has hated her*. But the *foeditas* on account of which the woman is said not to find favor in the eyes of the man is whatever can displease the man, whether moral or physical. But it could not happen that so broad a power of dissolving the conjugal bond would be made for the man in the people of God. Therefore. The other reason is gathered from the very words of Moses. For he says that the dismissed woman who has married another is polluted and abominable before the Lord. But this pollution is certainly moral, since on account of it the woman is abominable to God. But why is the dismissed woman called polluted if she has married another, unless because, existing as wife of the man by whom she was dismissed, she could not be united to another? Therefore not the bond of marriage, but only the society of cohabitation, was loosed by the bill of repudiation.

Now if it were certain that Moses tolerated (or, if you wish, permitted) that a man by his own authority should dismiss his wife from any cause whatever, we confess that we too would concede to that opinion, namely, that the effect of the bill of repudiation was not the dissolution of the conjugal bond, and this on account of the reason brought forward. But we have already declared that that is not demonstrated from the words of Moses. Nor is it established, as we have indicated, that this was lawful to do without the intervention of a public person. The other argument also seems to us to lack demonstrative force. For, short of adultery of the wife who has married a second time, we seem to ourselves to understand sufficiently that pollution and abomination of which there is speech. And first it must be noted that the verb טָמֵא is not said of moral uncleanness alone, but also of legal uncleanness of men and beasts; cf. Gesenius ad h. v. Likewise, as to the words which the Vulgate renders *she has become abominable*, if we consult the original text, the words of the text תּוֹעֵבָה הוּא may rather be translated thus: *this is an abomination before the Lord* (for תּוֹעֵבָה is a substantive, and הוּא or הִיא frequently serves in place of the substantive verb), namely, that the man should again receive the wife whom he repudiated. Certainly it must be noted that the things which are said here concerning the dismissed wife are not said of her in any hypothesis whatever, but only in this one: that she returns to the former husband by whom she was repudiated. For her second nuptials are not reprehended, nor is she herself prohibited from going to a third man after the second man either dismissed her or died; but this alone is here presented as hateful to God, that those who had been separated by repudiation should again be united after the woman had been with another man. Therefore it is an abomination, or, if you wish according to the Vulgate, the woman is abominable to God, not considered absolutely, but relatively, namely, insofar as she returns to the former man after

she has married another. And this is what God prohibits. Chrysostom seems to us to have touched upon the reason for this matter, Hom. XVIII on Matthew, n. 4: "The ancient law," he says, "was that he who, from any cause whatever, hated his wife was not prohibited from repudiating her and taking another. Nor, however, did the law command that this be done simply, but after a bill of repudiation had been given to the wife, in such a way that she could not again return to him, so that at least the figure of marriage might remain. For if it had not prescribed this, and if it had been lawful to repudiate her and to receive another and then to bring back the former, great confusion was going to arise, with all frequently receiving the wives of others by alternating turns, and this would plainly have been manifest adultery." Namely, under the appearance of marriage there would have been introduced a certain promiscuous exchange of wives and wandering concubitus. This certainly is wicked, and under this aspect a woman who would undergo these vicissitudes would be abominable before the Lord. But why is she called polluted, since she has been known by another man? We think that, although she was a true wife of this man, she could be called polluted by God. For although God permitted repudiation, nevertheless this "was conceded not by the will of God but by the necessity of sinners (Jerome on Matt. XIX, 3)," that is, God permitted it not from antecedent will but from consequent will, namely, on account of the hardness of heart of the Hebrews. Therefore the thing was something which God, considered in itself, did not approve, in which He saw a certain disorder and a certain defect of true cleanness; and so that God, in the very permission of repudiation, might signify this to the Hebrews, He called that woman polluted who had been known by the second husband. These words indeed in the Hebrew text indicate only the fact, not properly the reason of the law: *after she has been polluted*, he says, not *because she has been polluted*.

We judge that the same interpretation must be applied to the words of Jeremiah III, 1. Commonly it is said: *if a man has dismissed his wife, and she, departing from him, has taken another man, will he return to her again? Is not that woman polluted and contaminated?* Nevertheless it is better to note that in the Hebrew text mention is made not of the woman but of the land: *has not that land been profaned by profaning?* It perhaps alludes to the words of Moses: *lest you make your land sin*, l. c.; cf. Jerome, comm. on Jeremiah, l. I, c. 3, v. 1. But as to Malachi II, 16, after it has been said, *when you have had hatred (for your wife), dismiss her, says the Lord God of Israel*, there is immediately added: *but iniquity shall cover his garment*. It is lawful from the Hebrew to translate: *but he covers his wife with injury*, which, whichever dismissal it is, can be true.

On the contrary, the opinion affirming that the bond of marriage was dissolved by the bill of repudiation is strongly recommended by these reasons. 1. The second man can give a bill of repudiation; but a bill of repudiation could be given not to an adulteress, but to a wife or betrothed woman. 2. A dismissed woman, if afterwards she has married another, is prohibited, not indeed from marrying another when this second husband has died, but from returning to the former husband. But if the first bond remained, there was no sufficient reason why this should be prohibited; for this prohibition was in conflict with the obligation of the woman herself toward the man, which remaining, reconciliation could not be impeded. It was moreover in conflict with the law of honesty; for thus the woman was exposed to the danger of adultery, and it is not honest to impede that this danger be removed. 3. Besides, in Lev. XXI a special law is enacted concerning the marriage of priests and of the high priest, so that to them is forbidden what is lawful to others, or that is commanded to which others are not bound. Namely, the high priest is commanded to marry a virgin; he is forbidden to marry a widow, a repudiated woman, a defiled woman, a harlot (v. 14). The reason of this law is a

special reason: because the oil of unction has been poured upon his head, because his hands have been consecrated in the priesthood (v. 10). A reason is brought analogically for the other priests (v. 6). Therefore the law also is special, not common to all Hebrews. And certainly no one from the people was prohibited from marrying a corrupted woman, a widow, a harlot. Therefore also the prohibition against marrying a repudiated woman pertained only to the high priest and the other priests; it was permitted to the rest to marry a repudiated woman as wife. But if this is so, then the bond of the repudiated woman with the former man was dissolved. And indeed, in truth, if it had been lawful for no one to marry a repudiated woman, why in the law of the priests, by which things peculiar to them are prescribed, would it have been decreed that a repudiated woman was not to be married by them? Did they not already know that they were bound to this, because they were from the people of the Hebrews? 4. The Hebrews interpreted the law in this way; for in the age of Christ there was indeed a dispute about the causes of dismissal, but in this all agreed, that a woman dismissed by a bill of repudiation could marry another. Cf. Josephus, *Archaeol.*, l. 4, c. 8. 5. Christ Himself, Matt. XIX, opposes the permission of the bill of repudiation, considered simply, to the primitive institution, affirming that it did not exist from the beginning. But the mere permission of dismissal without dissolution of the bond is not opposed to the primitive institution; for even now this is lawful for Christians, among whom the primitive institution has been recalled entire. Therefore let it be certain that the bond was loosed by the bill of repudiation.

In this matter the opinions of the Fathers seem divided. Jerome indeed, on Malachi, c. II, 16, seems to judge that not every dismissal among the Hebrews was without fault, except the cause of fornication; nevertheless it is not established whether the things which he says he wishes to refer only to Christians, or also to the Hebrews who were before Christ. Equally ambiguous is what he says on Matt. XIX, 8. Ambrose also, on Luke, lib. VIII, n. 70, rather supposes that dissolution of the bond was permitted to the Jews, which he denies to Christians. But Augustine, who, lib. XIX, *contra Faustum*, c. 20, expounds at length the economy of the institution of the bill of repudiation, speaking of the same in l. 1, *de Sermone Domini in monte*, c. 14, says that "however hard the man was who wished to dismiss his wife, when he thought that, once the bill of repudiation had been given, she could now without danger marry another, he would easily be appeased." Therefore Augustine thought that the marriage was loosed. But when he says, *de Bono coniugali*, c. 8, that in that permission of Moses there appears a reproach of divorce rather than an approval, he is speaking of the approval of God according to antecedent will, which certainly was lacking; indeed, according to that will there was a reproach, for repudiation had been permitted only from the cause of men, namely, on account of their hardness. Basil indeed, can. 9, Epist. CXCVIII, and can. 21, Epist. seq., referring the words of Jeremiah from c. III, 1, calls the dismissed woman who has married another, of whom there is speech there, an adulteress. But it is manifest that the holy Doctor is not interpreting the law of Moses *data opera*, but incidentally referring the words of Jeremiah, which, taken separately, could agree with the matter which Basil was then treating. Cyril of Alexandria, on Malachi II, 14, 16, from the fact that the law permitted a bill of repudiation to be given, denies that it follows that those who give it are without fault, who give it for the purpose of being coupled with others. Perhaps he places the sin in this, that men repudiating their wives are not led by a good intention.

In the biblical apparatus containing several Dissertations collected by a certain Discalced Carmelite in the year 1705, there exists in Tom. 3 a Disputation *De ritibus nuptiarum penes Iudaeos*; and there, a. 8, there is vehemently defended the opinion denying that it was permitted to the Jews, by a permission

which would take away sin, to dismiss their wives through a bill of repudiation in such a way that the conjugal bond would be loosed; and the principal reason for this denial is the authority of St. Thomas, who is said to have denied it. This indeed is proved both by several testimonies of his brought forward, and from his principle, namely, that, according to Thomas, the dissolution of matrimony is repugnant to the law of nature. But 1. St. Thomas recounts both opinions in this question, and calls the one which we defend probable; indeed he also defends it, having solved the contrary arguments against it. He only says that the other opinion is more common, and shows that he himself is borne more toward it. Cf. in 4, D. XXXIII, and 1a 2ae, q. CV, a. 4, ad 5. But as to what they say, that Thomas from his customary modesty calls the opposite opinion probable, we do not understand what this regards; for neither do we believe that the holy Doctor, on account of modesty, wished to assert as probable that which did not seem probable to him. Therefore, even if we wished to settle the question by the authority of St. Thomas alone, we would have nothing certain here.

But 2. that principle of St. Thomas is brought forward wrongly. For the distinction of the precepts of natural law into first and second must be kept before the eyes, which we gave in Thesis XIV, n. 1, not from our own store, but from St. Thomas himself. Therefore, when Thomas, in lib. 3, *contr. Gentes*, c. 123, produces several arguments by which he proves that the dissolubility of marriage is not congruent with the law of nature, we say that he speaks of the second precepts of the law of nature, by which that which is more fitting is proposed. And we demonstrate this evidently from the fact that he judged it probable that power of dissolving marriage had been made to the Jews by God; which certainly he would not have judged if he had thought it to be against the primary precepts of the law of nature, from which not even God can dispense. Therefore what Thomas teaches l. c. is that which we also with him shall teach in the following part.

What, then, finally do we have? That the opinion which denies that it was permitted by God to the Jews through a bill of repudiation to dismiss their wives in such a way that the bond was loosed, was in the age of Thomas the more common among the Theologians, and pleased him more. But these things are not yet sufficient for a Theologian for the full solution of the question. On the contrary, the opinion which we defend, several Theologians of the first rank defended either as certain or as more probable: Sanchez, *de Matr.*, l. 10, D. 1, n. 7, with several authors also cited; Bellarmine, *de Matr.*, l. 1, c. 17; Bonfrerius on c. 24 of Deuteronomy; Cornelius a Lapide, ibid.; indeed also from the Thomists, Gonet in Tom. 5 of the *Clypeus*, D. 5, and Cajetan on Deuteronomy c. 24. Therefore proper arguments must be brought forward, taken from the accurate analysis of the text and the nature of the matter, which we have tried to furnish according to our powers.

You will nevertheless say: Paul expressly teaches that in the Old Testament a woman was bound to the law of the man as long as he lived, so that accordingly she would be called an adulteress if she had been with another man. For he assumes this from the law (namely, of Moses) to prove that the law has dominion in a man for as long a time as he lives, Rom. VII, 1-3. Therefore, according to the law of Moses, a wife also who had been dismissed remained bound to the man dismissing her as long as he lived.

I answer first. This obligation of the woman toward the man is again predicated by the Apostle in almost the same words, 1 Cor. VII, 39, and he hands it down among the precepts proper to the Christian economy, in such a way that this precept also seems to be proper to the same economy.

Wherefore one might perhaps suspect that the law to which he appeals (Rom. VII) is rather the Christian law.

I answer secondly. The parenthetical words, *for I speak to those knowing the law*, may be interpreted thus: I speak, namely, to those knowing the force of law, whatever law it may be, which force of law is this, namely, that law has dominion over a man as long as he lives. Moreover, he declares this by the example of a wife bound to her husband; nevertheless he could borrow this example also from Christian law, since in this place, if you receive that interpretation, he was not treating of the Mosaic law.

I answer thirdly. If you wish τὸν νόμον, Rom. VII, 1, to be the law of Moses, which we too more gladly admit, note that the Apostle speaks in the hypothesis that the woman has a husband: *she who is under a man*, he says, *while the man lives, is bound to the law*, certainly of marriage, since it was not lawful for her to give a bill of repudiation. But we deny that a dismissed woman is under a man, which you also cannot affirm, unless you suppose what must be proved by you, that the bond endured after that dismissal.

There is also another response which we once gave, and which now we think by no means necessary. Namely, we noted that such a law concerning the obligation of the woman toward the man is not found in so many words in the whole law. But it exists according to the sense. Where, then? I do not know whether you may find another place besides Gen. II, 23, 24, where the law of the institution of matrimony is set forth. Now if the Apostle had regard to this place, what do you have? Namely, that by the law of institution the wife is indissolubly bound to the man and the man to the wife. We freely grant this; indeed, in its place below we shall prove it. But this is not what is now being treated. Rather, it is asked whether some dispensation from this law (and when we say dispensation, we certainly suppose the prior law) was conceded to the Hebrews, by which men could dismiss their wives with dissolution of the bond. We prove this from the place of Deuteronomy, where Christ Himself testifies that something had been permitted otherwise than had been instituted from the beginning. Nor does the Apostle deny what we contend, since he only cites the law of institution as uniquely valid in his age, since it had been recalled by Christ.

V. Therefore there remains the question whether such an economy of Moses was a true permission, by which the matter became licit, or only a toleration, leaving to that action its malice. But certainly that question has already been prejudged from the preceding question. For if the effect of the bill of repudiation was the dissolution of the bond, so that the dismissed woman could marry another, and could not, after the death of the man to whom she had married the second time, return to the former man, there was need of the intervention of a divine dispensation by which the dissolution of the bond, which from the beginning had been established as indissoluble, would be permitted. For mere toleration would have operated nothing on the part of the thing; it would have freed the one dismissing only from penalty, not from conjugal obligation toward the dismissed woman. But with divine permission existing, the matter became licit.

Besides, as St. Thomas argues in 4, Dist. 33, q. 2, a. 2, ql. 3, ad 4: "If the Jews, by repudiating their wives, had sinned, this at least ought to have been indicated to them through the law (for the law is holy, and through it comes knowledge of sin) or through the prophets (Isai. LVIII, 1: *Announce to my people their crimes*); for otherwise they would seem too despised if those things which are necessary to

salvation, which they did not know, had never been announced to them. Which cannot be said, since the justice of the law observed in its own time (certainly from grace) merited eternal life."

And so one may judge that it was permitted to Jewish men to repudiate their wives from a grave cause, with some public authority intervening. But this is a different dismissal from that which we disapproved above.

VI. But intrinsic dissolubility from certain causes only, by which the proper goods of matrimony are not impeded, which is governed by certain laws guarding against the more serious inconveniences and rendering the act more difficult and rare, and which takes place with the consent of an independent authority, is not repugnant to the primary law of nature. The first argument for this doctrine can be taken from the permission of repudiation made to the Hebrews by God, since repudiation looked to this, that the bond of matrimony be loosed. For in this hypothesis it was truly the man who dismissed the wife, commanding her by the bill of repudiation to be free. The form prescribed by the law was indeed kept, but the dismissal and repudiation was done by the authority of the man; and therefore it was an intrinsic dissolution. Moreover, in that law there certainly were not more precautions than those which we have posited in the enunciation of our assertion. Therefore, since God permitted to all Hebrew men the power of giving a bill of repudiation, and nevertheless did not destroy the essence of matrimony in His own people, it follows that some power of dissolution, or intrinsic dissolubility, is not repugnant to the laws of nature, at least the primary ones. And because, *per se*, with regard to the power over the body of the other by which the conjugal bond is constituted, the right in each spouse is equal, hence what is lawful to the man ought also, *per se*, to be lawful to the woman; although the dignity of headship which belongs to the man brings it about that this right is more congruent to the man.

And indeed, suppose that enough provision has now been made for the children with regard to education and sustenance; suppose that the wife is sterile; you will with difficulty prove (says Bellarmine, *de Matrim.*, c. 4) that dissolution is repugnant to the essence of matrimony; indeed, there is nothing which, with the law of nature alone considered, demonstrates that it is repugnant. For this demonstration is sought from the ends of such a union. Suppose, besides, that one spouse commits adultery; since with natural horror the spouse shrinks back from the contract and familiarity of the party who has violated fidelity so greatly, does the primary law of nature, especially if as yet there are no children, deny to the other, offended party the right of separating himself and contracting other nuptials, so that contrary to his wish he remains unmarried and, through the fault of the other, is deprived of the good of offspring and of the bridle of concupiscence? It can indeed be demanded that this power be restrained within certain limits, and be governed by certain laws independent of the discretion of individuals; and in this matter we judge that nothing more can be demanded than what we set forth from the beginning in the enunciation of this part. But with these things posited, you cannot prove that intrinsic dissolubility in cases of this kind is repugnant to the essence of matrimony by the law of nature, unless you prove that any dissolubility whatever is repugnant to the same; which, however, is false. For whatever argument you fashion, it will return to this: that either from the ends of matrimony, or from the nature itself of the obligation of the spouses undertaken from the beginning, you demonstrate that this dissolubility is repugnant to the primary law of nature. Now from the ends you cannot demonstrate this, as we have seen. But if you argue from the nature of the obligation, since this is always the same, you will bring it about that any dissolution

whatever is against the primary law of nature, because it is opposed to that obligation. But if you concede that some dissolution of the same can be combined with the nature of that obligation, then how do you prove that this dissolubility also, of which we speak, is repugnant to the primary law of nature? Moreover, that the conjugal bond suffers some dissolution is certain from the permission made to the Jews.

This which we defend is certainly the opinion of Augustine, who judges that full indissolubility is proper to Christian marriage because it is a sacrament; indeed, he places in that the reality of the sacrament (but Augustine speaks of indissolubility especially intrinsic; for a certain extrinsic indissolubility belongs to Christian marriages, as we shall see afterwards). Therefore Augustine did not recognize that indissolubility in marriage considered by the law of nature alone.

VII. Nevertheless this intrinsic dissolubility, of which we have just spoken, is opposed to the secondary rights of nature. For that which is *per se* congruous and more fitting for the essence of matrimony, so that the opposite is more or less unbecoming, is prescribed by the secondary rights of nature. Moreover, it is certainly congruous and most fitting for matrimony that it be intrinsically altogether indissoluble. Certainly it is abhorrent from matrimony that a spouse, while he is bound, should think of entering another marriage; for by this very fact that mutual friendship is diminished, which nevertheless follows spontaneously from so close and natural a communication, by which one gives himself to the other. But unless the union is indissoluble, that could and would follow not only from the fault of man, but *per se*. Besides, the wife is, by a certain fixed reason, the flesh of the man, and the man also the flesh of the woman; for they are one flesh. But *no one ever hated his own flesh, but nourishes and cherishes it* (Ephes. V, 2); therefore nature shrinks back from divorce as from hatred of one's own flesh, with some distinction indeed, according as spouse and flesh properly differ. Again, by the indissolubility of matrimony, provision is more certainly made *per se* for the good of the offspring and the modesty of the wife is more honorably cared for; thus the communion of life, the union of souls, the state of the family, and the necessity of affinities is firmer and holier. Finally, in this way the distinction of families is more certain and peace between diverse families is safer, and thus better provision is made for the good of human society. But if it sometimes happens that it is becoming that the bond be loosed, this need not be done by the power of the spouses, but can be done by the authority of a superior, and therefore extrinsically. Wherefore this indissolubility was deservedly sanctioned by the law of institution.

Certain inconveniences are usually objected, which have a place when the indissolubility of matrimony is posited after hatred or weariness has succeeded love. But 1. these do not outweigh those things which would arise from dissolubility. 2. These are inconveniences of individual persons; but those which arise from dissolubility are opposed more or less to matrimony itself and to the end intended by nature through it. 3. These do not exist *per se*, but from the evil will of men, who, since they are free, can impede those things from which they take their origin; but the former would arise *per se* from dissolubility. Moreover, compare the things which we shall discuss *data opera* on this argument in Th. XXIII.

According to the things just said, we understand that proposition 67 in the Syllabus of Pius IX was rightly condemned: "By the law of nature the bond of matrimony is not indissoluble, and in various cases divorce properly so called can be sanctioned by civil authority."

Thesis XVII

It is established by Catholic tradition that Christian matrimony, not only consummated but also ratified only, is intrinsically indissoluble even in the case of adultery.

I. Now specifically concerning the indissolubility of Christian matrimony. Note that several Theologians (cf. Sanchez, L. II, D. 13) in this question do not use this distinction of indissolubility into intrinsic and extrinsic, and regard this one thing for affirming or denying indissolubility: whether matrimony can be dissolved. But when they deny that every matrimony is altogether indissoluble and affirm that only consummated matrimony of Christians is such, they in reality regard that indissolubility which we have called extrinsic, which ratified matrimony of the faithful, and consummated matrimony also of unbelievers, can lack. Nevertheless, all agree that consummated matrimony of the faithful is altogether indissoluble; but they do not agree in assigning the intrinsic reason of this matter, namely, whether it is by the law of nature, or by the positive law of God, or by ecclesiastical law, or by reason of the sacrament, or by reason of a certain signification. First it will be necessary to demonstrate the truth, then to investigate its reason. We say, therefore, that Christian matrimony, whether ratified or consummated, is intrinsically indissoluble even in the case of adultery of either spouse. The difficulty is from the words of Matthew XIX, and from the practice of the Greeks and the opinions of certain Fathers, namely, whether to Christians, on account of fornication or adultery of the spouse, there was made a power, which also belonged to the Jews on account of other causes, of dissolving the conjugal bond.

II. The doctrine is asserted by the Council of Trent, Sess. XXIV, *de Reform. Matrim.*, cn. 5: *If anyone shall say that on account of heresy, or troublesome cohabitation, or affected absence from a spouse, the bond of matrimony can be dissolved: A.S.*; and cn. 7: *If anyone shall say that the Church errs when she has taught and teaches, according to the evangelical and apostolic doctrine, that on account of adultery of one of the spouses the bond of matrimony cannot be dissolved, and that neither spouse, or even the innocent one who did not give cause for the adultery, can contract another matrimony while the other spouse is living, and that he commits adultery who, having dismissed an adulteress, marries another, and she who, having dismissed an adulterer, marries another: A.S.* In these canons there is speech simply of matrimony, which at least is the matrimony of Christians, to whom these canons pertain, no distinction being made between ratified and consummated. The power which is denied is certainly the power which belongs to the spouses themselves; for if this were present, the canons would be false *per se* and simply. And concerning this the question was when these canons were issued. There are enumerated the causes which might have the greatest force for dissolving the bond and which were brought forward by the heretics for the dissolution of the same. From the second canon we have: 1. that the Church, not this or that Church, but simply the Church, that is, the Catholic Church, has taught and teaches that the bond of matrimony cannot be dissolved on account of adultery of one of the spouses; 2. that she has taught and teaches this according to evangelical and apostolic doctrine; 3. that he is anathema who shall say that the Church errs in this doctrine. Pallavicini reports, L. XXII, c. 4, that a simpler decree had previously been proposed, by which he was said to be anathema who would say that consummated marriages can be dissolved on account of adultery. If you look to the sentence, almost the same doctrine is handed down in both decrees. For the Church cannot fail to err when she teaches that matrimony cannot be dissolved, unless this is true, and indeed true according to evangelical and apostolic doctrine; for the

Church testifies that she teaches it according to this doctrine. Therefore by this very fact the Tridentine Fathers signify that it is a revealed truth. And certainly he who would affirm that marriage can be dissolved in that case would also have to affirm that the Church errs, which denies this. And the Protestants were doing this. But the Greeks, less logical, content with their practice of dissolving those marriages, abstained from this calumny against the Latin Church. Moreover, from this special manner of thinking of the Greeks, it happened that they would not be struck by the anathema if the anathema were said only against those who would say that the Church errs in this matter. Therefore, so that the Council might comply with the Venetian orators, who demanded that an anathema not be brought against the Greeks, it admitted that other formula proposed by the same orators. Therefore the doctrine was not changed, but the manner of inflicting the anathema was changed, and the condition on account of which the anathema would be incurred. Moreover, no one can deny that the canon is doctrinal. For the indissolubility of matrimony is asserted to be doctrine of the Church, doctrine according to evangelical and apostolic doctrine, that is, revealed doctrine; that the Church is infallible in handing down this doctrine; and that those who deny this are heretics. Moreover, a canon proposing revealed doctrine and doctrine infallibly asserted by the Church is certainly doctrinal. Indeed it is also dogmatic, namely, establishing a dogma of faith to be believed by all; but its direct object is the inerrancy of the Church in teaching that matter, while its indirect object is the matter itself, or the indissolubility of marriage. "What Catholic," says Pius VI in the epistle to the Bishop of Eger, "does not recognize as a head of doctrine that which the Church has taught and teaches according to the Gospel and apostolic doctrine, and in teaching which it is certain, indeed expressly defined, that she does not err?"

In order that we may vindicate the doctrine of the Council, it is necessary to demonstrate that it is really evangelical and apostolic. This can be proved both from the words of Christ and of the Apostle, to which the Council of Trent certainly alludes, and from the constant consent of Tradition. Since the question especially is whether, in the case of adultery, the spouses have the power of dissolving marriage, which being denied, it follows of itself that that power must be denied in the other cases, we shall chiefly treat this question; although the things which we shall bring forward will have force, both implicitly and explicitly, universally for any case whatever. Note, moreover, that although now in treating we are dealing only with intrinsic indissolubility, we do not wish to say that this alone belongs to, and this alone is asserted by the testimonies to be brought forward concerning, the matrimony of which we speak; but whether another also belongs will be discussed expressly afterwards.

III. Let the first argument be from Tradition. The constant sense of the Church that this is a divinely revealed doctrine, if we ascend from the age of the Council of Florence to the beginning, is clear in this way. 1. In that Florentine Synod the Latins and the Roman Pontiff openly signified that they disapproved the method of the Greeks of dissolving the bond of nuptials on account of fornication. The same Pontiff, in the Instruction for the Armenians, taught that "although for the cause of fornication it is lawful to make separation of bed, nevertheless it is not lawful to contract another matrimony, since the bond of a legitimately contracted matrimony is perpetual." Thus it has been sanctioned in canon law, and indeed as an evangelical law, the words of Christ and the Apostle having been brought forward: c. *Ex parte*, *de Sponsalibus et Matrimonio*, and c. *Gaudemus*, *de Divortiis*, which rescripts are indeed, the one of Alexander III, the other of Innocent III. Before these, John VIII had written in these words to Ederetus, Archbishop of the Angles, in the year 877: "But as to these whom

you assert to leave their own wives against the precept of the Lord, we command that neither the man depart from the wife nor the wife from the man except on account of fornication; but if on this account he or she shall depart, let him or her remain unmarried, or be mutually reconciled, since the Lord says, *what God has joined let not man separate*. And therefore, since each person cannot desert the former woman joined to himself in lawful matrimony, by no reason whatsoever is it granted to him to lead in another while the former lives." Before him Nicholas I, in an epistle to Ado, Archbishop of Vienne, in the year 862: "You ask whether, a wife having been dismissed whom someone has taken after legitimately betrothing her, because afterwards he imposed an evil name upon her, without the decree of a general Synod, it is lawful for him either to receive another against evangelical authority, or, while she survives, to have a concubine in place of a wife. Supported by apostolic authority, we wholly resist these things according to the evangelical sanction, and we grant neither the union of another wife to those who do such things while the dismissed woman survives, nor do we bestow license of having a concubine." Photius, in the *Syntagma Canonum*, Tit. XIII, c. 4, recites the canon of the Milevitan Council which will soon be brought forward. The same is established in the Capitularies from the Collection of Benedict, L. II, n. 87 and 235, by which this is decreed: "those who, after dismissing their wives on account of fornication, marry others, are marked by the sentence of the Lord as adulterers." The same was established in the preceding century in the Council of Friuli, with this reason added: "For although it is read in the sacred evangelical pages that the Lord said that a man may dismiss his wife for the cause of fornication alone, nevertheless it is not read that He conceded that he may join another to himself in marriage while she lives; indeed, there is no doubt that He prohibited this in every way. For He says: whosoever, etc." The same was established in the same century by Stephen II in the responses given to the Bishops of the Gauls, renewing the decrees of Innocent I and Leo the Great. The same had been decreed in the preceding century in the Council of Herudford in England under Theodore, Archbishop of Canterbury, c. 10: "Let no one leave his own spouse except, as the holy Gospel teaches, for the cause of fornication. But if anyone has expelled his own spouse joined to himself in lawful matrimony, if he wishes to be a Christian rightly, let him be joined to no other; but let him remain so, or be reconciled to his own wife." In the fifth century, moreover, the Second Milevitan Council issued a canon, which is also attributed to the Carthaginian Council of the year 407. The canon is 8: "It has pleased that, according to evangelical and apostolic discipline, neither a man dismissed by his wife, nor a woman dismissed by her husband, be joined to another; but let them remain so, or be reconciled to each other. But if they shall contemn this, let them be brought to penance. In this cause, an imperial law ought to be requested to be promulgated." Likewise Innocent I to Exuperius, Bishop of Toulouse: "Your love also inquired concerning those who, after a repudiation has intervened, have coupled themselves to another marriage. It is manifest that these are adulterers on each side; but those who, while the wife is living, although the marriage seems to have been separated, have hastened to another union, cannot not be seen as adulterers, to such an extent that even those persons to whom such persons have been joined seem themselves also to have committed adultery, according to that which we read in the Gospel: *he who shall dismiss his wife and marry another commits adultery; likewise he who shall marry one dismissed commits adultery*." The Council of Elvira, year 305, can. 9, established this: "A faithful woman who has left a faithful adulterous husband and marries another, let her be prohibited from marrying; but if she shall marry, let her not receive communion before he whom she left has first departed from this world, unless perhaps necessity of infirmity shall compel it to be given." Finally Apostolic canon 48, according to the

recension of Dionysius Exiguus, decreed: "If any layman, having rejected his wife, has received another, or one dismissed (or loosed) by another, let him be separated." Nor are the Greek interpreters Theodore Balsamon and Aristenus to be heard here, who, for the purpose of confirming the practice of their Church at that time, add a limitation, namely, if he has cast her out *beside reason*, or *without some one of the causes sanctioned by the laws*.

IV. Parallel to the series of decrees is the series of testimonies of the Fathers reaching all the way to the apostolic age. To bring forward the more important testimonies, beginning from the more ancient, first there occurs Hermas, who in L. II, Mand. 4, introduces the Shepherd speaking thus: "If a man shall know that his wife has sinned, and the woman has not done penance and remains in her fornication, and the man lives with her, he will be guilty of her sin and a sharer in her adultery. And I said to him: What then if the woman remains in her vice? And he said: Let the man dismiss her and remain by himself. But if he shall dismiss his woman and marry another, he too commits adultery." Justin Martyr, in the First Apology, n. 15, commending the doctrine of Christ concerning chastity, recites these testimonies from the Gospel: "he who has looked upon a woman to lust after her has already committed adultery with her in his heart ... he who marries one repudiated by another man commits adultery." Then he adds: "As also those who, by human law, enter into a double marriage, so also those who look upon a woman to lust after her, are sinners before our Master." Therefore, by the law of Christ, the bond remains between the repudiated woman and the one repudiating; and although human laws permit entering another marriage, the former having been loosed, nevertheless this is sin before Christ. Athenagoras teaches the same in the *Legatio pro Christianis*, n. 33: "Whoever," says Christ, "shall dismiss his wife and marry another commits adultery; not allowing her to be dismissed whose virginity someone has ended, nor another besides to be married." Tertullian, moreover, in the book *de Patientia*, c. 12, says that the virtue of patience confers this good upon each spouse "when marriage has been separated on account of the adultery of one, that one may be amended and the other (that is, the innocent one) may not become an adulterer." But such a one could not become such unless the bond still remained and it were not lawful to dissolve it. And in the book *de Monogamia* he reports this opinion of the Catholics whom he attacks: "that God, while the husband is living, does not wish the repudiated woman to be joined to another man."

Clement of Alexandria, *Strom.*, L. II, c. 23, teaches from the words of Christ that the one who takes to himself a wife dismissed on account of fornication commits adultery: "Scripture openly established the law: you shall not dismiss a wife except on account of fornication. But it judges adultery to be joining in matrimony while the other of those separated is alive. ... But he who takes a dismissed wife commits adultery, it says." Origen, on Matthew, Tom. 14, notes that "against the law of Scripture certain rulers of the Church permitted a woman, while her husband was alive, to marry, acting against that which is written: *A woman is bound to the law for as long a time as her husband lives*, and against that: *Therefore, while her husband lives, the woman shall be called an adulteress if she has been with another man.* Nevertheless, they did not permit it altogether without reason; for it is probable that they permitted these things against the law given and written from the beginning, to avoid worse things, accommodating another's discretion."

Therefore it was a matter of women repudiated or repudiating, which repudiation the discretion of civil laws and powers permitted; Origen thinks that Bishops accommodated this discretion in order to avoid worse evils. For they must not be judged to have accommodated the discretion of private

persons even against civil laws; for they could not have thought that they were avoiding worse evils, since this would have been the greatest evil, nor would there have been need for them to permit this, since civil law also prohibited divorce apart from the cases permitted by it, nor therefore, if they had done this, would they have been worthy of excuse.

The same doctrine is exhibited by Cyprian, L. III, *Testimonia ad Quirinum*, n. 90, and by Ambrose, who, on Luke, L. VIII, 2-5, on those words *everyone who dismisses his wife*, etc., reproves the faithful because they think that it is lawful for them to dismiss their wives because human laws permitted this: "You dismiss your wife as if by right, without crime, and you think this is lawful for you because human law does not prohibit it; but divine law prohibits it. You who obey men, fear God; hear the law of the Lord, which even those who make laws obey: *what God has joined let not man separate*." Then he notes, n. 7, that he is a Jew, not a Christian, who appeals to the permission made by Moses, which Christ abrogated. Besides, he teaches in the same place (n. 6) that if the repudiated woman (certainly according to human laws, and therefore even in the case of adultery) marries another, her marriage is adultery. But in lib. I *de Abraham*, c. 4, he establishes the principle that "what is not lawful for the woman is not lawful for the man."

Basil, in *Moral.*, reg. 73, c. 2: "what is not lawful," he says, "for a man, once his wife has been dismissed, to marry another; nor is it right that one repudiated by her husband be taken as wife by another." And to prove this he cites Matt. XIX, 9, as it is in the Vulgate (cf. the preceding book, *de Fide*, n. 6). Nazianzen, epist. CXLIV to Olympius (Maurist edition), advising a certain Venerius not to make a divorce, adds: "which is wholly disapproved by our laws, even if the Roman laws decree otherwise." Namely, this permission of Roman law was opposed to Christian laws, which Roman law permitted divorce with dissolution of the bond, not from any cause whatever, but only from certain causes, among which was adultery. Thus Chrysostom, on Matthew, hom. XVII, interpreting the words of Christ, c. V, 32, teaches that a woman cast out by a man remains the wife of the one casting her out: "even cast out," he says, "she perseveres as the wife of him who cast her out." And in the Sermon *de libello repudii*, weighing the words of Paul, *A woman is bound to the law*, he says: "See with how great diligence he used propriety of words. For he did not say: let her live with the man as long as he lives, but: *a woman is bound to the law for as long a time as her husband lives*; and therefore even if he gives a bill of repudiation, even if she leaves the house, even if she goes away to another, she is bound by the law and is an adulteress. Therefore, when a man wishes to cast out his wife, or a wife to leave her husband, let him be mindful of this saying and think Paul to be present and crying out: *A woman is bound to the law.* But she who is a slave and subject to law, even if she receives a bill of repudiation a thousand times, will be bound by the law of adultery. Do not read to me laws established by outsiders; for God will not judge you according to those on that day, but according to those which He Himself established." Therefore, even when repudiation has been given according to civil laws, which permitted this on account of adultery, the one dismissing remains still bound by the bond, and he who marries the dismissed woman commits adultery. To this also belongs the fact that in the same place he says that a wife repudiated by one and received by another is the wife neither of the former nor of the latter; for an adulteress is the wife of no one. For if the bond were loosed, she would really be the spouse of the second. Therefore she is not *de facto*, or according to affection, the spouse of the former, because she is not acknowledged; she is not the spouse of the other *de iure*, because the prior bond remains. But in the book *de Virginitate* he teaches openly, n. 40, that although the wife may be wicked, slanderous, talkative, extravagant, and filled with many other evils, and

likewise the man may be fierce, angry, proud, who holds a free woman in the same place as a slave, one must be borne by the other in turn; and if the woman departs, she must remain unmarried or be reconciled to the man; but if she is unwilling to return into favor, she must await the death of the man; that the bond of matrimony subjects the spouses mutually; that no spouse is in his own right; that whether they wish it or not, spouses, male and female, must bear servitude.

Theodoret on 1 Cor. VII, vv. 10, 11, says: "But this, *let her remain unmarried, or be reconciled to the man*, is not contrary to that: *do not defraud one another, except perhaps by consent*. For those things were said to those who are separated not on account of another cause, but on account of continence alone; but this establishes the law for those who contend concerning other matters. And indeed he tries to preserve the bond of matrimony intact; but yielding to weakness, he commands continence to the one who has separated, by this reason also prohibiting the severance of matrimony. For when he forbids one to be joined to another, he compels each party to return to the former matrimony." Jerome (who, having been educated in the Eastern Church and spending there the greater part of his life, must be judged also to report the sentiments of the Eastern Church), ep. LV to Amandus, nn. 3, 4: "Answer not our opinion but that of the Apostle: *therefore, while the husband lives, she will be an adulteress*, etc.; and in another place: *a woman is bound to the law*, etc. Therefore the Apostle, cutting off all excuses, has most openly defined that while the husband lives a woman is an adulteress if she has married another. ... As long as the husband lives, although he is an adulterer, although a sodomite, although covered with all crimes, and on account of these wicked deeds abandoned by his wife, he is reputed her husband, and it is not lawful for her to receive another man. Nor does the Apostle decree these things by his own authority, but with Christ speaking in him, he followed the words of Christ, who says in the Gospel: *he who dismisses his wife, except for the cause of fornication, makes her commit adultery, and he who has received a dismissed woman is an adulterer.* Whether she herself has dismissed the man, or has been dismissed by the man, he who has received her is an adulterer." Although the holy Father speaks chiefly of the woman because such was the question proposed to him, nevertheless he sufficiently shows that what he affirms of the woman also pertains to the man, since he appeals to the words of Christ, which speak of the man, and when by arguing from there he concludes; and also when, epist. LXXVII to Oceanus, n. 3, he says: "The laws of the Caesars are one thing, the laws of Christ another; Papinian taught one thing, Paul another. Among them the reins of unchastity are loosened for men ... among us what is not lawful for women is equally not lawful for men, and the same servitude is reckoned on equal condition." And there also he excuses Fabiola, who, by repudiating her adulterous husband, had married another, because "she had not known the vigor of the Gospel, in which every excuse for marrying is cut off from women while their husbands are living." And on Matt. XIX, 9: "Wherever there is fornication and suspicion of fornication, the wife is freely dismissed ... so the man is commanded to dismiss the former wife, that he not have a second while the first lives."

Augustine, L. II *ad Pollentium*, c. 4: "These words of the Apostle (*A woman is bound to the law*, etc.), so often repeated, so often inculcated, are true, are living, are sound, are full: a woman begins to be wife of no later man unless she has ceased to be wife of the former. But she will cease to be wife of the former if her husband dies, not if he fornicates. Therefore a spouse is licitly dismissed on account of fornication, but the bond of the former remains, on account of which he who marries the dismissed woman becomes guilty of adultery, even on account of fornication." Read both books, and *de Bono coniugali*. But the difficulty which Augustine confesses that he experiences in this matter, *ad*

Pollentium, L. I, c. 25, is not concerned with the question whether the matter is so, in which he always defends the affirming part most expressly; but it is both in the exegetical question concerning those words of Christ, *unless on account of fornication*, which difficulty would be none unless the prior affirmation were certain, and in the question why it is so, or in rendering the intrinsic reason of the matter, which he himself seeks from the reason of the sacrament. "So much is that nuptial covenant once entered into the reality of a certain sacrament, that it is not made void even by the separation itself. For with divorce intervening, that confederation of nuptials is not abolished, so that the spouses are spouses to each other even when separated; but with those to whom they have been joined even after their own repudiation, she to the man or he to the woman, they commit adultery. And nevertheless not except in the city of our God, on His holy mountain, is such a case with a wife. But who does not know that the laws of the nations hold themselves otherwise?" Bede on 1 Cor. VII, 10: "It can happen that a man dismiss his wife for the cause of fornication, which the Lord wished to be excepted. But now, if neither is it granted to her to marry while he from whom she has departed is alive, nor to him to marry another while the wife whom he dismissed is alive, much less is it right to commit illicit fornications with anyone whatever." In the Capitularies of Charles, Louis, and Lothair collected by Ansegisus, this canon is 42, Lib. I: "Likewise in the same (that is, in the African council), that neither a wife dismissed by her husband receive another man while her own husband is living, nor a man receive another while the former wife is living."

The same doctrine shines forth from the rites of nuptials. Thus in the Gelasian ritual God is entreated as "You who bound the covenants of nuptials by the gentle yoke of concord and by the indissoluble bond of peace." And in the order of the Greeks for Betrothals, God is called σύνδεσμον διαθέσεως τιθεὶς ἀρραβῶνα ("placing the pledge as a bond of covenant"). Cf. the other ritual books in Martene.

From all these monuments it is clear that this doctrine concerning the intrinsic indissolubility of marriage, even in the case of adultery, always existed in the Church, both Latin and formerly certainly Greek, and was held as a revealed doctrine flowing from the words of Christ and of the Apostle, and that the matter was sanctioned by divine immutable law, against which the opposing laws of the Caesars have no force.

Thesis XVIII

The things which are brought forward with great apparatus by the adversaries do not diminish the force of the demonstrated Catholic Tradition.

I. Nevertheless, not a few things occur which seem to make the matter difficult, and which the adversaries abuse (Launoy, *de Regia in Matrim. potest.*, Tom. I, p. 2; Adam Braun, dissertation *Utrum matrimonii vinculum et in casu adulterii alterius coniugum iure divino, an solo iure ecclesiastico, sit insolubile*). In order to clear these away, it will help first to note these things. 1. No testimony can be brought forward of any Father or Writer or Synod which has any authority in the Church, concerning which it is permitted to affirm with certainty that it teaches that a man, after dismissing his wife on account of adultery, and while she lives, can marry another wife. 2. In the first centuries of the Church the matter was not defined by authentic magisterium; whence it is no wonder if some erred, and while erring were not held to be heretics. 3. This principle was certain for the Fathers in this matter: that the right of each spouse over the other is equal with regard to this matter; which is sufficiently clear from the testimonies brought forward, to which this testimony of Basil (canonical epistle, can. 9) can be added: "According to the sequence of the sentence, what was pronounced by the Lord applies equally to men and women" (Matt. XIX). Wherefore what is said by them concerning wives must also be transferred to husbands. 4. When penal laws are enacted, not always is whatever is evil in some kind punished, but according to the condition of men, that which seems graver or more easily capable of amendment is struck with a penalty; hence it is not permitted to infer that those things which are left immune from penalty are judged honorable and permitted. If, noting this, you read the canons of Elvira 8, 9, 10 (this last indeed according to the emendation of Mendoza, whose reading we judge at least more probable), and certain canons of Basil which we shall afterwards weigh, you will understand that certain separations of spouses are not therefore approved or permitted, because they are punished by no penalty by Fathers solicitous about the more principal things.

II. These things having been set down beforehand, from the Fathers or writers who are objected to us, a) certain ones, after making mention of the law of Christ, which permits a wife to be dismissed only on account of fornication, do not explicitly add that it is not lawful for men to marry another wife; which nevertheless it is permitted to think that they judged. Thus Nazianzen, Orat. XXXVII, n. 6, who says: "Concerning this question I see that very many are ill-disposed, and that their law is unjust and not consistent with itself. For what cause was there why it should restrain the woman (their law, namely, that is, the law of the Caesars), but, on the contrary, indulge the husband and leave him free? And indeed let the woman who has undertaken a wicked plan against the bed of her husband be bound by the guilt of adultery; but should the man who by adultery has violated the fidelity given to his wife be liable to no punishment? (cf. the law of Constantine the Great in Cod. Theod., Lib. III, Tit. 16, n. 1). I by no means approve this law; I in no way praise this custom. They were men who sanctioned this law.... But God is not thus. For the law gives a bill of repudiation for all causes. But Christ does not permit a man to be separated for all causes, but only from an unchaste and adulterous wife.... Therefore let us indeed cast out the unchaste woman, because she corrupts and adulterates the race; let us bear all other things patiently, moderately, and wisely." Here note that it is not said that Christ gives a bill of repudiation, but that He permits separation in the case of fornication; which, of itself, is less. But that Nazianzen judged the bond not to be dissolved even in

this case, although he does not say it here, is clear 1. from his poem *de Virginibus*, where, recounting the inconveniences of matrimony, he calls a bad wife an odious τυκτὸν κακὸν, οὐδ' ἀπόπεμπτον, that is, an evil taken on and not dismissible, inasmuch as the bond could never be dissolved. It is clear 2. from his sentence concerning divorces which Roman law permitted, in epistle 144 cited above.

b) Certain testimonies of some are brought forward, of whom, nevertheless, other very clear, or sufficiently clear, testimonies exist in favor of the Catholic doctrine; of this sort are Tertullian and Origen. But the testimonies which are objected, if they are accurately weighed, favor not the adversaries, but us. The passage of Tertullian is in IV *contra Marcionem*, c. 34. Marcion, that he might prove that the author of the evangelical law was other than the Creator, the author of the Old Testament, brought forward the permission of repudiation made by Moses and its abolition by Christ. Tertullian's response returns to this: 1. Christ is not opposed to the Creator, because, abolishing divorce which Moses only had permitted, He restored the primitive law of the Creator, as is clear from Matthew, whose Gospel, nevertheless, Marcion, content with Luke alone, wrongly rejected, as Tertullian had already proved. For thus "He both protected the constitution of Moses as His own, and directed the institution of the Creator, as the Christ of Him." 2. In the very abolition of repudiation, Christ is not contrary to Moses, for Christ Himself also permitted divorce; nor did He prohibit it simply, but only conditionally, that is, if the divorce be made in such a way that another is married. Behold the words which the adversaries object: "For I say that He now made the prohibition of divorce conditionally, if someone dismisses his wife in order to marry another (behold the condition under which divorce is prohibited): *He who dismisses*, He says, *his wife and marries another commits adultery, and he who marries one dismissed by her husband is likewise an adulterer*: certainly from the same cause, because it is not lawful for her to be dismissed so that another may be married; for marrying one illicitly dismissed as if she were undismissed, he is an adulterer." It is manifest that Tertullian, in order to show that the author of the Gospel is not opposed to the author of the Law, gathers an argument secondly from this, that Christ Himself also in some way permits divorce, namely of bed and board, provided another is not married: "if He conditionally prohibited dismissing wives, He did not prohibit it entirely; and what He did not prohibit entirely, He permitted. It is another thing when the cause ceases on account of which He prohibited it." Moreover Marcion, who cited Luke alone, supposed repudiation or divorce to be absolutely and entirely prohibited by Christ. To some this argument can seem not sufficient, but first this is false in itself; then there was no need of a demonstrative argument, since the matter had already been accomplished by the prior argument; nor are arguments of this sort rare in Tertullian; and finally it is not lawful for us to change the clear statements of authors because they are not sufficiently approved by us. Moreover if anything is clear in this disputation, it is this: that the prohibition of divorce was made not absolutely, but under a condition, namely if the wife is dismissed so that another may be married; or, what is the same, that it is permitted, provided another is not married. It can be asked what those words signify: *for marrying one illicitly dismissed as if undismissed, he is an adulterer*. Namely, he had said that he who marries one dismissed is an adulterer, and this on account of the same cause on account of which it is not lawful to dismiss, namely, that another be married; therefore, just as it is not lawful for the one dismissing to marry another, and if he marries, he is an adulterer, so also he adulterates who marries one dismissed, because he illicitly marries one dismissed. But what is that *as if undismissed*? This form of speaking, *to marry one dismissed as if undismissed*, seems equivalent to this: to marry one dismissed as if

she were undismissed, or insofar as she is undismissed. Moreover here an undismissed woman is not a wife not dismissed; for who would receive as wife to himself the wife of another insofar as she is another's? Rather, she is one who was never dismissed, because she was never a wife; and the sense is: he who illicitly marries one dismissed as if she were loosed is an adulterer. And he proves this by what follows. "For the matrimony which has not been rightly severed remains; to marry while matrimony remains is adultery." These words do not carry this sense: that matrimony does not remain if it is rightly dissolved, as if it could be dissolved by a spouse, so that the one marrying another would not be an adulterer; for this does not cohere with the preceding words, since it is not lawful to dismiss so that another be married. Rather, the legitimate sense is that matrimony remains because it can never be rightly dissolved. Therefore we have that Tertullian does not deny that Christ prohibited divorce, but denies that He prohibited it entirely; and therefore that He conceded it in part, namely conditionally, that is, if another is not married. But this is the Catholic doctrine. Now according to the preceding things those which follow must be understood, where Tertullian argues *ad hominem* against Marcion: "Or if you altogether deny that divorce is permitted by Christ, how do you dissolve marriages?" And again: "Certainly what does the husband do among you if his wife has committed adultery? Will he have her? But you know that not even your Apostle permits the members of Christ to be joined to a prostitute." By these words we are taught that a husband can, indeed sometimes ought, to separate himself from an adulteress, yet by separation as to bed or even habitation.

3. He teaches that the law of Moses is confirmed by Christ. "Already hence Moses is confirmed by Him (Christ), prohibiting (?) repudiation under the same title under which Christ also does: *if there shall have been found in a woman an unchaste matter*." (Even if all read thus, we do not understand how he said that Moses prohibited repudiation; for Moses permitted it to a man if he found in the woman an unchaste matter, Deut. XXIV, 1; although he did not properly permit it on account of adultery, for he had commanded an adulteress to be stoned. And besides, if Moses is said to have prohibited repudiation, Tertullian's statements do not cohere, since he proves that Christ confirmed Moses because He permitted a certain divorce in the case of adultery. Should it be read *permitting*?) "For also in the Gospel of Matthew, *he who shall dismiss*, He says, *his wife except for the cause of adultery, makes her commit adultery*, etc. Moreover, except on account of adultery neither does the Creator (that is, God indeed, but as author of the old covenant) separate what He Himself joined, with Moses elsewhere (Deut. XXII, 29) establishing that he who had made a matrimony by violation cannot dismiss his wife for all time; but if a matrimony forced from violence will stand, how much more a voluntary one from agreement?" The passage is somewhat obscure. If the single parts are taken separately, you have the words of Christ recited by Tertullian, and therefore accepted by him in that sense in which he has already interpreted them above. But he says that, since a matrimony entered into on account of violence inflicted was indissoluble by the law of Moses, it is much more equitable that a matrimony contracted from voluntary agreement should not be dissolved. And thus you have that matrimony was indissoluble even in the old law. The argument is not effective; but many things of this sort occur in Tertullian. Note that the work against Marcion was written by Tertullian when already a Montanist, as also the book *de Monogamia*. This is clear from L. I, c. 29.

As regards Origen, he himself, in the same place cited above on Matthew, namely Tom. XIV, proposes to himself a difficulty from the words of the Lord: "Perhaps some Jewish man says that Jesus Himself, when He said: *everyone who shall dismiss his wife, except for the cause of fornication, makes her commit adultery*, made a power of repudiating a wife no otherwise than Moses did." But he answers 1. by noting that the foulness (Deut. XXIV, 1) found in the woman, on account of which she could be repudiated according to the law of Moses, could not be adultery, because for this the woman was stoned. 2. He brings forward the sentence of Christ, namely that *from the beginning it was not so*. 3. He notes that Christ did not grant the faculty of dissolving the marriage except for the crime of fornication. But of what sort is this dissolution of the marriage? If it is also dissolution of the bond, why did he previously reprove those Bishops who permitted it? Why is he called Jewish who was establishing it from the words of Christ? But also the things which follow must be considered. There follows, moreover, 4. an interposed disputation whether on account of other causes, for example on account of poisoning, or the killing of an infant, the plundering of a house, or any other slaughter, a wife can be dismissed or not; and he says each seems absurd, to affirm it, because Christ excepted fornication alone, and to deny it, because those crimes can be judged worse than adultery.

Yet he himself defines nothing. Then he asks why Christ did not use this form: "Let no one repudiate a wife, except for the cause of fornication," but that form: "he who shall dismiss his wife, except for the cause of fornication, makes her commit adultery," noting that certainly he makes the wife commit adultery, that is, exposes her to the danger of adultery, who dismisses a wife not at all guilty of adultery; for while the husband lives, she shall be called an adulteress if she has been with another man. But occasion of marrying again is given to the repudiated woman; he doubts, however, whether one could be excused from this fault who should dismiss his wife on account of poisoning. Then, on occasion of this incidental question, he notes that men, even when they do not dismiss wives, furnish them many causes of adultery, when they do not guard them as they ought, or when they are unwilling to render the debt. These things having been completed, 5. he returns to the former question and resolves it peremptorily with these words: "But just as a wife is an adulteress, even if she seems to have been married to another man while the former one is still alive, so also the one who has seemed to have married a repudiated woman (for it is an apparent, not a true, marriage) is demonstrated by our Savior to be not so much her husband as an adulterer." He speaks universally of a repudiated woman and of him who marries, or rather thinks that he marries, the repudiated woman whom Christ indeed had permitted to be repudiated on account of fornication; but whether it is lawful to repudiate her from other causes, Origen confesses that he does not know. Wherefore certainly when he simply names a repudiated woman, he understands her whom Christ permitted to be dismissed on account of adultery. Therefore the doctrine of Origen is entirely Catholic.

c) There are also brought forward testimonies of certain men who did not speak clearly; as Theodoret, who (*de Graec. Affect. Curat.*, Serm. IX, *De Legibus*), after bringing forward the words of Christ according to Matthew, says: "by which words He commands that the other faults of the wife be borne, whether she is talkative, or drunken, or abusive; but if she transgresses the laws of nuptials and impudently aims at another, then finally He commands the union, τὸν ζυγόν, to be dissolved." The same man, moreover, in Lib. V, *Haeret. fab.*, c. 16, opposing the new law to the old in this matter, says: the new law calls repudiation without fornication adultery; "for he," he says, "who dismisses his wife, except for the cause of fornication, makes her commit adultery, and he who marries one dismissed commits adultery." And in the same place, c. 25, he says that "Christ confirmed the law of

matrimony, so that by another law He restrains him who wishes to dissolve matrimony except for the cause of fornication: *whosoever*, He says, *dismisses his wife, except on account of fornication, makes her commit adultery*." By these words Theodoret seems to judge that marriage can be dissolved on account of fornication. But with regard to the first testimony one can deservedly doubt what sort this dissolution of the union is; for it can be accepted for the separation of society, or of bed and habitation, or of the use of marriage. For this is properly the union, and this also can properly be signified by ζεύγλη, which is a yoke; for since the innocent spouse is free from the obligation of rendering the debt, he is deservedly said to be loosed from a certain yoke, that is, from a burdensome society. Besides, the antithesis also suggests this; for to bear a talkative, drunken, vicious wife is to make use of her conversation and fellowship; therefore to dissolve the union is to be separated as to bed and board. Certainly God commands this separation in certain cases; but divorce properly so called could be said at most to be permitted by God, not commanded. In the other testimonies Theodoret does not indeed expressly affirm in his own words that the bond cannot be dissolved on account of fornication; but he affirms it by the words of Christ brought forward: *he who marries one dismissed commits adultery*, which he certainly understood and approved. And he teaches the same clearly in the commentary on 1 Cor. VII, 10, 11, which we have cited.

Likewise Asterius, Bishop of Amasea, in the homily on those words, *Whether it is lawful for a man to dismiss his wife for any cause whatever*, vehemently rebuking those who, as he says, "as garments, changed wives, and immediately on light offense wrote out a bill of repudiation," has these words: "Hold this as fixed and altogether persuaded: excepting death and adultery, matrimony is dissolved from no cause"; where adultery is compared to death, which certainly dissolves the bond. But it is not new that the same thing be predicated of several things, yet not in the same mode, but with a certain signification accommodated to the subject. Therefore although adultery and death are said to dissolve matrimony, it does not follow that the dissolution is the same; for there is a certain proper dissolution of each. That the words of Asterius are to be accepted thus is suggested 1. from the fact that nowhere in that sermon does he affirm that it is lawful for the dismissing spouse to marry another wife; 2. from the fact that he reproves the Roman laws then in force as sanctioning otherwise for adulterous women and for adulterous men, laws which were not solicitous concerning the adultery of the man and gave men power of dismissing adulterous wives, but not wives power of dismissing adulterous men. Cf. what we admonished at the beginning of the Thesis.

To these can be added Hilary of Poitiers, who, on Matt. V, on those words *whosoever shall dismiss*, etc., says: "Reconciling equity among all, He commands that it remain especially in the peace of marriages, adding many things to the law and taking away nothing. Nor indeed can advancement be argued against. For since the law, by the authority of the bill, had attributed the liberty of giving repudiation, now evangelical faith imposed upon the husband not only the will of peace, but also the guilt of a wife compelled into adultery, if by the necessity of departure she must marry another; prescribing no other cause of ceasing from marriage than that which would pollute the man by association with a prostituted wife." By these last words he seems to assert that divorce is lawful in the case of fornication. But in reality he does not say this; rather he affirms that in the case of fornication it is lawful to dismiss a fornicating wife in such a way that the guilt which she afterwards contracts if she marries another is not imputed to the husband; but if she is dismissed on account of other causes, that guilt is imputed to the husband.

To this perhaps pertains St. Epiphanius, who, *haer.* LIX, discoursing concerning second nuptials, is said in our matter to speak obscurely; nevertheless, if he is well considered, he indicates the Catholic doctrine sufficiently clearly. For he says: "The matter indeed stands thus, that after the advent of Christ the most holy discipline of God rejects all those who after first nuptials, the wife being dead, have bound themselves to the nuptials of another (namely from the clergy). Among the people, on account of its weakness, this can be tolerated, that those who cannot be content with the first wife, when she is dead, join a second to themselves. Although he who has had only one, by the judgment of the Church, is worthy of greater honor. But he for whom one dead woman is not enough, when on some occasion of fornication and adultery or of another crime he has made divorce with her, if he has married another, or if the woman has married another man, the authority of the sacred letters absolves them from every fault.... Yet not so that one should have two wives at the same time, while the other is surviving, but that, separated from one, he may legitimately, if he pleases, join another to himself." This last sentence of Epiphanius seems obscure to Petavius in his notes on this place. But it seems able to be explained without difficulty. Those words, *separated from one*, do not signify separation by divorce alone, so that namely she ceases to be his wife, but by death. For a) he begins the sentence by saying, *for whom one dead woman is not enough*; therefore he speaks in this hypothesis; b) he appeals to the sacred letters; but the testimony which a little later he brings forward confirming the same thing is that of Paul: *A woman is bound to the law for as long a time as her husband lives, but if her husband shall have died, she is free, let her marry whom she wishes*; c) he absolutely prescribes that, while the former is living, another is not to be received: *yet not so that one should have two wives at the same time, while the other* (namely) *is surviving, but separated from one*; but one separated from the former so that he does not receive the second while the former is surviving is one separated by death. Wherefore the occasion of fornication, adultery, of which he makes mention, is proposed by him for this end, that he may signify that it is more equitable that he enter second nuptials who, on account of certain crimes of the wife, had to be separated from her while she was still living, and thus to abstain from the use of marriage. Moreover, what he concedes to the man he also concedes to the woman, if on account of the adultery of the man she has separated herself from him, in these words: *or if the woman has married another man*. Therefore Epiphanius too is a witness of the Catholic doctrine.

Likewise, if the things which we brought forward above from Chrysostom are weighed, it will be sufficiently clear what is the sense of those things which he has in hom. XIX on 1 Cor. c. 7, namely that on account of the adultery of the wife "the matrimony is now dissolved" and that "the husband is no longer a husband." For it is absurd that by the adultery itself, without need of a free repudiation of the offended spouse, the bond is dissolved. Therefore the sense is: on account of the adultery of the wife the right of asking from her is lost, and since, besides, it is not fitting for the man to be mingled with her, he ceases, as to use, to be a husband, and the use of matrimony is dissolved.

But what must be judged concerning canon 10 of Elvira: "If the one whom a catechumen leaves has married a husband, she can be admitted to the font of washing; this also is to be observed concerning female catechumens. But if she is a faithful woman who is married by him who leaves an inculpable wife, and when she (that faithful woman) knew that he had a wife whom he left without cause, it has pleased that communion be given to such a person at the end (another reading: not even at the end)." The canon is obscure. The addition of the negative particle *not even* is approved by us, both by the authority of the ancient codex reported by Mendoza and by the very economy of the canon, which requires that some penalty be directly indicated here. But with this reading posited, no difficulty from

this part of the canon remains. But what is the meaning of the prior part? Since not one explanation is used by interpreters (cf. Hefele, *Historia Concilior.*, on this canon), we judge that that part of the canon can be accepted in this way. She whom the catechumen is said to leave was an unbeliever when she was left, and married a husband in unbelief; afterwards, however, she seeks baptism. Concerning a marriage of this sort, dissolved before baptism, the Fathers do not wish to give judgment, and they permit the woman married a second time to be baptized. Perhaps there was some reason why it was believed to be lawful for a catechumen to leave his wife, for example because the unbelieving wife then did not wish to cohabit with him, and those who were nearest to baptism claimed for themselves also the privilege of the baptized; concerning which matter those Fathers either did not wish, or did not have occasion, to decree anything. The same Fathers add: *this also is to be observed concerning female catechumens*. The sense of these words can certainly be this: that just as that woman whom a catechumen leaves, and who has married another, is to be admitted to the washing of baptism, so too the man whom a female catechumen has left, and who has married another, is to be admitted. The matter therefore returns to this: that these Fathers did not wish to give judgment concerning a marriage dissolved in unbelief.

d) There are also brought forward testimonies of those who speak about an entirely different matter. Thus in Gratian, c. 32, q. VII, c. 19: "A certain woman slept with the brother of her husband: it was decreed that adulterers never be joined in marriage; but to him whose wife has been violated, lawful marriages are not to be denied." But this canon speaks of entering matrimony after the death of the other spouse, which was denied to the guilty party as a penalty of crime, as is clear from c. 22 in the same question: "But those who find their wives in adultery, it will not be lawful for either him or her to receive another wife or another husband while both are living. But if the adulteress shall have died, her husband, if he wishes, may marry only in the Lord; but the adulteress never, even if her husband shall have died; nevertheless, through all the days of her life let her perform the lamentations of penance." And thus is to be accepted the canon which immediately follows in the cited place of Gratian, namely: "Have you lain with the sister of your wife? If you have done this, you shall have neither. And if she who was your wife was not conscious of the crime, if she does not wish to contain herself, let her marry in the Lord whom she wishes. But you and the adulteress shall remain without hope of marriage, and so long as you shall have lived, do penance according to the precept of the Priest." This canon is taken from Burchard, L. XIX, c. 5, *de Adulterio*, who cites it from the Roman penitential; and similar to this canon is canon 21, lib. I, of the Collection of Capitularies of Benedict the Levite, which indeed is nothing other than canon 8 soon to be cited from the Convention of Compiegne. But it is plain that this canon is falsely attributed by Gratian to Pope Zachary, if it is accepted in a sense alien to the common doctrine; for that Pontiff, in the epistle to Pipin and the Bishops of the Franks, asserts the common doctrine in this matter, both in c. 7 and in c. 12, where he appeals to the Milevitan canon, which he cites in just so many words from the African Council.

But canon 8 of the Convention of Compiegne (year 756) stands thus: "If any man has a lawful woman, and his brother has committed adultery with her, that brother, or that woman, who perpetrated the adultery, while they live, shall never have marriage. He whose wife she was, if he wishes, has power to receive another." Namely, after his wife is dead he may receive another, which is denied to the adulterers, who, while they live, must remain without marriage. Canon 381 from lib. III of the same Benedict certainly sheds light on these things: "If two brothers have fornicated with one

woman, not knowing each other's fornication, as soon as they have known the adultery, he who has her as wife shall dismiss her. And he indeed, after penance has been done, if his wife has died, can be joined to another; while she lives, by no means. But she will never again be able to be assumed into marriage (by anyone, namely, for it is added) and, subjected to continual penance, at the end of life let her receive the grace of penance." As regards the response of Gregory II, *What you have proposed*, we have already weighed it in Th. XIII, n. IV.

Canon 13 of the same Convention of Compiegne is indeed difficult: "If any man has dismissed his woman, and has given leave for her, for the cause of religion, to serve within a monastery, or has given leave outside the monastery to veil herself, as we have said, on account of God, let that man receive a lawful woman; and let the woman do similarly." For either matrimony only ratified is supposed and the matter concerns profession, or power is given, after the wife is dead, of receiving another; or the canon must be referred among errors. Both canon 25 of the Council of Agde (year 506) and canon 2 of the Council of Vannes (year 461) also concern another matter, which no reason compels to be interpreted otherwise than of simple separation. Cf. Perrone, l. c., p. 365 seq.

e) Likewise the testimony of Basil from the first Canonical Epistle to Amphilochius, can. 9, which is adduced, speaks about an entirely different matter. Namely, distinguishing the law of the Lord from custom, he establishes that according to the law of the Lord it belongs equally to men and women that it is not lawful to depart from matrimony except on account of fornication: "But custom," he says, "does not so have itself." Of what sort, then, is this custom? Namely, that the man can dismiss an adulterous woman; but the woman cannot dismiss an adulterous man. From this custom it followed that "a woman who has left her husband is an adulteress if she goes to another; but the man who has been left by the woman is worthy of pardon, and she who dwells together with him is not condemned." And he says that he does not know whether this very woman who dwells with the dismissed man can be called an adulteress. These things were said by Basil not according to the sentence of the Lord or his own, but according to that custom which Roman laws had introduced, of which Augustine too makes mention (Serm. IX, n. 12, and *de Adulter. coniug.*, L. II, c. 8), which custom Basil himself does not approve. Indeed he expressly teaches that "if the man who departed from his wife (certainly even in the case of adultery, for in this canon speech is deliberately about this) has gone to another, he himself also is an adulterer; because he makes her commit adultery, and she who dwells together with him is an adulteress, because she has drawn another's man to herself." Therefore, according to Basil as author, the bond is not dissolved by a bill of repudiation given by the man even in the case of fornication. Therefore the things which were first said were said by Basil not according to the law of the Lord, but according to the custom of the Roman laws. Namely, when he says: *he is worthy of pardon, she is not condemned*, the sense is: according to this custom he is held worthy of pardon or is not subjected to penalty. Moreover the Fathers judged that some account had to be taken of this custom when the question concerned imposing penances, of which Basil treats in the same place. In the *Morals* indeed he openly teaches that it is not lawful for a man, after his wife has been dismissed, to marry another; and that one repudiated cannot be married by another (cf. the testimony cited above). Again the same Basil, epist. can. 2, can. 21, which is usually objected, notes that a man who lives with a wife, but not content with matrimony has intercourse with another unattached woman, is condemned by the canons not as an adulterer, but only as a fornicator, that is, is subjected to the penance due to fornicators, not adulterers. But a wife having intercourse with any other man whatsoever does penance as an adulteress. The reason of this diverse economy was always

the same, namely that by Roman law the adultery of the man was not punished as the wife's was punished. "But indeed of these things," Basil adds, "the reason is not easy, but custom has so prevailed!" You see here that the speech is not about the dissolution of the bond, nor about the honesty of dismissal, but only about the distinction of penances which were imposed on adulterous men and women.

But in canon 35 of the same epistle, the speech is only of the hypothesis that a man is dismissed by his wife, and it is established that if the man is dismissed without reason, he is worthy of pardon, that namely he may communicate with the Church; but the wife is worthy of punishment.

Finally in can. 48, in the same place, he says: "She who has been left by her husband (even from the cause of fornication, as is clear from the text which he immediately cites), in my judgment indeed, ought to remain. For if the Lord said: if anyone leaves his wife, except for the cause of fornication, he makes her commit adultery, from the fact that He calls her an adulteress, He precluded conjunction with another for her. For how could the man indeed be guilty as the cause of adultery, but the woman inculpable, who is called an adulteress by the Lord on account of conjunction with another?" Namely, from the fact that the Lord imputes to the man the adultery of the wife if he dismisses her except for the cause of fornication, *he makes her commit adultery*, but does not impute it when this cause exists, Basil gathers that it is supposed by the Lord that a dismissed wife always commits adultery by marrying another, and that the whole distinction is that if she is dismissed from a just cause, her adultery is not imputed to the man, but it is imputed if she is unjustly dismissed. Basil therefore judged that the bond remains between the dismissed woman and the dismissing man even from the cause of fornication, and because plurality of wives is not permitted, the man cannot marry another wife while the former survives.

f) Certain ones are not quite aptly brought forward, since the testimonies produced do not pertain to them. Thus under the name of Ambrose there is cited Pseudo-Ambrose, whether Hilary or some other person, on 1 Cor. VII, who denies that the man and the woman are bound by the same law, and therefore that a man, after dismissing his wife on account of fornication, can marry another. Of this sort are certain canons or capitula among the Capitula ascribed to Theodorus, Bishop of Canterbury, related by Acherius in his *Spicilegium*, Tom. I, by which in not a few cases power is made for a spouse of entering matrimony while the prior spouse survives. But 1. it is not certain that Theodore composed the capitula which are inscribed to him (cf. Perrone, l. c., p. 373). 2. It is certain that he is not the author of those capitula which are objected from that collection; for they are wholly opposed to the doctrine established by him in the Synod of Herudford, whose canon we reported above. This canon indeed is the tenth of those which it is certain were proposed by Theodore to the aforesaid Synod, because he had known them to be especially necessary (cf. Migne, P. L., T. XCIX, p. 954); wherefore 3. this collection of capitula is owed to some private man who substituted the name of Theodore, and it is one of those not a few collections which, proceeding from private persons, never obtained public authority (cf. Simon Aloysius Assemani, *Bibliotheca Iuris Orientalis*, Tom. IV, c. 23).

Of doubtful faith also, indeed of no moment, is the canon attributed to the Second Hibernian Council celebrated under St. Patrick, which see in the Appendix.

III. From the things said, one will also be able to form a judgment concerning the testimonies of certain others. There is no need that we be anxious about all. We concede that some erred or spoke incautiously when the matter was not yet defined and not so easy; which is sufficiently clear from the

testimonies cited under letter f). Among these we do not deny that even some Bishops and Synods are to be counted. Thus we say that the Fathers of the Synod of Vermeria erred, year 753, can. 9: "If anyone, necessity compelling, has fled into another duchy or province, or has followed his lord (*signore*), to whom he could not lie in faith, and his wife, when she is strong and able, out of love of parents or of her own things, has been unwilling to follow him, let her remain always unmarried for all time, so long as her husband, whom she did not follow, lives. For that man of hers, who, necessity compelling, has fled into another place, if he cannot sustain himself, can receive another wife with penance" (cf. in Appendix). Namely, those Fathers accommodated themselves to the custom of the Frankish people, which Christianity had not yet been able fully to extirpate, in which matter they are not to be praised. Witnesses of this custom are the formulas of repudiation according to secular laws used by the Franks, which, among others, the monk Marculf exhibits, who flourished, as it seems, toward the end of the eighth century in Gaul (cf. ibid.). Note nevertheless that the response of Stephen III, brought into Gaul two years later, which we cited above, was opposed to the sentence of the Synod of Vermeria. Thus before these men Pollentius had erred, against whom Augustine disputes; those Bishops of whom Origen speaks had erred. Nor is there reason why anyone should wonder that such disagreement once existed; for this was common to several dogmas before they were solemnly defined. But it is only necessary, in this practice and variety of opinions, to discern what descends from apostolic tradition and has been revealed, from that which human opinions introduced. But the former is easily discerned. For what has always and more commonly been retained and believed in the Churches; what is conformable to decrees of discipline and morals issued by the authority by which the universal Church is ruled and obliged, and has the same reason and foundation as they, and finally has obtained full consent, certainly must be judged to have been handed down. But such is the sentence concerning the indissolubility of Christian matrimony even in the case of adultery. Accordingly the disagreement which existed, which was only practical, was a certain wandering away from revealed truth, and must be set down to human causes, which were both ignorance of revelation and an undue συγκατάβασις of certain persons toward the morals of barbarians rebellious to Christian purity and severity.

IV. But against this very conclusion the adversaries seek an argument from the practice and doctrine of the Greeks. For they say that the Greek Fathers permit dissolution of marriage in the case of adultery of a spouse, that the imperial laws permitting and sanctioning repudiation in several cases were also received and approved by Bishops and commended by the use of the faithful through several centuries, nor did the Roman See itself reprove them. From this it follows, they say, that if each Church, Latin and Greek, be taken as one, it is false that the sentence which we defend was more common in the Church and contained in dogmatic apostolic tradition; rather the matter is one of discipline, which is accustomed to vary in different Churches.

But 1. who are those Greek Fathers who permit repudiation with dissolution of the bond? The Fathers of the fourth century, surely, are wholly alien from this sentence; indeed they oppose it. For, as we have already seen, Basil denies it, and Nazianzen, Asterius, and Chrysostom deny that Roman laws have any force in this matter for Christians, and oppose to them the law of the Gospel; cf. their testimonies already cited above. Is it permitted to think that in the age of these Fathers there was another sentence of the Greek Church than that which had settled in their minds? Therefore the Church of the East, no otherwise than that of the West (cf. the testimonies of Jerome and Ambrose

cited above), believed in the fourth century that the bond of matrimony could not be dissolved even in the case of fornication, and that imperial laws obtained no force in this matter for Christians.

Should it be said with the more recent Greeks (cf. Arcudius, *Concordia*, etc., b. VII, c. 13) that there existed a twofold cause of separation, one light, which did not permit dissolution of the bond, and that this was multiple, and was called by the one word μικροψυχία, and another grave, namely adultery; but that the Fathers spoke of the former, not of this latter, when they deny that the bond is dissolved? This interpretation can be confirmed by the doctrine of Chrysostom saying, l. c. from hom. XVII, that he who dismisses a wife, even if he does not marry another, makes her commit adultery; which indeed he would not have said if he had spoken of dismissal on account of the adultery of the wife, for that is opposed to the sentence of Christ. Therefore Chrysostom was speaking of dismissal on account of other light causes; and so also must other Fathers be understood who, while denying that dismissal is lawful, except the cause of fornication or adultery. Chrysostom seems to have made mention of light causes in the same place, saying that God did not permit the wife to furnish an occasion of μικροψυχία. But although according to the Roman laws there indeed existed other causes of repudiation besides the adultery of the wife, nevertheless those causes were not light in themselves. Cf. the law of Constantine. But the Fathers do not speak only of some causes which either the law permitted or the abuse of men introduced, but of all causes, or, what returns to the same thing, they speak specifically of the gravest cause, that is, adultery; and while making words concerning this, they deny that the Roman laws, which permitted it, have force for the faithful. Therefore that distinction is altogether empty for understanding the doctrine of the Fathers. But μικροψυχία in Chrysostom, no otherwise than among the other ancient writers, is not some light cause of separation, but pusillanimity, dejection of soul. Namely, Chrysostom says that Christ did not permit that the wife furnish the man a cause why he himself be cast down in spirit and loathe the marriage, and so dismiss the wife. But although in this place, hom. 17 on Matthew, he says that the man dismissing his wife makes her commit adultery, without mention having been made of the exception of which Christ makes mention, nevertheless he sufficiently signified that exception, since a little before he had recited the words of Christ containing that exception. Moreover what he himself thought concerning dissolution of marriage in the case of adultery is manifestly clear from his words cited from the book *de libello repudii*, in which he speaks most clearly; but places less explicit must be declared by the more explicit places.

2. As regards the imperial laws, the adversaries insist in many ways. For first, the fact that Christian Emperors enacted these laws by which divorce was permitted is an indication that they judged the same thing not to be forbidden by the law of Christ. Then, the fact that Bishops and especially Roman Pontiffs did not reprove these laws is an argument that they did not believe that they were opposed to the law of Christ. Finally, the constant practice and observation of the same laws in the Greek Church persuades the same thing; of which common observation already in the fourth century St. Asterius, bishop of Amasea, l. c., is a suitable witness. But for an accurate response, the several points must here be distinguished. Indeed a) if this fact alone is considered, namely that Christian Emperors enacted laws permitting and sanctioning divorce, we ought in no way to be moved by this matter. For it must be held 1. that the Roman laws even under Christian Emperors preserved not a few elements of the old pagan legislation, of which they were a continuation, and which they could

transform only gradually and imperceptibly. It must be held 2. that under the first Christian Emperors the Roman empire still had very many pagans, for whom it was lawful for Emperors to enact laws concerning marriages; and from this it easily followed that Christian Emperors did not wish laws of this sort to be banished from their code, and in them they preserved that custom which had prevailed among pagans, of sanctioning divorces, moderated indeed by the Christian sense, whose efficacy could not be restrained on every side. It must be held 3. that the Greek Christian Emperors generally were not only too tenacious of their prerogatives, but exceeded measure altogether and wished to assert for themselves those rights which are proper to the Church, from which it was ready to follow that not a few things would be established besides and against the doctrine of the Church. It must be held 4. that Emperors of any sort are not witnesses and teachers of revealed truth, and for that reason one appeals to them unsuitably in a theological question concerning the doctrine of the Scriptures and tradition. These things are quite enough and more than enough for a peremptory exception against the imperial laws, if account is had of the sole fact of the laws enacted.

But b) if together with them are joined the Bishops and the Roman Pontiffs themselves, who did not disapprove those laws, appeal to these laws in a question concerning revealed doctrine is not unsuitable. This indeed we admit; but we deny what is affirmed by the adversaries, that is, that the Bishops and the Roman Pontiff did not reprove these laws for Christians. Certainly what the sense of the Greek Bishops was concerning them can be gathered from the cited words of Nazianzen, Chrysostom, Asterius, Basil, who either directly reject those laws or openly proclaim the law of Christ. What the Latin Fathers judged concerning the same laws is clear likewise from the cited testimonies of Jerome, Augustine, and Ambrose, who oppose the law of Christ to civil laws and affirm that the law of Christ has force for Christians. It is clear from the canon, likewise cited, of the Milevitan Council, in which the Fathers judged this also, that the Emperor was to be asked to enact a law which would efficaciously guard the exercise of divine right against the contumacious; which is the office and duty of the Christian civil power. As regards the Roman Pontiffs, none of them certainly approved those imperial laws for Christians. Several, with the beginning drawn from Innocent I, whose testimony we cited above, taught the indissolubility of matrimony even in the case of adultery as the law of the Gospel, by which they sufficiently signified that they were handing down and prescribing this not for the Western Church alone, but for the universal Church; for the law of Christ has force equally for all the faithful. Moreover Eugene IV, following the sentence of his predecessors, signified to the Greeks in the Florentine Synod that the Roman Church by no means approves the practice of the Greeks. Thus the profession of faith proposed to the Easterners by Urban VIII and confirmed by Benedict XIV in the Constitution *Nuper ad nos*, among the other dogmas of faith, also asserted this: "that the bond of the sacrament of matrimony is indissoluble; and although on account of adultery, heresy, or other causes, separation of bed and cohabitation can be made between spouses, nevertheless it is not lawful for them to contract another matrimony." Likewise Clement VIII, in the Instruction concerning the rites of the Greeks living among the Latins, commanded the Bishops that they in no way permit divorces as to the bond to be made between Greek spouses. Now moreover the principle preached frequently by the Greek Fathers, especially in the Arian controversies, and defended by the Roman See, was known: that Emperors have no right in ecclesiastical matters, and that their laws enacted concerning sacred matters, of which sort are the sacraments, obtain no force. Wherefore it was not lawful for the faithful to be ignorant what force the

imperial laws had in this question concerning dissolution of the conjugal bond. Therefore, although it cannot be proved historically from the middle age that the Roman Pontiffs several times raised their voice against the Greeks themselves and openly reproved the custom and laws of the Greeks, nevertheless 1. perhaps certain monuments have perished; 2. they sufficiently signified that they reprobated it, when they taught that imperial laws in ecclesiastical and sacred matters have no force unless they are adopted by the Church herself, and at the same time taught that by the law of the Gospel matrimony is indissoluble even in the case of adultery. But just as Eugene IV seems to have supposed that that practice of the Greeks proceeded not from a heretical mind but from ignorance, and therefore judged that this did not obstruct their union with the Latin Church, so it is permitted to judge that his predecessors likewise judged, when they directed their mind to this practice of the Greeks, and that, in the afflicted circumstances of that Church, they prudently abstained from a direct and explicit rebuke, from which they hoped for no fruit.

c) Therefore if finally the laws themselves that had been enacted and their observation for not a few centuries among Greek Christians are considered in themselves, and account is had of this practice both in the Emperors enacting these laws and in the subjects living according to them, and also of the connivance of the Bishops from a certain age thereafter, we affirm that these things have altogether no force for proving or declaring Catholic tradition, since they are a most manifest prevarication. For it was a prevarication of the Christian Emperors, who wished to enact laws in sacred matters. It was a prevarication of the Bishops, who, especially after the Synod of Chalcedon, little by little began to fail in due reverence toward the Roman See, and to look up to their new Patriarch of the royal City, and to reverence more than is fitting the Emperors who vindicated their prerogatives, and with a servile spirit to concede to them those rights which, as rebels, they denied to their legitimate Pastor, the Roman Pontiff.

Nevertheless, when the doctrine had to be proposed expressly by the Greeks by Synodal authority, no decree sanctioning this crime was issued. Certainly in the Trullan Synod, whose canons thereafter always obtained force in the East, the African canons first having been received, that Milevitan canon also, which we gave above, was received. Then when the Greeks themselves of their own accord were going to compose a canon in the same Synod, the Bishops had enough shame to abstain from sanctioning this disgrace by their own authority; indeed rather, though timidly, they sufficiently signified the Catholic doctrine. This is plain from the Trullan canon 87, where only these things are established indefinitely: "she who has left her husband is an adulteress if she has come to another ... if she is seen thus to have departed from her husband beside reason, he indeed is worthy of pardon, but she of penalty. But pardon will be given to him so that he may communicate with the Church"; concerning permission of another marriage, at least expressly, nothing. They add further indefinitely: "but he who leaves the wife legitimately given to himself and marries another, by the sentence of the Lord is liable to the judgment of adultery." Then penance is established for such men for a fixed time, after which they are held worthy of communion. This canon sufficiently indicates the mind of the authors. They did not wish openly to contradict the imperial laws, but neither manifestly to favor them by sanctioning a false doctrine. Wherefore the connivance of the Greek Bishops for so long a time toward that practice must be attributed rather to their pusillanimity and defect of episcopal virtue than to error or their erroneous magisterium (if we consider them universally). Nor otherwise did Aristenus, earlier than Balsamon or his contemporary, who nevertheless wrote before him, abbreviate that canon, saying: "she who goes from her husband to another is an adulteress, and he

who goes from his wife to another, according to the word of the Lord, is likewise an adulterer" (Migne, P. G., Tom. 137, p. 813). But since one syntagma was constituted from the imperial laws and ecclesiastical canons (the Nomocanon), so that thereafter all had force equally, what wonder is it if, this prevarication being posited, it was no longer whole for the Bishops to abolish that immoral practice of dissolving marriage? The outcome of that most servile obedience toward the imperial laws and of aversion from the Roman See was finally full departure from the unity of the Church. But because not truth but error paves the way to this departure, it is clear what can be gathered from that practice, and similar practices flourishing from the sixth century in the Greek Church, for affirming Catholic dogma and Catholic discipline. And concerning this matter enough.

V. Finally, against the demonstration handed down in the preceding Thesis, it could be objected that not all that was to be demonstrated has been demonstrated; for the proposed matter was that the indissolubility also of matrimony only ratified was to be demonstrated, concerning which, however, nothing was specially said. I answer that there was in reality no need that anything be specially said. For if the universal proposition is true: Christian matrimony can never by any reason be dissolved by the spouses themselves, then, because ratified matrimony is certainly Christian matrimony, that which had to be demonstrated necessarily follows. And this will be more evident, if there is need, if no exception is ever made for ratified matrimony; but this nowhere appears, nor did anyone ever teach that the spouses indeed cannot dissolve consummated matrimony by their own authority, but can do so if it is only ratified. "If between a man and a woman lawful consent concerning the present has intervened ... whether an oath has been interposed or not, it is not lawful for the woman to marry another; and if she has married, even if carnal copula has followed, she must be separated from him, and compelled by ecclesiastical constraint to return to the first," said Alexander III, c. *Licet*, *de Sponsa duorum*, adding: "although it has sometimes been judged otherwise by some of our predecessors." But why? Perhaps because, judging thus, they thought that they were dissolving a ratified matrimony.

VI. But did not the same Alexander III (*Ex publico*, *de Convers. coniug.*), teaching that a ratified matrimony not yet consummated can be dissolved, admonish that the words of Christ, *it is not lawful for a man to dismiss his wife*, according to the interpretation of the sacred utterance, are to be understood of those whose matrimony has been consummated by carnal copula? We think that this is not the necessary sense of the Pontiff's words, namely that Christ there speaks of consummated matrimony alone, whence it would be consequent that the intrinsic indissolubility of ratified matrimony could not be gathered from them. Rather, since the Pontiff then had to answer that question to which extrinsic indissolubility also pertained, namely by reason of religious profession, he seems to have wished to say this: that if the words of Christ are taken concerning indissolubility in every mode, they are to be understood of consummated matrimony, according to the interpretation of the sacred utterance, that is, according to that interpretation which is to be applied to the sacred utterance, which, namely, the sense of the Church supplies, by which we are taught that ratified matrimony can be dissolved extrinsically. Namely, if any and every indissolubility is considered, the words of Christ are to be accepted concerning consummated matrimony, and indeed Christian matrimony, as we shall explain a little later. But if only intrinsic indissolubility is considered, the Roman Pontiff affirms nothing in this special question. But the response is manifest from the things demonstrated. Certainly that interpretation by which the words of Christ are accepted concerning the intrinsic indissolubility also of ratified matrimony contains no doctrine against the universal doctrine

of the Fathers, nor does it exclude extrinsic dissolubility, of which God is the author, and it coheres with the intention of Christ answering, who speaks directly in the question proposed to Him by the Pharisees concerning intrinsic dissolubility. Moreover that interpretation seems to be recommended by the Tridentine Council. For can. 7, teaching that the bond of matrimony cannot be dissolved, says that this is according to Evangelical and Apostolic doctrine. Now the Council does not speak only of consummated matrimony, both because it says simply *the bond of matrimony*, and because the doctrine is Catholic: nor can ratified matrimony be dissolved on account of adultery by another spouse. But it says that this is Evangelical doctrine. What place of the Gospel, then, to which it appeals, except this one, whether in Matthew or in Mark or Luke? Therefore Christ in that discourse was speaking about the intrinsic indissolubility also of ratified matrimony. And certainly all confess that ratified matrimony also is intrinsically indissoluble, that is, that by the power of the spouses themselves it cannot be dissolved even in the case of adultery. Therefore a law exists commanding this. Moreover the law of nature does not suffice; therefore it will be the law of Christ, that is, of the institution restored by Christ; but unless this is in those places, it is nowhere. And indeed the divine conjunction of the spouses is made in the contract itself, as the very words and prayers which the Church uses sufficiently signify; but that conjunction is common to ratified and consummated matrimony. Moreover Christ denies that man can separate what God has joined; therefore that prohibition of Christ has force for any matrimony.

We brought forward in Th. VII, among the authorities of the Latins, the words of Innocent I from epist. 9, saying that "the union of a second woman, while the former survives and has not been cast out by divorce, can in no way be legitimate." If divorce is made, then, will the other marriage be legitimate, while the former woman is still living? That this is not the sentence of Innocent is certainly clear from his other epistle, whose words we gave in the same place. The whole sense is that a woman cannot be cast out by divorce by which the bond is dissolved; and therefore while the former spouse lives and has not been cast out by divorce, which indeed cannot happen, the other marriage cannot be legitimate. Namely, if the former could be cast out by divorce, the other marriage could also be legitimate; but because the former cannot be done, and therefore never happens, this other cannot be made.

Thesis XIX

The same truth is demonstrated by the authority of the Apostle.

I. Let us make the step from Tradition to Scripture, that is, to the doctrine of the Apostle and of Christ, from which Tradition has been derived. Now we consider the doctrine handed down by the Apostle. The words of the Apostle, 1 Cor. VII, 10, 11: *But to those who are joined in matrimony, I command, not I but the Lord, that the wife not depart from the husband: but if she has departed, let her remain unmarried, or be reconciled to her husband. And let the husband not dismiss his wife.* It must be presupposed what we have already admonished elsewhere: that according to the Apostle (ibid., 4) the right of each spouse over the other is equal with regard to this matter; whence what is said concerning the woman will also have to be accepted concerning the man. Moreover it must be noted that here the speech is about a separation whose author is the spouse, male or female, who withdraws from the other. Now when Paul says, *but if she has departed*, he speaks of a woman who departs from a just cause, of which sort certainly is the adultery of the man. This is proved, because if she departed without cause, the Apostle would not permit her the option of either of the two, either to remain unmarried or to be reconciled to the man, but would command her to be reconciled; the reason is evident, because it is a precept of the Lord, as is said here, that she not depart. But since the man has power over the body of the woman, he cannot without a just cause be deprived of using his right. Therefore the Apostle, giving the option of each, supposes that the woman departs from a just cause; and since he speaks indefinitely, he supposes any just cause, among which certainly is the adultery of the man. Therefore the sense is: if the woman, on account of fornication of the man or some other legitimate cause, has departed, let her remain in the departure, that is, separated, yet unmarried, or return again to her own husband. Therefore the precept of the Lord is of this sort: first, that the woman not depart from the man; then, if a just cause is present, departure is permitted, but with the condition that the woman not marry another man. Therefore it is commanded absolutely to the woman that she not contract other nuptials while the man is living, and departure is prohibited *per se*; but *per accidens*, that is, when a just cause exists, it is permitted, yet so that it be only separation of bed and board. "Therefore the Lord," says Augustine (*de Adult. coniug.*, L. I, c. 21), "commanded that a woman not depart from the man; but if she shall have departed, certainly for that cause for which it is lawful to depart, to remain unmarried or to be reconciled to her husband." Read the whole book. But this, as we have already noted, also has force for men. Therefore even in the case of adultery, which is the most just reason for departure, the dissolution of matrimony is prohibited. But it is so prohibited that that departing woman still remains bound by the bond of marriage; for he from whom she departed is still her husband, to whom she can be reconciled: *or let her be reconciled to her husband*. Moreover this precept of the Lord cannot be accepted only of the illicitness of other nuptials; for when the wife departs from a just cause, if the bond of matrimony is dissolved or can be dissolved with God consenting, there is no reason why other nuptials should be illicit, since God has obligated no one to virginity and has permitted second and further nuptials. Notice in passing that by these words of the Apostle the distinction is already indicated between divorce which is simple separation of bed and common life, and divorce by which the bond is dissolved.

II. This is also the doctrine handed down by the same Apostle, Rom. VII, 2, 3: *the woman who is under a husband is bound to the law while the husband lives; but if her husband shall have died, she is loosed from the law of*

the husband. Therefore, while the husband lives, she shall be called an adulteress if she has been with another man; but if her husband shall have died, she is freed from the law of the husband, so that she is not an adulteress if she has been with another man. Cf. the things said in Th. XVI. But it is certain that in these words there is contained a certain doctrine not only in the old law but in the new; for the Apostle hands down the same doctrine to the Christians of Corinth, 1 Cor. VII, 39. Pollentius (*de Adult. coniug.*, L. II, c. 2 seq.) thought these words of the Apostle were to be understood thus: "that if the man has fornicated, he is counted as dead, and the wife who has fornicated as dead, and therefore it is lawful for either of them, just as after death, so after the fornication of the spouse, to be joined to another." Augustine attacks this interpretation thus: "I ask you whether anyone who has married a woman who has ceased to be bound to a husband is to be held an adulterer? I think this does not seem so to you; for therefore a woman, while the husband lives, shall be called an adulteress if she has been with another man, because she is bound so long as her husband lives.... Moreover, if by the death of either of them this bond between husband and wife is dissolved, and fornication also, as you say, must be held for death, beyond doubt his woman will be loosed from this man when she has fornicated. For she will not be able to be called bound to her husband when the man has been loosed from her. And by this, after she has ceased by fornicating to be bound to her husband, whoever marries her will not be an adulterer. And see how absurd it is that he is not an adulterer for this reason, because he marries an adulteress. Indeed, what is more monstrous, neither will the woman herself be an adulteress, because she will not be the wife of another to the later man, but his own. For when the prior conjugal bond has been dissolved by adultery, to whomever she has now been married, if he does not have a spouse, she will not be an adulteress with an adulterer, but rather a wife with a husband. How then will this be true: *A woman is bound so long as her husband lives*? Behold, her husband lives, because he has neither departed from the body nor fornicated, which you wish to be counted for death; and nevertheless the woman is now not bound to him. Do you not attend how much this is against the Apostle saying: *A woman is bound so long as her husband lives*? Or perhaps you will say: he indeed lives, but he is no longer her husband, because he then ceased to be when she dissolved the conjugal bond by adultery. How therefore, while the husband lives, shall she be called an adulteress if she has been with another man, since indeed that man is no longer her husband, the conjugal bond having already been dissolved by the woman's adultery? Wherefore according to sound doctrine a woman is bound so long as her husband lives, that is, has not yet departed from the body." This argumentation of Augustine certainly shows that 1. by the very fact of the adultery of either one, the conjugal bond is not dissolved; 2. the words of the Apostle, *for as long a time as her husband lives*, cannot be accepted concerning that life which is said to consist in conjugal fidelity. For from this it would follow that just as, with either spouse dead, by that very fact the bond is dissolved, Paul being witness, so also it is dissolved by that very fact that either one violates fidelity; which nevertheless we have said in the first place to be false, and Augustine demonstrated. Wherefore the life of the husband must be accepted only in the immediate literal sense. To this pertains the argumentation of Augustine. But if, as long as the husband lives, the woman is bound to the law of matrimony, not only is the bond not dissolved by the very fact of the adultery of either party, but neither is there a right for the innocent spouse, suppose the woman, of dissolving the bond on account of the adultery of the other. For as long as her husband lives, she is so obligated by the law of matrimony that she is an adulteress if she is united to another. Therefore, even if she repudiates an adulterous husband, if she marries another, since it is verified that while the husband lives she is with another man, the consequent also will be

true, namely that she is an adulteress, that is, that the other marriage is null while the prior one remains. Therefore while the husband lives there is no power for the wife of dissolving the marriage, even if the man breaks fidelity. And the man likewise, "because the form is equal in both" (ibid., L. I, c. 1), cannot dissolve the conjugal bond, even if the woman is an adulteress.

Thesis XX

In order that we may prepare the way for the interpretation of the doctrine handed down by Christ in the Gospels, after setting forth the statement of certain varieties of readings, we first establish that in the words of Christ in Matthew V, 32 and XIX, and in the parallels of Mark and Luke, there is contained not a counsel, but a law to have perpetual force, the old covenant having been abrogated; consequently that Christ in these places acted not as interpreter of the Mosaic law, but as legislator of the new covenant. We establish secondly that it is not rightly demanded that the interpretation of the testimonies of Mark and Luke concerning this matter be required according to the norm of the words of Matthew, on the ground that the more obscure are to be explained by the clearer, the fewer by the more numerous.

I. It is known that Theologians, not only Catholics but Protestants also, have labored very much in this century, both generally in the exegesis of the words of Christ according to Matthew V, 31, 32; XIX, 3 seq.; Mark X, 2-16; and Luke XVI, 18, and specifically in composing the disagreement which seemed to them to exist either between the twofold testimony of Matthew or between Matthew himself and the other Evangelists. A sufficiently accurate description of all these can be seen in Augustine de Roskovany in the work *de Matrimonio in Ecclesia catholica*, year 1837, to which other things also can be added. It is not our part to recite all those interpretations of different men; for it is enough to have account of those which are of some importance and furnish an occasion for explaining the text of the Gospel. This we shall accomplish both in this and in the following thesis; but just as in the following one we shall touch the immediate interpretation of the text, so in this Thesis we shall weigh certain opinions devised for preparing the way for that immediate interpretation.

II. Therefore in the first place there occurs the critical question concerning the reading. And indeed in Matt. V, 31, 32 no variety of readings occurs which is of any moment. Certain Codices indeed omit (from the uncials or more ancient codices, one) the last words: *and he who marries one dismissed commits adultery*; but these are certainly confirmed more than sufficiently by the testimony of very many codices and Fathers.

As regards the other place, Matt. XIX, 3-9, Leonard Hug, certainly a learned critic, in the work *de Coniugii christiani vinculo indissolubili, Commentatio exegetica*, 1810, proposed the hypothesis that at first in this place of Matthew those exceptive words *except on account of fornication* did not exist; and therefore that the sentence of Matthew was altogether equal to that of Mark and Luke. The reason for doubting whether some interpolation occurred is that the reading is varied. For excellent codices, among which are א. C., and almost all the Constantinopolitan codices, read μὴ ἐπὶ πορνείᾳ; a few add εἰ, that is, εἰ μὴ ἐπὶ πορνείᾳ. Clement of Alexandria indeed either read or supplied, for the sake of explanation, πλὴν εἰ μ. ἐ. π.. But other most ancient codices, the Vatican, the Cantabrigian, and other Greek codices, and the Egyptian and Latin versions before Jerome, read παρεκτὸς λόγου πορνείας. Hence a suspicion arises whether this is some addition. Namely, previously no exception occurred there; but afterwards, a collation having been made with the words of c. V, where that exception π. λ. π. certainly exists, with all codices agreeing, since some reader judged that the place c. XIX should be declared by the words of c. V, he first placed those exceptive

words in the margin, and afterwards they crept into the text. The author himself does not make much of this hypothesis, and deservedly. For first one may ask why, if the matter stood thus, the same exception was not placed in the words of Mark and Luke. Indeed in this way perhaps the diversity of readings could be explained, why some texts have μ. ἐ. π., others, as in c. V, π. λ. π., inasmuch namely as these last words were first written in the margin at c. XIX by way of elucidation, but afterwards, as clearer, were substituted for the others in the text. But since in all codices the exception exists, expressed in this way or that, and only in Matthew, not according to Mark and Luke, that hypothesis cannot render an account of this fact. On the contrary, from the fact that all codices exhibit the exception, it must be held critically that the exception was written by Matthew himself.

III. The distinguished Vincenzi, in the Appendix of Volume V of the notable Work *de Scriptis Origenis, Nysseni*, etc., first contends that the exceptive words in c. XIX are to be read with the Vatican codex and the Itala as π. λ. π., *except for the cause of fornication*, as in c. V; then he contends that the words *and shall marry another* were absent from the autograph of Matthew, but that they afterwards were introduced into the text of Matthew, these words which at first occurred only according to Mark and Luke, from which, however, the exceptive words are absent. Therefore this Writer judges that once there was a reading of chapter XIX equal to the reading of chapter V, but that afterwards those words *and shall marry another* were inserted into the words of Christ according to Matthew, not indeed deliberately and from zeal for interpolating the text, but both on account of other causes and on account of the collation of the four Gospels into one, or the Μονοτέσσαρον, which Ammonius of Alexandria had already carried out. For from this it happened that thereafter the things which belonged to one Evangelist were attributed to another. Jerome complains of this in an epistle to Damasus, saying: "Indeed a great error has grown up here in our codices, while, because another Evangelist said more in the same matter, they thought something less in another and added it; or while another expressed the same sense otherwise, he who had first read one of the four judged that the others also should be corrected according to his example. Hence it happened that among us all things are mixed, and in Mark many things of Luke and Matthew, again in Matthew many things of John and Mark, and in the others things which are proper to the rest, are found." Vincenzi contends that the matter stood thus as regards our text, and that the fault persevered in it, first indeed from the difficulty by which the interpretation of the words of Christ is pressed, with that clause *and shall marry another* retained and at the same time the exception retained; then especially from the testimony of the Ancient Fathers, inasmuch as they sufficiently teach us that they by no means read that clause according to Matthew, and indeed from the authority of a most ancient codex. Certainly, that we may begin from this, the most ancient Vatican codex (middle of the fourth century) in reality lacks this clause at Matt. XIX, 9, and reads as in c. V, 32. Then Tertullian read thus in the ancient Itala Vulgate, who in lib. IV *adv. Marcionem*, c. 34, weighing the response of Christ to the Pharisees, the preceding words having been reported, recites the words which follow thus: *he who shall dismiss his wife except for the cause of adultery, makes her commit adultery*. Indeed in the same place he recites the words of Christ with the aforesaid clause: *he who shall dismiss his wife and marry another commits adultery*; but the omission of the exception, *except for the cause of fornication*, shows that he is citing the words of Luke. In the same way Origen, on Matthew, Tom. XIV, n. 24, expounding c. XIX, recites the words of Christ: *everyone who shall dismiss his wife except for the cause of fornication makes her commit adultery*. Cyril of Alexandria, on 1 Cor. c. 7, in Mai, *Bib. nov. PP.*, Tom. III, reports in no other way the words of Christ spoken to the Pharisees.

But not only by the long use of centuries is the reading of this clause of Matt. XIX, *and shall marry another*, frequent in the Church; it also seems that it was in the old Itala and in the primitive Greek text. For Jerome, the corrector of the old Vulgate according to the fidelity of the Greek codices, shows this, since he retained that reading. Augustine also, who so frequently weighs this sentence of Christ and experiences the difficulty, likewise reads thus. Ancient codices in general, both Greek and Latin, prefer the same reading; the ancient Syriac version also has it, and c. א., equal to the Vatican. Nor is the force of this consensus sufficiently diminished by the authority of those Fathers who, citing the words from c. XIX, reported them in exactly the same way as they are in c. V; for either there was a lapse of memory, not so difficult, or they used some less accurate codex. Nor does the Vatican codex help very much, since so many others are opposed to it. Moreover, since the reading lacking this comma, *and shall marry another*, cannot be proved as the more probable, an interpreter acts imprudently in a matter of such great moment, and one also disputed with heretics, by preferring the easier reading.

IV. If you ask which of the two exceptive formulas in c. XIX is to be preferred, critics seem to judge that the reading μὴ ἐπὶ πορνείᾳ is more certain there. The uncial codices א C. INZ and thirteen others have it, as also 150 minuscules, the Syriac, Armenian, Ethiopian, and our Vulgate. Moreover I think this question matters little; for finally the sense is the same. For τὸ μὴ among classical Writers occurs in place of τοῦ εἰ μὴ, and because the particle ἐπὶ with the dative also has the force of *on account of* or *because of*, hence the whole phrase is rightly rendered *unless on account of fornication*, which finally is just the same as *except for the cause of fornication*; unless you wish the meaning of the word λόγου to be different, concerning which question, however, something must be said in the following Thesis.

V. In order that some might defend the sentence which concedes repudiation of a wife from some cause to Christians also, they have not feared to affirm that in the words of Christ a law is not contained. For they say that the words of c. V, 31-32, just as several others contained in that sermon, show the norm of a certain perfection, which is not in precept but permitted to the judgment of the faithful; but the words of c. XIX, as being directed to the Pharisees, indeed exhibit an interpretation of the Mosaic law and show its imperfection; and insofar as He amends it to the norm of the primitive institution, He recalls all causes of dismissal to one, and this for the Jews, to whom He was responding.

It must be established beforehand, what otherwise ought to be known to all, that the doctrine of morals handed down by Christ, by which He Himself affirms that those who act otherwise sin, has the force of a true divine law; for by the very fact that God says some action is sin, He Himself forbids the same under threat of penalty. Besides, it must be held that the law which Christ, by teaching in this mortal life, enacted, from that part by which it abrogated the Mosaic institution, Christ Himself wished to have force when His Church began to exist and the right of the old economy began to cease. Finally it must be noted that the moral precepts which Christ handed down, even if He was addressing Jews alone, did not pertain only to Jews living under the law of Moses; otherwise, since He Himself was sent to the sheep of Israel alone, what would the remaining precepts be for Christians?

These things being posited, it is easily plain that the words of Christ according to Matthew V, 31-32, and XIX, 3 seq., truly contain a law. For not only does He assume the person of a legislator, saying:

But I say to you, But I say to you; but He affirms that he sins who acts otherwise, or affirms that he commits adultery who dismisses a wife and who marries one dismissed; but adultery is sin. But because according to the old law it was not true that he commits adultery who marries one dismissed, it is plain that here Christ speaks not according to the norm of the old law, nor has before His eyes only certain customs of the Jews, but sanctions a new law. Then, instituting an opposition between what He Himself says and what Moses had permitted, and at the same time affirming that he commits adultery who acts otherwise than He Himself says, He pronounces the abrogation of the Mosaic permission. But this abrogation could be made only by the authority of a legislator; for it was a permission contained in the law, which law Moses had enacted in the name of God. But how it could happen that Christ, abrogating the disposition of the Mosaic law, acts only as interpreter of the same and wishes to teach only those who live according to the law of Moses, it is not permitted to divine. Moreover Christ, thereafter instructing the disciples separately (Matt. XIX, 10 seq.), does not propose a new or broader doctrine, but inculcates the doctrine already handed down, namely that which the disciples had understood from the prior words of Christ (cf. Mark X, 10 and the following Thesis, n. XI). But instructing the disciples He surely proposes doctrine for His Church. Therefore by this whole disputation Christ wished to establish a law for His Church. This is the certain sentence of the Church, which in words of Christ of this sort understood a law obliging Christians, as is clear from the tradition represented in the preceding Thesis.

VI. Let us now hear those who, wishing to reconcile Matthew with Mark and Luke, affirm that the exception expressed by Matthew is to be understood in the words of Mark and Luke, so that thus it is established that all the Evangelists concede repudiation of a wife in the case of fornication. But why must that exception be supplied in Mark and Luke? Because, namely, the more obscure are to be explained by the clearer, and the fewer by the more numerous; but more words, or more numerous sentences, and those clearer, are in Matthew than in the others. This question is in itself theological; for it seeks the true sense of the word of God. But now we do not wish to use for its solution theological principles taken from the certain doctrine of Faith, but only critical or hermeneutical principles which the adversaries use, lest we seem to assume for ourselves what is now in question. Therefore we concede the prior principle: that the more obscure are to be explained by the clearer; but we deny that the text of Matthew is clearer than Mark and Luke; indeed we affirm that these are clearer. Wherefore, with the same principle assumed, we infer the altogether contrary conclusion. For if one text creates a difficulty for the interpreter, the other none, the former certainly is less clear. But the words of Mark and Luke occasion no difficulty for the interpreter; this difficulty, however, then arises when the words of Matthew are read, for the breadth of that exception and how it coheres with the primitive institution to which Christ appeals is not immediately clear, whereas the words of Mark and Luke cohere with it most fittingly.

As regards the other principle, that the fewer are to be explained by the more numerous, or that the shorter text is to be explained by the longer, we deny that this is a suitable principle of right interpretation. For what if the shorter text says more and is clearer? But this happens in this matter which we have before our hands. For, as we have already admonished, the texts of Mark and Luke are clearer, and the same texts in reality say more, or seem to say more, since they affirm that every man dismissing his wife commits adultery if he receives another; but whether Matthew says this of all is doubted. Wherefore Augustine, comparing these texts together (*de Adulter. coniug.*, L. I, c. 11), says

that one reading Matthew must be left in doubt, not indeed concerning what he says, but concerning what he does not say; and as to this the other Evangelists must be consulted.

Thesis XXI

From the words of Mark and Luke, and from the words of Matthew V, 31, 32, and XIX, 3 seq., we certainly gather Christ's doctrine concerning the indissolubility of the conjugal bond even in the case of adultery.

I. Therefore the doctrine of Christ is reported by Matthew in two places: V, 31, 32. *It has been said: Whosoever shall put away his wife, let him give her a bill of divorce. But I say to you, that everyone who shall put away his wife, except for the cause of fornication, makes her commit adultery, and he who shall marry her that is put away commits adultery.* XIX, 3 seq. *And the Pharisees came to him, tempting him, and saying: Is it lawful for a man to put away his wife for any cause whatever? Who answering said to them: Have you not read that he who made man from the beginning made them male and female? And he said: For this cause shall a man leave father and mother, and shall cleave to his wife, and they shall be two in one flesh. Therefore now they are not two, but one flesh. What therefore God has joined together, let not man separate. They say to him: Why then did Moses command to give a bill of divorce and to put away? He says to them: Because Moses, by reason of the hardness of your heart, permitted you to put away your wives: but from the beginning it was not so. But I say to you, that whosoever shall put away his wife, except for fornication, and shall marry another, commits adultery; and he who shall marry her that is put away commits adultery.* Mark X, 2 reports the same disputation of Christ with the Pharisees, and this is the final sentence of Christ: *Whosoever shall put away his wife and marry another commits adultery against her; and if the woman shall put away her husband and marry another, she commits adultery.* Luke, moreover, has these words XVI, 18: *Everyone who puts away his wife and marries another commits adultery; and he who marries her that has been put away by her husband commits adultery.*

II. Concerning the signification of the noun dismissal and of the verb to dismiss, these things may be observed. Dismissal, ἀπόλυσις, in itself can be perfect and imperfect. Perfect dismissal is that by which spouses are separated in such a way that the bond also is dissolved; imperfect dismissal is that by which they are separated as to bed and board, while the bond nevertheless remains. For there to be dismissal, the separation must be effected or procured by either spouse. The Jews had the former in mind, and perhaps knew no other; the Apostle indicated the latter, 1 Cor. VII, 10, 11 (cf. preceding Thesis). For the rest, from the very words of Christ it will be gathered which dismissal is permitted.

Which of the two dismissals is to be understood in any discourse, if the term dismissal is employed, must be gathered from the adjuncts of the discourse which circumscribe and determine it. Therefore, and this must be noted, if someone wishes to signify that he permits indeed, at least in some case, an imperfect dismissal, but prohibits a perfect dismissal, he will signify his sentence excellently if he says that dismissal is indeed at times lawful, yet in such a way that another marriage cannot be entered without adultery. For perfect dismissal, or complete divorce, comprises two elements: separation and the dissolution of the bond; and these two elements can be so disjoined that one may be valid without the other. Therefore, when the former is granted and the latter denied, it is clearly expressed which dismissal is lawful and which is not lawful for spouses.

III. In Matthew XIX, 3, the question of the Pharisees, to which perhaps the disagreement between the two schools of Scammai and Hillel gave occasion, namely, *whether it is lawful for a man to dismiss his wife for any cause whatever*, is a modal proposition; and the chief inquiry seems to be whether it is lawful to dismiss for any cause. But of what dismissal were the Pharisees speaking? Since Christ's very answer

to this question predicates the unity of the two and the conjunction which God himself makes, which is the unity of the bond; and since the Pharisees must be judged to speak of that dismissal about which there was a question in the schools of the Jews, and which was by the repudiation of the wife, and which was known and in use among the Jews, it must be said that the question was raised by the Pharisees concerning perfect dismissal. And thus Christ, answering the objection of the Pharisees, uses the word *to dismiss* according to its perfect signification: *Moses, by reason of the hardness of your heart, permitted you to put away your wives: but from the beginning it was not so.* But the question proposed by the Pharisees shows that here the discourse is about a wife, and that the causes on account of which a wife can or cannot be dismissed are causes which pertain to the wife, and therefore have place in that marriage concerning which it is asked whether it can be dissolved or not.

IV. These things being laid down, let us first consider the words of Mark and Luke. The proposition is universal: *whosoever*, *everyone*; therefore it holds for any man dismissing his wife and marrying another. But among these is comprehended also he who dismisses her because of the wife's adultery and marries another. Therefore even this man commits adultery; therefore the former bond has not been dissolved. But although the Evangelists do not commemorate all the circumstances of the matter or of the discourse, nevertheless they cannot omit those circumstances by whose omission the history or sentence would become false. Now if it were true that Christ made an exception and permitted a man because of the adultery of his spouse to marry another, then what Mark and Luke report would be false. For on that hypothesis this would be the true sentence of Christ: not everyone who dismisses his wife and marries another commits adultery. Yet that is contradictory to the proposition of Mark and Luke. Therefore that was not the sentence of Christ, if we believe Mark and Luke. "Who are we to say: there is a man who commits adultery by marrying another after his wife has been dismissed, and there is a man who, doing this, does not commit adultery, when the Gospel says that everyone commits adultery who does this?" says Augustine (*de Adult. coniug.* L. I, c. 9). Therefore the sentence of Christ is sufficiently clear. Cf., however, what we shall say concerning the same matter when explaining the words of Matthew XIX.

V. With regard to Matthew's words, since there is a twofold testimony, we wish first to demonstrate the Catholic doctrine from the former, that is, from chapter V, 31, 32, by an argument already foreshown by St. Basil. Certainly Christ speaks there only of him who dismisses his wife, not of him who in addition marries another. But Christ says that the man dismissing his wife, except for the cause of fornication, makes her commit adultery. The fornication of a wife is adultery. Cf. what must be said in nn. IX and X. Moreover, the sentence expressed by the verb *makes* is not that the man compels the woman to commit adultery; for the woman is always free. Nor is it that adultery of the dismissed woman always follows upon dismissal; for why would this always follow if there is no necessity of the act? Nor is the sense only that an occasion of committing adultery is furnished to the wife; for the word *makes* indicates, furthermore, that the author of this occasion is the man who dismisses her. But since the matter here concerns the doctrine of morals which Christ hands down, he is truly said to be the author of the occasion of sinning, of whom the discourse treats, to whom, as to a cause, the sin which follows can morally be imputed. Therefore the sense of Christ's words is: he who dismisses his wife without the cause of fornication is the author of the wife's adultery, if it afterward follows, for instance if she herself marries another; and the sin of the wife will be imputed to him as to an author, that is, as to one giving, without cause, the occasion and exposing his wife to danger. But he who dismisses his wife in the case of fornication is not the author of her adultery, if

afterward she commits adultery, nor will the sin of the wife be imputed to him, since he has a legitimate cause for dismissing his wife. Now this sentence of Christ manifestly supposes that the dismissed wife can commit adultery, and that she always commits adultery whenever she is united to another man. For if you remove this, how does the one dismissing her furnish an occasion for adultery, which is no longer possible? But adultery cannot be conceived in this dismissed wife unless the former bond remains. Therefore Christ signifies that he supposes, and holds as certain, that the former bond endures, and that the dismissed woman still remains the wife of the man dismissing her. Thus the whole difference between one dismissing with cause and one dismissing without the cause of fornication is in this: that the ensuing adultery of the wife is not imputed to the former, but is imputed to the other. Accordingly, the doctrine of Christ is that not even through the fornication of the wife is the bond of marriage dissolved. Certainly, he who marries her that is dismissed commits adultery; therefore the woman dismissed is still a wife. You will say that the Jews did not have a notion of this dismissal by which separation indeed would be effected, but the bond would not be broken. I answer: if they lacked this notion, Christ now supplied it to them; for by teaching that the wife can be dismissed for a certain cause, and nevertheless that the same woman remains still a wife, he necessarily introduced the notion of that dismissal which is only separation of common life. For the rest, Christ indeed addressed the Jews, but chiefly he was speaking for his Church and for his faithful. Moreover, the Apostle manifestly understood and taught the same circumscribed dismissal, 1 Cor. VII, 10, 11, commanding that a wife who departs from her husband for a just cause either remain unmarried or be reconciled to her husband.

Will you contend that the exceptive phrase, *except for the cause of fornication*, must also be supplied in the last clause: *and he who marries her that is put away commits adultery*? Thus, therefore, he would be an adulterer who marries her that is put away, unless nevertheless she was put away because of fornication; for on this hypothesis the one marrying her would not be an adulterer, but her legitimate husband. That is to say, Christ, who here expressly commends the sanctity of marriage, would confer a privilege upon an adulteress, before an innocent wife who has been dismissed, so that the former could, while her own husband is still living, contract valid nuptials even with the adulterer himself, but the latter, who is free from that crime and is dismissed for other causes, could not. What is more absurd than this? Therefore the sentence of Christ is: a wife is licitly dismissed on account of the cause of fornication, illicitly on account of other causes; but he who marries a dismissed woman, whether licitly or illicitly dismissed, for Christ has spoken of both dismissals, is an adulterer. Provided that you weigh the true argument of Basil from his canon 48, cited in Thesis XVIII, it will be evident that this argument was already foreshown by him. You see that here we are supposing the common interpretation of the words *except for the cause of fornication*; and that this interpretation, at least as regards the force of the demonstration to be drawn from this text, is sufficiently certain, will presently be evident.

VI. Now let us come to chapter XIX, 3 seq. There is not one interpretation. Not a few Protestants wish that the indissolubility of marriage is indeed sanctioned there by Christ, yet with a certain exception, namely, that of the wife's adultery. But among those who deny that Christ permitted repudiation in any hypothesis, there is no agreement concerning the interpretation itself. Some note that πορνεία is not adultery, but simple fornication; and therefore by these words a crime committed by the wife after the marriage has been contracted is not indicated. But they are divided into two classes. For some take it as if it is fornication which, before the marriage, the woman who has been

married committed with another; in which case they wish Christ to have said that the rescission of the contract is lawful, as the due condition intended by the man is lacking. Others think that those exceptive words give this sense: unless the union of the man and woman is fornicary, on which hypothesis not only is it lawful, but it is necessary, to dismiss the woman. Finally, others judge that πορνεία is there the adultery of the wife; and these again are divided. For some, especially among more recent authors, state that the words παρεκτὸς λόγου πορνείας have the force of: the cause of fornication being set aside, or the discourse, λόγος, concerning fornication being set aside, that is, I do not wish to speak of this. But others reject this evasion.

VII. Now the first interpretation, which does not state simply that Christ in this discourse sets aside the hypothesis of the wife's fornication, but contends that Christ in that hypothesis permits the dissolution of the bond, inasmuch as he denies indeed that it is lawful to dismiss a wife, yet excepts the cause of fornication, that is, when this cause exists, dismissal is lawful; this interpretation, I say, cannot be admitted. Rather, it must be held that Christ denied this by his answer.

Certainly Christ, 1. immediately from the beginning of his answer, signifies that he wishes to answer with regard taken only to the primitive institution, and to take from it the norm of his doctrine: *Have you not read that he who made man from the beginning*, etc., v. 4. Moreover, from the institution he gathers not only unity, but indissolubility: *What therefore God has joined together, let not man separate*, v. 6. This law, laid down in the very institution of marriage from the beginning for the whole human race, plainly holds for every marriage in every hypothesis; and therefore in these words is contained the contradictory of Hillel's sentence, namely, that for no cause is it lawful for a man to dismiss, by that dismissal by which the bond is dissolved, his wife.

2. Christ refers the permission of dismissing and repudiating the wife, a permission, I say, taken universally as it occurs in the law of Moses, wholly to the hardness of the human heart, and consequently exhibits it as foreign to the institution and to that antecedent divine will by which the properties of marriage were established: *from the beginning it was not so*, v. 8. Therefore, just as Christ, saying, *What therefore God has joined together, let not man separate*, recalls the law of the primitive institution, so also he must be said to abolish the Mosaic permission. In these things there is no exception: the faculty of dissolving the marriage, that marriage which God has joined, is withdrawn from the spouse; therefore man cannot dissolve any marriage; therefore not for any cause either. But the power of dissolving which is denied to man is not denied to God; rather it is reserved to him who joined, and, under God, to those to whom God has willed to entrust it.

3. The disciples are astonished at Christ's doctrine and judge the condition made for man by this law difficult, so that it is not expedient to marry. Such difficulty chiefly appears when an unfaithful woman gives access to herself to another. Therefore the Apostles understood something new, which was not contained in the law of Moses; nor does Christ deny it, but from the astonishment of the Apostles and from their opinion that it is not expedient to marry in this way, he takes occasion to praise and commend virginity, vv. 10-12.

From these things, the following are certainly established. 1. It is altogether false that Christ answers the Pharisees according to the Mosaic law; for he answers according to the law of the primitive institution, to which he opposes the permission made by Moses. 2. Christ brings forth something

new to those accustomed to the Mosaic law, the novelty of which might seem to demonstrate that it is not expedient to marry. 3. Christ simply recalls the primitive institution, so that it is unlawful for man to separate what God has joined. Therefore no marital conjunction can be separated by man; therefore neither in the hypothesis of adultery can the wife be dismissed with the bond dissolved, for in that way very many conjunctions made by God would be separated by man. Nevertheless a difficulty occurs in the very words of Christ:

But I say to you, that whosoever shall put away his wife except for fornication and shall marry another, commits adultery, etc. For he seems from the universal law prohibiting and making void the dissolution of the bond which is effected by man to except the hypothesis that the wife herself is dismissed because of her fornication. This exception, in whichever way it is read, is too constant to be rejected (preceding Thesis, n. IV).

Nevertheless there is already a prejudice against this interpretation, and indeed a twofold one. For 1. this exception does not cohere with the primitive institution; and it is remarkable that, after the first institution has been recalled and it has been absolutely affirmed and established that *what God has joined together, let not man separate*, an exception of the greatest moment is not added here, but in the answer to the subsumed question of the Pharisees; and if that question had been lacking, the doctrine previously handed down would have turned out incomplete and in part false. 2. If a man can dissolve the bond with a wife who commits fornication, but not for other causes, it follows that the condition of the adulteress is made better by Christ than that of the innocent woman. For the woman who has not broken faith by adultery, when dismissed, remains bound, so that she can neither enjoy her husband, because she has been dismissed, nor marry another, because she remains the wife of the former husband; but the adulteress when dismissed can be freed from obligation toward her husband, and marry another, even the adulterer himself. Is it lawful to expect these things from Christ, who so greatly commended chastity and willed to bind more closely the conjugal bond? "For no one is so absurd as to deny that he is an adulterer who marries her whom her husband has cast off because of fornication, when he says that he is an adulterer who marries her who has been cast off apart from the cause of fornication." Augustine, *de Adult. coniug.* L. I, c. 9. Yet those whom we oppose impose this absurdity upon Christ.

Again, the words of Christ, *and shall marry another*, accomplish the same. These words, as we have already warned, are commended more than sufficiently by critical testimonies (preceding Thesis, III). Therefore the man who, after his wife has been dismissed because of fornication, marries another, is an adulterer; therefore the wife dismissed even because of fornication remains the wife of the man dismissing her; therefore the bond is not dissolved.

Therefore rightly do we deny that in Christ's answer to the Pharisees there is contained a permission made to a man of dismissing a fornicating wife in such a way that the conjugal bond is dissolved. Cf. Knabenbauer on Matthew, in this place.

VIII. How therefore are these exceptive words of Christ to be taken? Of the interpretations of Catholics brought forward above (VI), the first rests upon the proper signification of the word πορνεία, especially since Christ himself here distinguishes it from μοιχεία, which is adultery; therefore πορνεία is not adultery, or does not signify a crime committed by her who is truly a wife. In this explanation of the words of Christ it is supposed that these words, *except for fornication*, are a continuation of the discourse and cohere with the words immediately preceding, *whosoever shall put*

away his wife, so that their sense is: unless he shall dismiss because of fornication. This is rightly supposed, as the very structure of the words and the common interpretation of the ancients shows. Now, however, when the word πορνεία is so taken, there is a twofold explanation of Christ's sentence; the former, which also pleased certain Protestants, while it removes one difficulty, introduces another. For since here Christ establishes a law that will hold for the Church (preceding Thesis, part II), it would follow that now, after marriage has been entered, it is lawful for a man to repudiate a wife whom he has not found to be a virgin; and indeed, unless on the hypothesis that the man wished to contract under this definite condition, who would admit this?

IX. But the other explanation, namely, unless the man dismisses the woman because their union is fornicary, although it is new, has seemed worthy to some that account be taken of it. The distinguished Father Patrizi proposed it (*de Interp. Script*. L. I, n. 281), and he testifies that he received it from another whose name he leaves unspoken. The distinguished Father Perrone sharply attacked the same (*de Matrim*. L. III, c. 2, a. 2). Against it the first difficulty is that it is a new interpretation, and they say that in a matter of faith and morals it is an interpretation of Scripture contrary to the unanimous consent of the Fathers, which is not lawful according to Trent. But as regards this criticism, first there must be distinguished a twofold interpretation of the Fathers, against which this new interpretation is said to go. One is concerning the principal object of Christ's discourse; the other is concerning an incidental object. The former affirms that Christ here teaches that the bond of marriage is intrinsically indissoluble in any case whatever; the latter affirms that Christ teaches that it is lawful, on account of adultery, to make a separation while the bond nevertheless remains. Now if account is taken of the former interpretation of the Fathers, we concede that the unanimous consent of the Fathers conspires into it, but we deny that this new interpretation is opposed to the same. For a twofold opposition must be distinguished: namely, either concerning the thing or doctrine which the unanimous consent of the Fathers teaches to be contained in the words of Scripture, or concerning the manner of interpreting or drawing the same thing from the words of Scripture. But only the former opposition is reprobated by Trent as contrary to the unanimous consent of the Fathers. For this is the decree of Trent (Sess. IV): "let no one, in matters of faith and morals, twisting Sacred Scripture to his own senses ... dare to interpret contrary to the unanimous consent of the Fathers." It is, that is, an opposition as to the sense. Therefore at that time there is an interpretation of Scripture in a matter of faith and morals contrary to the unanimous consent of the Fathers, when from the testimony of Scripture a sentence pertaining to faith or morals is forced out, contrary to that which the Fathers teach to underlie Scripture. But the doctrine which the consent of the Fathers teaches to be contained in this place is this: that the marriage bond can never be dissolved, not even through adultery. But the second interpretation both holds this and shows it more clearly. Therefore the opposition is not in the sense of Scripture, or in the thing itself which is to be understood from the words of Scripture, but in the method of interpreting; and who would deny that there can be progress in this? Wherefore he who receives this interpretation can also affirm that he is carrying out what he promises in the Pian Profession of Faith: namely, that he interprets this Scripture according to the unanimous consent of the Fathers.

If account is taken of the other interpretation of the Fathers which is objected, this difficulty occurs: that if we receive this new interpretation, then it must be denied that from those words of Christ it is proved that on account of the adultery of a spouse it is lawful to make a separation as to domestic life; for Christ is not treating of the adultery of a spouse. But this is both inconvenient and is opposed

to the Church and to the Fathers, who commonly prove that from those words. Nor can it be demonstrated from Matthew, chapter V. For the foundation of this new interpretation is that πορνεία is not adultery; therefore also in chapter V, since the same phrase occurs and likewise the discourse is about dismissal, it will have to be taken of a fornicary wife. There is indeed some difference between the sentence of chapter V and the sentence of chapter XIX; but one of two things follows: either it is contended that the word πορνείαν in a discourse where the dismissal of a wife is treated, and where the word μοιχεία or μοιχεύειν or μοιχᾶσθαι occurs, signifies only fornication, or it is conceded that it can signify adultery. If the first, you will not be able from any of these places to force out that it is lawful for the innocent spouse to separate himself from the adulterer. If the second, you destroy the foundation of your interpretation. The distinguished Perrone indeed, who urges this kind of argument from the sense of the Church, demonstrates that the Church, in establishing that practice, rests upon these words of Christ, adducing canons from the Decree and the Decretals. But, to confess the truth, from the Decree, to whose canons that authority is left which they have from their origin, besides some particular council, canons are cited almost from Augustine alone; but from the Decretals nothing properly is brought forward which directly pertains here. What of the fact that, if we wish to rest upon these words of Christ for the sentence of the Church that separation of spouses is at times lawful, a difficulty is at hand: why, since Christ made mention only of fornication, does the Church admit many other causes besides? For this cause alone would seem from Christ's words to have to be excepted. On the contrary, could not the Church have learned that cause from the same source whence she learned the other causes? Certainly the Tridentine Synod, Sess. XIV, c. 8, abstained from citing these testimonies of Matthew. Nevertheless, if we consult the ancients, not a few could be cited who take this exception in this way; and one may compare them in Thesis XIX. To these may be added generally the scholastic doctors and the interpreters of canon law, who agree upon the words of Christ in Matthew for establishing this doctrine. "This doctrine is certain," says Sanchez (L. X, *de Divortio*, disp. 3), "from chapters V and XIX of Matthew and from chapter *Significasti*; and thus this conclusion is of faith." Augustine, however, did not hold this interpretation as certain; for although he used it repeatedly, nevertheless he devised another, namely, that by those words, *except for fornication*, the case of fornication is excluded from the object of the discourse (*de Adult. coniug.* L. II, c. 9). But although there is not a unanimous consent of the Fathers and Doctors, nevertheless so great is this consent in taking πορνεία for the fornication of the wife, that is, for adultery, and hence in proving the lawfulness of separation because of the adultery of a spouse, that we do not dare to depart from this common interpretation. This is especially so since the reason which is produced is surely of no moment. For although πορνεία is not of itself μοιχεία, nevertheless the πορνεία of a wife is adultery; but here the discourse is about the πορνεία of a wife. Moreover, the reason why Christ in the second place uses the term *to commit adultery* is not in order to institute any opposition, but because this was necessary to declare expressly that the bond between the one dismissing and the one dismissed remains. For the rest, adultery is frequently signified by the name of fornication also in Sacred Letters. Therefore there remains the common interpretation, which in the words *for fornication* understands the adultery of the wife. This understanding is further required by the very question proposed by the Pharisees, to whom assuredly it mattered nothing to hear anything about a concubine woman. Then, if the word *fornication* must be taken properly, the word *wife*, which is understood in that exceptive formula, must be taken improperly: *whosoever shall put away his wife, unless he shall put away his wife for fornication*; but she with whom a fornicary commerce is had is

not a wife. Therefore one or the other term would have to be taken less properly. But why rather *wife*, which represents that about which the question is, than *fornication*? This, indeed, is an argument *ad hominem*; for, as we have said, here there is no place for improper terms. For when fornication is said of a wife, it is drawn over to signify the species of adultery.

X. But although this interpretation of the word *fornication* is admitted, there is still, as we have said, a twofold interpretation of the whole clause: *except for the cause of fornication*. Is that one to be approved which takes it thus: the cause of the wife's adultery being set aside, concerning which matter I do not wish now to speak?

The following observations forbid us to receive this interpretation. 1. No suitable reason appears why Christ would have wished to set aside this hypothesis. He had already appealed to the primitive institution, which, as the adversaries concede, comprised also that hypothesis. The Pharisees, in asking, had excepted nothing. Moreover, the case of adultery could be the principal reason for doubting. Christ here speaks as Teacher and proposes a new law before the Mosaic law. Therefore no prudence, unless you invent a human prudence from which Christ is most foreign, advised that this hypothesis be set aside. 2. In Mark and Luke, Christ is exhibited as handing down an absolute and universal doctrine. How can it be that Matthew represents him speaking defectively and abstracting from the more important hypothesis? 3. The connection of the discourse excludes that explanation, since already in the preceding words Christ had implicitly denied that even in the case of adultery the dissolution of the bond is lawful, and Christ had completed his answer. Therefore now he cannot say that he prescinds from that hypothesis.

Nor should you say that it satisfied the Jews, even with this set aside, to know the other things, especially since an adulteress wife was by law subject to death. For Christ speaks not for the Jews alone, but, as the Apostles themselves understood, for his future Church, promulgating a new law (cf. preceding Thesis), in which Church, moreover, what is lawful for the husband is also lawful for the wife.

XI. Yet there remains to be resolved a difficulty of no small weight placed in the words of Christ, Matthew XIX, arising not from the exception added alone (*except for fornication*), but from the fact that this exception is placed there where the subject of the discourse is not only he who dismisses, as in chapter V, but he who dismisses and marries another. For this seems to follow from that sentence: therefore he who, because of the cause of fornication, dismisses his wife and marries another, does not commit adultery. It is lawful for a legislator, who wishes to except some case from a law, first to enact the law in most universal terms and afterwards to add the exception for that case. This, they say, Christ now seems to have done. That is, after Christ had uttered the universal law, he was expecting an objection to be proposed to him by the hearers, so that he might indicate the exception which would exclude universality; which does not seem sufficiently congruous. But let us hear the argument. Namely, here surely one case seems to be excepted. For the Pharisees speak of perfect dismissal, and the proposition of Christ is exceptive and returns to this: Everyone who shall dismiss his wife and marry another, except him who shall dismiss her because of fornication, commits adultery. But an exceptive proposition is that which excludes one thing or several things, which are contained in the extension of the subject, from participation in the predicate. It is expounded, like an exclusive proposition, by a copulative proposition consisting of two exponents, one affirming, the other denying. Therefore the proposition of Christ seems to have to be expounded thus: he who

dismisses his wife because of fornication and marries another is not an adulterer; the others who dismiss and marry another are adulterers. Namely, it is lawful to argue from the contrary: if they are adulterers who dismiss a wife and marry another without the cause of fornication, therefore when this cause exists they are not adulterers. For it seems that if Christ had wished to except this case from the law of indissolubility, he could not have spoken more clearly than in this way: he who shall dismiss, except for the cause of fornication, and shall marry another, commits adultery. For the words *except for the cause of fornication* would not have had to be placed after those words, *and shall marry another*; for the fornication of the wife is not the cause why another is married, but only why the former wife is dismissed, and after this dismissal has been accomplished, another is married. Therefore, on the hypothesis that because of the adultery of the wife it would be lawful for the man to dissolve the marriage, the matter would stand thus: the man because of fornication would dismiss the wife, and thus would marry another. Therefore, he who, establishing the law of indissolubility, wishes to except only this case, speaks most rightly thus: he who shall dismiss his wife except for the cause of fornication and shall marry another, commits adultery; that is, he who does not dismiss his wife in the case of fornication and marries another is an adulterer; he who dismisses in the case of fornication, if he marries another, is not an adulterer.

XIII. Theologians labor to free themselves from these bonds. Omitting less apt responses, we observe that the words *except for fornication* pertain only to the dismissal, with which they are immediately connected, not to the following words, *and shall marry another*; nor was it without cause that the Lord did not add them after the completed subject, after the words *and shall marry another*. Therefore those words are indeed to be taken exceptively, but not by an exception by which something contained in the extension of the subject is excluded from participation in the predicate posited in the proposition, which is *to commit adultery*, but by one by which something contained in the extension of the subject is excluded from participation in another predicate understood in the proposition itself, namely, that it is not lawful to dismiss; so that the sense may be: everyone who dismisses, because dismissal is not lawful for anyone except one having an adulterous wife, in which proposition he who has an adulterous wife is excluded from the predicate, that he cannot dismiss. But that predicate is understood in the whole proposition itself, in which the power of dismissing is denied; and it is a certain elliptical form of speaking, so that those words, *except for fornication*, constitute an incidental proposition and are to be pronounced as by a certain parenthesis; and this is the sentence: whosoever shall dismiss, which indeed is not lawful except for fornication, and shall marry another, commits adultery. Therefore it would be a certain incidental proposition by which it would be taught when simple dismissal is lawful.

Thus indeed what Bellarmine answers rather obscurely can be proved (*de Matrim.* L. I, c. 17): "Christ, that is, when he grants dismissal in the case of fornication, does not speak of dismissal as to the bond, but only as to bed and habitation. But the Pharisees asked about dismissal as to the bond; therefore the Lord also answered concerning the same. I concede that the Pharisees asked about dismissal as to the bond, but I deny that the Lord answered about the same when he grants dismissal in the case of fornication. Therefore, says the adversary, the Lord did not satisfy the proposed question. The consequence must be denied. For since in perfect dismissal, which is as to the bond, two things are contained, the dismissal of one and the power of marrying another, the Lord separated these two, and granted one, namely dismissal with restriction because of the cause of fornication, but wholly removed the other. And this is the cause why almost always the Lord placed those two

distinctly: *whosoever shall put away, and shall marry another*, namely, in order to explain the repudiation permitted in the law, and partly to approve it, partly to disapprove it." Cf. n. II of this Thesis. Nor does it matter that the Pharisees had knowledge only of perfect dismissal; for Christ here, as also in the sermon on the mount, chapter V (cf. here n. V), teaches them both, and nothing else can be required from one answering.

This special interpretation of this testimony is required, 1. by the very interpretation which Paul, as we have seen, applies to the precept of the Lord. For the precept of the Lord is that a woman departing from her husband for a just cause either be reconciled to her husband or remain unmarried; and what holds in the woman as to this holds also in the man. Therefore the exception of fornication employed by Christ will indeed have this bearing, that it declares dismissal lawful, but not that it attributes a right to other nuptials; otherwise Paul would have to be said not to have understood well the precept of the Lord.

This interpretation is commended, 2. by the manner of speaking of men, by whom it is not foreign to use this elliptical form. Certainly one can speak thus: A priest using his wife, unless he is a Greek, and ministering at the altar, commits a disgraceful act. He who says this does not wish to say that a Greek priest using his wife and ministering at the altar does not sin; this indeed is false, for neither is the use of marriage permitted even to Greek priests when they serve at the altar; nor do I think that a Greek hearing this proposition would so take it as to apply the exception to the whole subject of the proposition. But the sense is: a priest using his wife, which indeed is not lawful except for a Greek, and furthermore ministering at the altar, commits a disgraceful act; and this is true whether he is Greek or Latin. Likewise, let this other proposition be: every soul, except the brute soul, when sinning merits punishment. That exception cannot be applied to the whole subject of the proposition, as if the speaker wished to say that it could happen that a brute soul sins and, sinning, does not merit punishment; but it must be applied only to the former part of the subject. Whoever attends a little will find propositions of this sort not infrequent; for they return to a certain elliptical manner of speaking. From these things we conclude that it is not altogether contrary to reason that we interpret that exception in this way; and indeed we demonstrate by other arguments that this interpretation is demanded by the words of Christ.

XII. Therefore the certainty of the interpretation handed down of the words of Christ, Matthew XIX, 3 seq., remains whole; by this interpretation it is established that Christ denies to the man the power of dissolving the conjugal bond for any cause whatever. Consequently, the falsity of the first interpretation, from those which we have mentioned, the one which pleased the Protestants, is evident.

Thesis XXII

By the very law of the primitive institution, generally any marriage whatsoever is intrinsically indissoluble.

I. Thus far we have spoken of Christian marriage. There remains the question concerning the marriage of unbelievers: whether it also is endowed with the same indissolubility. Innocent III certainly judged this, in c. *Gaudemus, de Divortiis*; and this must now be proved. Therefore we are speaking generally of any marriage whatever, appealing to the law of institution, under which certainly all marriages fall. Wherefore we affirm that marriages not only of the faithful, concerning which we have already disputed separately, but also marriages of unbelievers, by right of divine institution, were intrinsically indissoluble, and now are so, the same institution remaining in force after Christ.

II. Certainly in Matthew XIX, 3 seq., when the Pharisees ask, *Is it lawful for a man to put away his wife for any cause whatever?* Christ answers: *Have you not read that he who made man from the beginning made them male and female? And he said: For this cause shall a man leave father and mother, and shall cleave to his wife, and they shall be two in one flesh. Therefore now they are not two, but one flesh. What therefore God has joined together, let not man separate.* And when they say: *Why then did Moses command to give a bill of divorce and to put away?* Christ answered: *Because Moses, because of the hardness of your heart, permitted you to put away your wives: but from the beginning it was not so*; that is, marriage was not instituted in such a way that that permission would exist. Note the Hebrew phrase: *they shall be two in one flesh*, היו לבשר אחד, which the Greek retained, ἔσονται οἱ δύο[^1] εἰς σάρκα μίαν, *unto one flesh*, has the same force as *they shall be one flesh*, as Christ himself explains. Moreover husband and wife are one flesh, not as if they are physically one man, but because physically according to the flesh they are one principle of generation, and they are this in act when they commingle, in potency by force of the marriage itself, which is the power of one over the body of the other in order to generation. Namely the man is the head of the woman, and the woman is the body of the man (Eph. V), and thus from the two one is made, one flesh.

III. Moreover, from these words of Christ these things are manifest: a) that marriage was so instituted by God that God himself is the author[^2] of the conjunction of man and woman, and that God is so the author of this conjunction that it is never lawful for man to dissolve that conjunction. Certainly it was indeed permitted to the Jews to give a bill of divorce and to dismiss their wives; but from the beginning, when marriage was instituted, this permission did not exist. For this is the sense of those words, *but from the beginning it was not so*, by which what was said before is excluded; but the discourse before was about permission.

You will say that the sense of Christ's words is not properly this, but another. Namely, when the Pharisees had asked whether it was lawful for a man to dismiss his wife for any cause whatever, which they thought lawful for themselves from the law of Moses, Deuter. XXIV, 1 seq., Christ answered that Moses indeed permitted this, but that from the beginning it was not so, namely, that a man could dismiss his wife for any cause whatever; consequently not denying that from the beginning it was lawful to do this for some special cause. And indeed Christ himself then approves

the cause of fornication. I answer that if we wish to adhere to the words of Christ and to those alone, Christ's answer, *Because Moses, by reason of the hardness of your heart, permitted you to put away*

[^1]: Concerning the reading οἱ δύο, which now does not appear in the Hebrew copies, read the distinguished Patrizi on Mark, c. X, vv. 7, 8.

[^2]: How much positive institution of God claims for itself in this matter will be declared in what follows.

your wives, but from the beginning it was not so, this answer, I say, is not to that question, *whether it is lawful for a man to dismiss his wife for any cause whatever*; but since he had already satisfied this question by that answer by which he universally concludes, *What therefore God has joined together, let not man separate*, by which words no cause is left on account of which it is lawful to dissolve marriage by the authority of man, when the Pharisees objected to him the commandment of Moses, he gave that answer in order to refute this objection. In this answer it must be observed that Christ makes mention only of the permission granted by Moses of dismissing wives, not of a permission of dismissing for any cause whatever; and indeed that broadest permission cannot be read even in the words of Moses (Thesis XVI). For the sentence of Moses must not be confused with the interpretation which certain Jews in the age of Christ applied to it; nor did the Pharisees themselves, when objecting, bring forward the authority of Moses in this way. That is, the Pharisees, hearing that man cannot separate what God has joined, thought that it was sufficient for themselves, in order to refute Christ, to oppose to him the commandment of Moses, who certainly permitted some dissolution, or, as they themselves were saying, commanded it. Therefore in this second question there is no longer a question about dismissal for any cause whatever, but simply about dismissal or the bill of divorce by which marriage is dissolved. If this is at any time lawful, the Pharisees thought that they had sufficiently refuted the preceding words of Christ. Therefore the opposition instituted here by Christ is between the permission made by Moses to men of dismissing a wife, insofar as it is simply a permission, and the primitive institution. Therefore marriage was not instituted in this manner, that license would be given to the man of repudiating his wife, and consequently neither to the wife of repudiating her husband. This certainly must at least be understood of repudiation dissolving the bond, both because, if it is understood of simple divorce, by that very fact this must much more be understood of the former, and because simple divorce for a just cause is lawful in the Christian economy, in which the primitive institution has been altogether recalled, and therefore it was lawful also then. Therefore the words of Christ, which are universal, cannot be taken of divorce alone or separation alone. Moreover, the question proposed by the Pharisees was not about fact, but about right. Therefore when Christ says that from the beginning, when God made male and female, it was not so, he is not speaking about fact, which could not have had place, but about right, that is, about permission, which was not then made. But it is established that divine permission was necessary for the Jews, that men might be able to repudiate their wives; for on Christ's authority, from the manner in which God instituted marriage, it follows that man cannot separate what God has joined, unless therefore God himself permits it, dissolution by man cannot be effected. And this also Christ signified, when he brought forward no other reason for dismissal except the permission of Moses, who in giving the law acted in the place of God.

IV. b) It is manifest that God from the beginning so joined man and woman that each lacked the power of dissolving the bond, and therefore repudiation would be not merely illicit, but invalid. For

Christ immediately inferred from that institution: *What therefore God has joined together, let not man separate*. But in these words is contained not only the prohibition of separation, but the nullity of the act attempting it. For there is not exhibited merely the will of God the legislator, which can be violated, but there is exhibited the efficacious will of God, effecting the conjunction: *what God has joined together*; but no creature can render void the effect of the divine will acting. Therefore either spouse would attempt to dissolve the bond of marriage not only illicitly, but without any effect. And certainly Christ, recalling the first institution and abrogating the permission of repudiation, established in the words immediately following that he commits adultery who marries her that is put away. Therefore the bond remains, without which there can be no adultery. Certainly he who marries her that is put away, even because of fornication, commits adultery. Therefore the woman is still bound to the law of the husband; therefore also the husband dismissing her is still bound to the law of the wife, for the bond is mutual. Therefore also from the beginning he who had married her that was put away would have committed adultery; therefore then the bond remained, and thus there was no power in the spouses of dissolving the bond.

We said that by those words, *What therefore God has joined together, let not man separate*, Christ recalled the first institution and abrogated the permission of repudiation. For the words are of one commanding indissolubility, or prohibiting the dissolution of marriage by human authority, and therefore prohibiting what Moses had permitted. But this command is connected by Christ with the words of God in which the first institution of marriage is contained; therefore the primitive law is recalled. Accordingly, from the beginning marriage was instituted by God in such a way that man, whether husband or wife, could not dissolve it; that the male and female joined by God should always exist as the same joined persons, and their bond should remain perpetual; that the permission of repudiation should not exist; that therefore repudiation, that is, with the power of man to dissolve the bond or to separate what God joined altogether removed, should be prohibited by God and destitute of force. Now an institution of this kind was a law for future marriages; for Christ appeals to it in the question whether it is lawful to dismiss one's wife. But a law laid down from the beginning of the human race had force for any future marriage whatever that would exist among men. "From which it is manifestly evident," says Pius VI in his epistle to the Bishop of Agria, in the year 1789, "that marriage, even in the very state of nature and indeed long before it was raised to the dignity of a sacrament properly so called, was so divinely instituted that it bears with itself a perpetual and indissoluble bond." But although in former times a dispensation from this law was given to the Jews through Moses, Christ removed this dispensation both when he openly pronounced, *What God has joined together let not man separate*, and when, opposing himself to Moses, he added to the Pharisees themselves: *But I say to you, that whosoever shall put away his wife, except for fornication, and shall marry another, commits adultery; and he who shall marry her that is put away commits adultery*; or more simply according to Mark X, 11, 12: *Whosoever shall put away his wife and marry another, commits adultery against her; and if the wife shall put away her husband and marry another, she commits adultery*; and finally when by the Christian institution he abrogated the whole Mosaic institution, except those things which pertain to the natural law, of which sort certainly that permission was not, since it was opposed to the divine institution.

Therefore first, marriages of the faithful, because of the primitive law recalled by Christ, are intrinsically indissoluble. Therefore likewise, secondly, marriages of unbelievers, which are subject to that former law, for which no dispensation was ever enacted, and to which the Mosaic permission

abrogated by Christ can be of no service even indirectly, are altogether indissoluble (cf. Thesis XVII, n. V). Thus the Council of Trent, Decree on Matrimony: "The first parent of the human race, by the impulse of the divine Spirit, pronounced the perpetual and indissoluble bond of marriage, when he said: *This now is bone of my bones and flesh of my flesh*; wherefore," etc.

Thesis XXIII

Reason also, well considered, shows how well marriage has been furnished with such indissolubility.

I. With these matters settled, it remains that we also demonstrate by reason that it was fitting for marriage to be strengthened by this intrinsic indissolubility. For this demonstration we shall prepare the way for ourselves by the solution of the principal difficulties. Nor will it be out of place first to set aside a certain prejudice drawn from human reason itself. Namely, someone could say: if human reason counsels full indissolubility of marriage rather than dissolubility in certain cases, how is it that human reason, left to itself, never perceived this truth, since all laws enacted merely according to the governance of reason have sanctioned divorce, and the Roman laws themselves approved the same, not only under unbelieving emperors, but especially under believers, such as Constantine, Justinian, and others?

I answer in many ways. 1. Reason left to itself not rarely does not see that which is true and good and is properly contained within the scope of those things which could be known by reason itself, using its own powers and rightly applying its own principles. The age before Christ supplies many examples of this matter.

2. Since, as we have already said, reason alone does not demonstrate the necessity of full indissolubility, while on the other hand affection toward sensible goods generally dominates in men, especially in unbelievers, and this recommends divorces, it would be remarkable if men with reason alone as guide in an unbelieving society had rejected divorces.

3. For the rest, even rulers thinking rightly could have been brought to this, while ignorant of the opposite law of God, that they approved divorces for certain causes, namely, in order to avoid greater evils which, because of the malice of men, would have come about; or, in other words, because of the hardness of heart of their subjects, as Moses permitted.

4. But Christian rulers either enacted those laws for unbelievers still living within their empire, thinking that they were able to do this, or rashly following the custom of their predecessors did not sufficiently attend to what the matter demanded, or, seized by the passion for making laws and for involving themselves in ecclesiastical matters, could not hear the counsel of reason.

II. Now let us hear the arguments of the adversaries. They say first: the adultery of a spouse is opposed to all the goods of marriage: to offspring, which it makes uncertain; to fidelity, which it violates; to the sacrament, whose signification it injures. Therefore, since contraries are destroyed by contraries, it is necessary that marriage be dissolved by adultery.

I answer 1. Properly, contraries are those things which mutually expel one another from the same subject; but adultery does not of itself exclude marriage, which remains together with it. Nor do those making the objection contend this; they wish only that a power of dissolving the marriage be made for the innocent party. And certainly it is absurd that, through the violation of an obligation perpetrated by one party, the obligation should be dissolved even though the other is unwilling; yet

this would happen if adultery of itself dissolved marriage. Therefore adultery is contrary to marriage not insofar as it is the exclusion of the obligation, but insofar as it is the violation of the same obligation, which can and must remain with that violation and after it.

I answer 2. Adultery is indeed opposed to the goods of marriage, but not in such a way that they are altogether excluded. For as regards the good of fidelity and of signification, since adultery is something transitory, it excludes these in act, but they themselves remain habitually and can be present in the other acts.

As regards the good of offspring, the offspring can indeed be rendered uncertain, but this uncertainty also can be guarded against; nor does it prevent true offspring from being nourished and educated, but it causes outsiders also to be admitted into the family of the father, which is not contrary to the good of offspring except in accidental things, namely, as to goods to be divided.

For the rest, 3. from the doctrine of St. Thomas, q. LIX, a. 3, ad 1, something to be done is more easily impeded than what has been rightly done is destroyed. For if something has been done, some new right proportioned to it exists, demanding its conservation, which right was not there before; and this right, sought from the nature of the thing, can be such that it prevails over other rights, or over the rights of private persons. Moreover, of this sort is the right of the intrinsic indissolubility of marriage, whose good surpasses that good of the spouse who must either bear an adulterous spouse or remain without the use of marriage. For the indissolubility of marriage is for the common good, whether of the human race to be multiplied and of worshipers of God to be begotten, not for the private good of the contracting parties, except secondarily and accidentally.

They say again (q. LXVII, a. 1, ob. 4): from marriage there is principally sought a good situated in offspring. But the inseparability of marriage is against this good, because some man cannot receive offspring from his own woman, though he could receive it from another, and she also could be made fruitful by another man. Therefore the inseparability of marriage is more against the law of nature than of the law of nature. I answer 1. that if there is antecedent impotence to have intercourse, the marriage is null; but this hypothesis being set aside, I answer 2. with St. Thomas (ibid.): "that marriage is ordered to the common good by reason of the principal end, which is the good of offspring, although also by reason of a secondary end it is ordered to the good of the person contracting marriage, insofar as it is of itself a remedy of concupiscence. And therefore in the laws of marriage there is attended more what is expedient for all than what can suit one person. Therefore although the inseparability of marriage impedes the good of offspring in some man, nevertheless it is fitting for the good of offspring simply." That is, of itself and with regard taken to the very procreation of offspring, the indissolubility of marriage conduces to the good of offspring; accidentally, by reason of this or that individual, it does not conduce. But again there is a distinction: for it positively conduces to the good of the offspring which exists; this latter negatively only does not conduce, insofar as offspring is not begotten, in which there is no evil.

You will say with Kemnitius (cf. Bellarmine, l. c., c. 17, ob. 1) that the pontifical law, denying another marriage to the innocent spouse in the case of adultery, deprives the innocent party of his right, without his fault, contrary to the rules of law.

We answer with the same Bellarmine that this law is not pontifical, but Christ's; and that the rule of law is badly alleged (in 6, *de regulis iuris*, c. *Sine culpa*). *Without fault, unless a cause underlies, no one is to be*

punished. Certainly here a cause underlies, for the essence of marriage demands it. For the rest, this evil is not a punishment; for punishment supposes fault. Nor is the innocent party deprived of his right, for he does not have a right of marrying another, and he can be reconciled to the adulteress. But if he abhors this, he is subjected to a certain evil, for which he can provide a remedy through patience. Moreover, this is common to many men in so many other matters.

But you will object: if one of the spouses, with love turned into hatred or contempt, conducts himself unjustly toward the other, so that life together with him is intolerable, is not the innocent spouse separated from the impious one even by perpetual separation? But in this hypothesis would it not be more fitting, both for the tranquility of the innocent spouse and for the punishment of the wicked one, to give the innocent party the power to enter another marriage, with the former one dissolved? Is not that perpetual separation already a certain dissolution? Or to what does that bond, remaining between irreconcilable persons, conduce except to the unhappiness of the innocent party and almost the certain eternal damnation of that person?

Response. In order that the defect of this and like arguments, for the same difficulty can be proposed in many ways, may be detected, it must first of all be weighed whether that which their authors intend to demonstrate is that which their adversaries deny and which comes into question. Certainly the question is not whether, with those conditions posited which are supposed in the objection, the dissolution of the bond could have been permitted by some law. That Catholics deny this is so false that, on the contrary, several of them teach that this was conceded to the Jews for causes even of lesser moment, and they affirm that not every dissolubility of marriage is prohibited by the law of nature. Therefore you declaim in vain when you bring forward only certain goods which would arise from dissolution, and certain evils which would arise from indissolubility, and take account of the force of the natural law alone. For the question is, 1. about marriage to be conformed to the norm either of Christ's institution, of which sort it is among the faithful, or of the primitive institution of God, which now holds for all men (preceding Thesis); the question is, 2. now, when we consult reason alone, not whether, with indissolubility posited, the innocent spouse is deprived of certain physical goods and is subjected to certain evils, even grave ones, but the question is comparative of itself: whether a greater good or a greater evil accompanies indissolubility or dissolubility, and therefore which is better, dissolubility or indissolubility, with regard taken not only to the good of the persons who are united, but to the universal good and the proper end of marriage; or the question is absolute under this respect, namely, whether some moral evil is begotten from indissolubility. For neither do we wish from reason alone to demonstrate the necessity of indissolubility in every hypothesis, but we intend to demonstrate that the law of God, which sanctioned indissolubility, was more suitable to nature itself, to human society, and to the dignity of marriage.

Thus, when the point of the question has been defined, the efficacy of the contrary arguments now begins to be lessened and almost to vanish. There account is taken only of the personal good of one or the other spouse, or even of both spouses, and especially of sensible and worldly good. For what is added about the danger of eternal damnation is produced in order to make a pretext. For to a man who wishes to live according to reason, assisted by divine helps, which cannot be lacking, not only will escape from eternal death be easy, but the attainment of salvation will become more certain through the exercise of virtue.

Now any physical evils which can follow indissolubility are suffered by the spouse either from his own fault or without fault. If from his own fault, let him impute them to himself, not to the law of God, and let him bear them in expiation of his crime. But if he suffers without his own fault, 1. this is an evil only personal; 2. it is an evil which can be abundantly compensated for and overcome by another personal good, of which sort is the exercise of virtue; 3. it is an evil which can cease when reconciliation is seriously procured by the aid of virtue. Perhaps you will laugh when you hear mention made of virtue in a matter which is undertaken on account of pleasure. But if in marriage, which is a matter most highly moral, you have only sense before your eyes, we freely affirm that you are altogether unfit to pass judgment in this question. But in the same way in which we have spoken of the evil following upon indissolubility, one must also speak of the good which spouses might hope for themselves from dissolution.

On the contrary, the evils which would arise from intrinsic dissolubility, or at least from extrinsic dissolubility of consummated Christian marriage, more or less harm the very nature or sanctity of marriage, and they more or less ruin the public and social good which marriage is born to produce. That we may not say the same things twice, we are about to declare this in the following part; but before we make our step toward it, it is better to hear another argument of the adversaries.

They say that the firmness of the contracted bond depends, as on a cause, upon the free consent of the contracting parties, who freely impose upon themselves this obligation of the bond. But the cause which makes something can itself destroy that same thing. Therefore it is situated in the nature of marriage that it be intrinsically dissoluble not only on account of the cause of adultery but also on account of any other cause whatever, so that therefore its intrinsic indissolubility is altogether against the law of nature.

I answer. In this argument, first, something is supposed which would hold of itself in all obligations freely undertaken from the beginning, namely, that the cause of an obligation of this kind is the very free consent of him who is obligated. But this is true in a qualified way, but false simply. When, for example, you vow something to God, you indeed vow freely; but the obligation of preserving what has been promised to God arises from the essences of things, or from the relation between the essence of a promise and the essence of God to whom the promise was made; and, furthermore, the natural law and the positive law of God will that this relation be preserved. Therefore it is within man's choice to posit the foundation of this relation, and when this foundation has been posited, that relation results. But it is not placed in man's power to prevent that relation from existing, just as it is not in his power to change the essences of things; nor does it depend upon man's will that there be a natural or positive law of God commanding that such a relation be preserved. Certainly, if the essences of things demanded nothing of themselves, if there were no law antecedently to your act which commanded what, when certain conditions have been posited, it is necessary to do, and if all things depended solely on the free consent of man, there would in reality be no obligation. For by that very fact there would always remain the right of acting against that to which we consented; for the subsequent consent in the opposite direction would have the same force as the prior consent. Since, therefore, the power would always remain of positing this second opposite consent, there would never be any obligation. For what obligation is it, to which immediately and as often as you wish you can contradict by the same right by which it was imposed? From this it is clear that the cause of obligation must be sought outside him who is obligated. Nevertheless, obligations do not all

exist in the same way. For certain ones bind you with abstraction made from any free act of yours, so that you undergo them whether you will or not; others, in order that they may exist, require some free act of yours, by which you voluntarily subject yourself to a law, which indeed independently of your will establishes that if that act is posited, that obligation exists.

Accordingly, to this extent it is true that he who freely undertakes obligations of this sort is himself the cause of his obligation, insofar as he is the cause of the act which is a necessary condition that the obligation exist. But that which properly begets the obligation is not the act of man by which it is freely undertaken and by which, therefore, the law introducing it is already supposed, provided that something be done; but it is the law itself which commands that the relations of essences be preserved.

With these things posited, the solution of the proposed argument is easy. The consent of both is required that the mutual power and obligation, in which the bond of marriage consists (Thesis I), may exist. But 1. the essence of this mutual power and obligation does not depend upon the choice of man; therefore 2. the firmness and immutability of this obligation, which either the very nature of the thing requires, or the divine law, at nature's urging, establishes, neither depends upon the choice of man, nor proceeds from free consent as from a cause, but only through free consent is freely undertaken, and must be undertaken by the contracting parties lest nothing be done.

III. But in order that the direct demonstration may be brought forward, it must first be established that marriage is not simply to be reckoned among contracts. For although it is called a contract because it is entered by the free consent of two persons and something is given and accepted on both sides, nevertheless its essence exceeds every notion of contract and is placed in a higher order. For 1. in marriage that is given to which those giving, taken separately, do not have a right. Consequently the free consent of the contracting parties looks only to this, that this union exist, and that each should know the other as his own. Namely, they consent to a union, for which nature has made them fit, and because this union comes to be by a power obtained by each over the body of the other, each is said to hand over to the other a power over his own body. 2. In marriage, furthermore, there is not only a communication of things or actions over which a right of dominion or property exists, but a conjunction of persons is made into a unity of souls and a unity of the generative and educative principle of offspring, the elements of which unity are subject to no human right of dominion or property. 3. Marriage is of itself an institution of nature, or of the author of nature distinguishing the twofold sex and ordering one to the other; and likewise it precedes every other human society, indeed existing physically and morally as the fountain of civil society. But what is of this sort cannot borrow its force from the will of man or from a social law, of which sort all contracts are. Wherefore marriage, instituted by nature or by the author of nature, is a natural state pertaining not only to the physical but to the moral order, accommodated by God to the propagating of the human race. This observation indeed is sufficient for making exception against those who would wish to discuss marriage no otherwise than as some contract, and to assert for it the properties of a contract, among which is dissolubility.

IV. Therefore, this imagination having been excluded, let us hear what reason teaches in our question. It is not asked whether perpetual indissolubility is essential to marriage; concerning this matter we have already spoken in Thesis XVIII. Nor is the question about any indissolubility whatever, but about intrinsic indissolubility, by which, namely, dissolubility is withdrawn from the

choice of the spouses. But it is asked whether God deservedly established this intrinsic indissolubility in any case whatever, even in the case of adultery of one spouse, quarrels, hatred, and mutual enmity, so that it is necessary that they be separated. God must indeed be said to have established this deservedly, if intrinsic indissolubility even in these cases was more fitting than permission of intrinsic dissolubility in certain cases. But reason persuades that the former was more fitting. For 1. of two things, that is certainly more fitting of itself which coheres more with the essence of marriage; but it is evident that total intrinsic indissolubility coheres more than partial intrinsic indissolubility with the essence of marriage, which is of itself something stable and persevering, which is not simply a certain contract (n. III), but an institution of nature, whose term indeed is the unity of two. 2. Even with regard taken to those things which happen to marriage, that is more fitting from which lesser evils follow than that from which greater evils follow. But a greater evil would follow from intrinsic dissolubility in certain cases, for instance the adultery of a spouse, than from the same marriage's total intrinsic indissolubility. For from this indissolubility there directly follows only a private evil of the spouse; but from dissolubility there would directly follow a public and social evil.

And first, if the matter concerns consummated Christian marriage, the dignity of the sacrament situated in the signification of the indissoluble union of Christ with the Church would be violated. This evil is public and social, just as the sacraments are a public and social good, and it is an evil directly opposed to the divine ordinance which annexed this signification to marriage. Even with abstraction made from this dignity of the sacrament, if in certain cases the dissolution of marriage were permitted to spouses, several other social evils would follow. The chief ones are these: the diminution of the reverence owed to marriage and of the moral union of the spouses, since it would be subjected in part to the choice of men and would be reduced to the condition of contracts, than which nothing is more unbecoming to marriage; thence, the continual uncertainty of the marital bond, depending upon the always changeable will of man, which uncertainty, existing from the very beginning of the union, would of itself harm not a little the moral unity of the spouses. For when it is established by law that, if the minds of the spouses have been irrevocably dissociated, it is lawful for them either by mutual consent to separate and dissolve the bond, or to seek its dissolution from the social authority, which would be bound, when that cause exists, to grant it, since those about to contract would know this already from the very beginning of the union, they would be so disposed in soul that they would will a perpetual union only conditionally, and would be disposed to dissolve the bond if love between them should cease. Hence they would also be less ready to guard against the beginnings of quarrels and disputes, because the remedy would always be ready at hand, namely, the dissolution of the bond. But a marriage entered with such a will, with the purpose of perpetuity truly lacking, would no longer be marriage according to the perfect notion, but, once the divine law is posited, concubinage. But the substitution of concubinage for marriage is a social harm.

Then there would follow the lamentable condition of children, who would lose their family, or would no longer recognize those by whom they were begotten, although still living, as the stocks of their family, since those persons would no longer constitute a family, the bond of marriage having been dissolved; the distraction of relationships by blood or by affinity which marriage produces, which, once consummated marriage has been dissolved, it would be unbecoming not to persevere, but, if they did persevere after marriage was dissolved, because of their excessive frequency, it would be burdensome to society. Hear besides Ambrose addressing the man who casts out his wife (*in Luc.* VIII, 4): "Where is one heavy with little children dismissed? Whither is the aged woman thrust out

with tottering step? You are harsh if you exclude the parent but keep the pledges, so that to the insult against charity you add also an injury against piety. You are harsh if, on account of the mother, you cast out the children also with her, since rather the children ought to redeem from the father the fault of the parent. How dangerous it is if you expose the fragile age of the young woman to error; how impious if you forsake the old age of her whose youth you deflowered! Therefore will the commander dismiss a veteran, inglorious with dishonored service, and thrust him out from the possession of his command; and will the farmer drive from his field the countryman worn out by his labor? Or is what is impious toward subjects lawful toward an equal?" These and like things, although certain of these are evils of such a kind that they can be permitted on account of some more excellent good, nevertheless are all graver than the evil which the innocent spouse is compelled to suffer from the injury of the other spouse. Therefore.

"How great a material of evil," says the Holy Father in the cited Encyclical, "divorces contain in themselves, it scarcely needs saying. For on account of them marital covenants are made changeable, mutual benevolence is weakened, pernicious incentives are supplied to infidelity, harm is done to the protection and education of children, occasion is furnished for dissolving domestic societies, seeds of discords are scattered among families, and the dignity of women is lessened and depressed, for they come into danger of being held as forsaken women, after they have served the lust of men. And since nothing avails so much to ruin families and break the strength of kingdoms as the corruption of morals, it is easily seen that divorces are very hostile to the prosperity of families and states; divorces which are born from the depraved morals of peoples, and, as experience bears witness, open an entrance and gate to more vicious habits of private and public life. And it will be established that these evils are much graver, if it is considered that there will be no restraints so great that they can hold the faculty of divorces, once granted, within certain and previously provided limits."

This furthermore must be warned, that divorces introduced among Christians by the civil power labor under that original defect, that they proceed from an authority altogether incompetent, as will be demonstrated in the following Chapter.

Therefore from these things it is evident that the intrinsic indissolubility of marriage is most fully conformable to reason. Cf. moreover what we shall say at the end of Thesis XXV and the following Thesis.

Thesis XXIV

As regards extrinsic dissolubility or indissolubility, we teach first that consummated, ratified Christian marriage cannot be dissolved even extrinsically.

I. Now concerning extrinsic dissolubility or indissolubility. Extrinsic dissolubility is the dissolubility of marriage from the power of a superior. Moreover, the superior over marriage, or over the spouses, first is God, who instituted marriage and joins the spouses. But God can communicate his power to another bearing his place. Moreover, when it is asked whether marriage is extrinsically dissoluble, account is not taken merely of this power existing in God, or it is not asked whether it can be dissolved by God; for concerning this there is no room for doubt. Rather, account is taken of the exercise of this divine power and of the communication of the same made to someone; or it is asked whether in some case God dissolves marriage and whether he has communicated to some man the power of dissolving the conjugal bond. We propose the question in this way, reducing all things to the power of God exercising itself or communicating itself, because whatever power is asserted for others cannot exist except from the positive concession of God. For since by the law of institution, which is not only natural but also positive, and which has force for any natural marriage whatever, and by the Christian law, which has force for any sacramental marriage whatever, God has sanctioned that marriage be indissoluble, and has declared universally, *What God has joined together, let not man separate*, and since an inferior can do nothing against the law of a superior, no man could dissolve the bond unless he were supported by divine power. And indeed that there is no human power which can dissolve the bond is clear from those words of Christ, *What God has joined together, let not man separate*, in which man is opposed to God. Therefore the man who acts by his own authority, not God's, is excluded. Moreover, these words are universal and exclude from the power of making total divorce not only the spouses but any man whatever. And in these words Christ expressed the first institution, for he gathered that sentence from the first institution. Then it is established from the other words of Christ, which certainly have the force of law: *Everyone who shall put away his wife and marry another commits adultery; and he who marries her that is put away commits adultery.* In these words, indeed, an exception can rightly be understood: unless God the legislator shall have permitted otherwise in certain cases, which exception coheres intrinsically with the very power of making law. But it is not lawful to add other exceptions; otherwise the words of Christ would become false. For the sentence of Christ is: everyone who shall put away, etc., unless I dispense, is an adulterer; but this would be false if, apart from God's dispensation, another wife were validly married after the former wife had been dismissed. Therefore. But for the moment it must be supposed, what we shall demonstrate in its own place, that no power over Christian marriage belongs to the civil authority.

Therefore, with the question proposed in this way, we say, 1. that consummated Christian marriage is not only intrinsically, as has thus far been proved, but also extrinsically indissoluble. Concerning this matter there can be sought both the reason demonstrating that it is so, and the reason why it is so. That the matter is so is easily proved. If consummated Christian marriage could be dissolved extrinsically, the Church surely would know either that God dissolves it in certain cases, or that she has from God the power of dissolving it, or at least she would not deny that she has this power. But the Church is ignorant of both, indeed denies both, simply denying that consummated Christian

marriage can ever be dissolved for any cause whatever, or that she has power to dissolve it. Cf. cc. *Verum* and *Ex publico, de Convers. Coniugatorum*; therefore.

Theologians dispute what the reason is for this indissolubility in every way (cf. Sanchez, l. II, d. 13; Bellarmine, c. 4). And indeed it is certain that, insofar as it is also extrinsically indissoluble, the ultimate reason is that God so willed. But the reason is sought why God so willed, which is a reason of congruence. Therefore we say that such an adequate reason of this matter cannot be sought from the law of nature; for the law of nature does not prohibit all dissolubility and divorce, as we have seen, and moreover if the law of nature were the reason, the consummated marriage of unbelievers would not at some time be dissolved, which nevertheless happens. Therefore neither is the ultimate reason the mutual handing over of bodies by which the contract is perfected; for this too has place in the marriage of unbelievers. Nor can that reason be sought from the dignity of the sacrament, if only that which is essential to the sacrament is regarded; for ratified marriage too is a sacrament no less than consummated marriage, and yet, as we shall say, it can be dissolved. Nor is Hincmar of Rheims to be heard in this matter; he, in epistle 22 concerning the incestuous nuptials of a certain Stephen, recounting the words of Leo to the Bishop of Narbonne, and also employing the authority of Augustine, denies that nuptials have in themselves the sacrament of Christ and the Church if commingling of the sexes does not follow them. Likewise he denies that that woman pertains to marriage with whom it is taught that there was no commingling of the sexes, just as, he says, there is no doubt that that woman does not pertain to marriage in whom it is taught that there was no nuptial mystery. This indeed he does not prove well by the words adduced from Leo, who says: "since the society of nuptials was so constituted from the beginning that, besides the conjunction of the sexes, it had in itself the sacrament of Christ and the Church." For from these words it is rather evident that the sacrament of Christ and the Church is distinguished by Leo from the conjunction of the sexes. And certainly this sacrament, or that which represents the union of Christ and the Church, is situated in the indissoluble union of one man with one woman, and therefore in a union between free and equal persons, because this union alone was held by Leo to be indissoluble and truly conjugal. But Leo is not solicitous concerning the commingling of the sexes, which has place even outside nuptials. Cf. Thesis XV, n. IX, and what we shall say concerning those words of Leo in the Appendix.

Therefore it remains that the reason for this indissolubility in every way is indeed the dignity of the sacrament, but, so to speak, considered integrally, namely joined with the actual mutual handing over of bodies, and therefore with the signification of the indissoluble union of Christ with the Church through the flesh assumed. That it is the dignity of the sacrament is clear, because for this reason the marriage of unbelievers can be dissolved, because it is not ratified (*c. Quanto, de Divortiis*); but that this alone does not suffice, we have already proved. Therefore, in order that the other element which we add may be understood, it must be observed: 1. that the consummation of marriage pertains not indeed to its essence, but to its integrity; and this integrity is attended not according to first perfection, which consists in the very being of the thing, but according to second perfection, which consists in operation (1a p., q. LXXIII, a. 1); 2. that by the actual handing over the contract is perfected, and it appears unbecoming by a special reason that he who has been commingled with one should become another's, or that what has been totally given should be demanded back; 3. that sacramental marriage, and that consummated, signifies completely in second act the union of Christ with the Church through the flesh assumed. For man and woman become actually one flesh through

the conjugal act; but marriage which is indeed sacramental, yet not consummated, signifies the same union in first act, for man and woman have the power of the conjugal act. It is commonly said that ratified marriage signifies the union of God with the soul through grace, but consummated marriage signifies the union of Christ with the Church through the flesh assumed; and therefore the former is dissoluble, just as the union of God with the soul can be dissolved, but the latter is not, for the contrary reason. But although it is not lawful for us to reprove this declaration, nevertheless it is lawful to interpret it. Namely, we judge that this doctrine, rather than being the reason for the dissolubility or indissolubility of marriage, is an explanation devised after the dissolubility of ratified marriage is already known from elsewhere, so that the matter might be declared by a certain example. For if ratified marriage really signifies only that, why can it not be dissolved for many other causes, and indeed even by the private power of the spouses, just as the union of the soul with God? For the rest, Paul affirms of every Christian marriage that it signifies the union of Christ with the Church. The difference, therefore, will be in the mode of representing, but the thing represented is the same. Moreover, since the indissolubility of marriage depends especially on the thing signified, it was fitting that that marriage be altogether indissoluble even extrinsically which represents in a perfect mode the indissoluble union of Christ with the Church through the flesh assumed. But such is consummated sacramental marriage. Therefore by reason of the thing to be signified, since some marriage ought to be altogether indissoluble, just as the union of Christ with the Church is altogether indissoluble, such is consummated Christian marriage, insofar as it most fitly conduces to signifying that thing (cf. c. *Debitum*, *De Bigamis*, and St. Thomas, q. LXI, a. 2, ad 1).

Thesis XXV

Ratified marriage is dissolved extrinsically by religious profession, and also can be dissolved by the authority of the Roman Pontiff.

I. The bond of ratified marriage can be dissolved, and first is dissolved by religious profession, by which, by the law itself, the preceding ratified marriage is severed. For it is not in the power of the spouse, once profession has been made, to dissolve or to preserve the conjugal bond; but it is in his power to place that by which, as by the condition having been placed, by divine law marriage is severed. That it has been believed in the Church for many centuries that ratified marriage is dissolved by religious profession is clear from the consent of theologians (cf. St. Thomas, q. LXI, a. 2), from the disposition of Canon Law, c. *Verum, de Convers. coniug.*, and from the decree of the Council of Trent, *de Matrim.*, can. 6: "If anyone shall say that ratified, non-consummated marriage is not severed by the solemn religious profession of either spouse, let him be anathema." That before the scholastic age also this was believed and brought into practice is evident both from the testimony of Innocent III, who in c. *Ex parte*, same title, establishes the same thing, wishing "not to depart from the footsteps of his predecessors, who, having been consulted, answered, etc.," from which it is evident that Alexander III was not the only one who taught this; and from the testimony of the same Alexander III in the said c. *Verum*, "just as certain saints also were called from marriages"; and also from history, which supplies some examples in this matter. We confess indeed that the historical demonstration is difficult; some things are produced, from which perhaps the first has bearing on the matter. Namely, from the seventh century Bede gives testimony of this matter, *Hist. Angl.*, l. IV, c. 19, collated with Thomas of Ely in Wharton, *Anglia Sacra*, p. 1. For he writes that Aethelthryth, the wife (therefore she was already a spouse, not only betrothed) of King Ecgfrith, could never be induced to use the king's marriage, and at last entered a monastery. But the latter adds that, when the king had tried in vain to recover Aethelthryth, or, as he himself calls her, Etheldreda, he joined Ermenburga to himself in marriage. St. Gregory the Great, *Dialogues*, l. III, c. 14, relates of the virgin Gregoria: "when, in the time of her adolescence, her nuptials having already been arranged, she had fled into the Church and was seeking the manner of life of a holy woman ... she merited to have a spouse in heaven, who fled a spouse on earth." The same speaks in epistle 23, l. VII, of another woman first betrothed and afterward converted. And Gregory of Tours, *On the Lives of the Fathers*, last chapter, relates that Leobardus, after breaking the nuptial compact which he had contracted with an honorable girl, became a monk in the greater monastery at Tours. There is brought forward besides also the example of St. Alexius from the fourth century, who, after the nuptials had been celebrated, left his bride, intending to live for God alone; whose history, however, has long been uncertain for many critics (cf. Tillemont, *H. E.*, tom. 10, in the notes to the life of St. Innocent, n. 8). There is also brought forward from the third century St. Cecilia, who, when the nuptials had been made, refused to give Valerian possession of herself, in order that she might preserve virginity for God; and from the first century St. Thecla, concerning whom Epiphanius (haer. 78) says that, when she had fallen in with Paul, she dissolved her contracted nuptials, although she had already been betrothed to a certain principal man of the whole city and one very rich and most noble. Cf. also Ambrose, *On Virgins*, l. II, c. 3. Here Suarez (*de Religione*, l. IX, c. 24) and others wrongly cite the decree of Pope Eusebius which is reported by Gratian (caus. XXVII, q. 2, c. 27): "a betrothed girl may not be handed over by her

parents to another man; nevertheless it is permitted to her to choose a monastery for herself." For this decree cannot be held as genuine. For although in that age the use of solemnly professing chastity was already in force, nevertheless the custom of monasteries had not yet become so established that it was equivalent to say: to enter a monastery and to profess chastity. Yet the writer of this canon held these two things as equivalent; for which reason this canon, at least as regards its second part, must be referred to those times in which consecrated virgins were customarily enclosed in monasteries. For whether you understand by monastery, with Cassian (coll. XVIII, chap. 10), a cell in which a single person lives, or coenobia with Eugene II, who says in the Roman Synod, year 826, can. 27: "let such men be appointed abbots over coenobia, or, as they are called at this time, monasteries, etc.," it is certain that under the beginning of the fourth century it was not entirely the same thing for virgins to be solemnly consecrated to God and to profess virginity in monasteries. Besides, neither is it necessary to take that canon as concerning a wife, but simply as concerning a betrothed woman.

II. Moreover, from the cited and other not numerous examples, whose memory history has preserved, the doctrine which we defend cannot be immediately gathered with any certainty; since either it is not established whether nuptials had previously been contracted or not, indeed often only betrothals seem to have preceded, or whether nuptials, if they had been contracted, were dissolved or not by reason of baptism received, in favor of the faith; and whether the party left behind entered other nuptials or judged that he could; and besides, certain histories are rejected by critics, nor did all those whom we have produced profess religion. Nevertheless, from these taken together this is immediately gathered: that the ancients judged it lawful for a spouse, after nuptials had been contracted, sometimes perhaps also after they had been entered upon, before they came together, to leave the other for the sake of preserving the more perfect life in the state of virginity. But whether, after the nuptials themselves had been contracted, it was believed by the universal Church to be lawful, and how great this separation was, we know with certainty from the more explicit doctrine of the following centuries when it is compared, and it is established that it was that which we defend, the sense and practice of the Church guarding and propagating the ancient tradition.

III. Now the Tridentine canon is doctrinal; that is, it establishes the truth of doctrine. For it does not treat of an action opposed to law, but of an affirmation opposed to truth; but the truth which is defended by the Tridentine Fathers is not this, namely, that the Church has the power of establishing this, but simply that the thing is so: that by religious profession ratified marriage is severed. Therefore the truth itself is established and defined by this canon, and the Council pronounces anathema against one denying this truth. From this, however, many gather (cf. Sanchez, l. II, d. 19) that this severing of ratified marriage is of divine law, as Benedict XIV argues in *Quaest. can. et mor.*, q. 540: "The indissolubility of ratified marriage ceases in the case in which one of the spouses emits religious profession, and this dissolubility has its origin from divine law ... and it is shown most clearly from can. 6, sess. XXIV, *de Matrim.*, where an anathema is pronounced against those asserting that ratified marriage is not dissolved by religious profession: for if, after this Tridentine canon, it is of faith that a ratified marriage is dissolved by profession, the dissolubility must have been imposed by God alone, who was able to make it eternally true (of which sort is every truth of faith, which must always be believed in the Church)." I confess that I do not sufficiently grasp the force of the argument. Even if the authority of the Church alone had established that ratified marriage is severed by religious profession, it would be true that it is severed, and those who denied it, since they would

contradict the ordinance and authority of the Church, would deservedly be punished with anathema. But there is no inconvenience if, with the law changed, the anathema ceases; just as the Church in the Council of Trent, sess. XXIV, *de Reformation of Marriage*, pronounced anathema against those who denied that marriages entered into with the parents dissenting were valid, without stripping herself of the faculty of thereafter placing this impediment also. Certainly, if such a force of profession were of faith, it could not be changed; but this is in reality what is asked: whether it is of faith, or, what here comes back to the same thing, of divine law, manifested through the Apostles to the Church. For the opinion is manifold. Some judge that it is of the law of nature, others of ecclesiastical law, others of divine law (cf. Sanchez, l. II, d. 20).

We grant that the opinion which asserts that this dissolution is made by the law of nature is less probable, on the ground that both religious profession is the more perfect state, to which by the law of nature it is lawful for anyone to pass, provided no injury is done to the other, and nevertheless that the same profession is repugnant to the bond of marriage, which therefore is dissolved. For 1. if profession is repugnant to the bond of marriage, it rather follows that, with that bond pre-existing, the profession itself, if only the law of nature is considered, is rather invalid; 2. nor by the law of nature alone do you prove that no injury is done to the other; for the spouse left behind is deprived of the right which he has over the body of the one professing, which seems an injury, whether this spouse can, or cannot (which indeed is not so easy for women), procure compensation for himself from elsewhere; 3. it is false that profession is repugnant to the bond of marriage in such a way that they cannot exist together, which is manifest in profession which is made after a consummated marriage, whose bond remains together with it; 4. it is false that there is for anyone from the law of nature a right to enter the more perfect state, when an obligation already undertaken is opposed to it; and indeed, although the Episcopate is a state more perfect than marriage, as being more perfect than the religious state itself, nevertheless it is not lawful to undertake it against the spouse's will, nor is ratified marriage dissolved by it; 5. what is supposed is false, namely, that in marriage merely ratified there is not yet a handing over of the thing, but a bare consent, as in the contract of sale according to Roman laws; for in the contract of marriage power over the body of the other is acquired, and thus each hands over his body to the other so that it may be the other's, and only the use of this right is still lacking (cf. Sanchez, *de Matrim.*, l. II, d. 19; Suarez, l. c., c. 23).

IV. Therefore another cause is required, which can remove the foundation of the right of nature which the spouse enjoys, namely, can take away the mutual obligation, with which standing, by the law of nature every opposed promise is invalid, and thus can act not against the law of nature, but beside and above it on account of the excellence of a higher good. But this cause will be some authority of the divine order. And indeed, since it is established that God alone can dissolve the bond of marriage, it is necessary that the dissolubility of ratified marriage by religious profession be from God. Now either it is from God mediately, insofar as he has granted to someone the power of dissolving, or immediately, insofar as he himself established this privilege and commanded that this should be, that, with religious profession existing, the bond of ratified marriage should be dissolved, and manifested this to the Church through the Apostles. But that this dissolution is from God immediately, and therefore of divine law, which is the third opinion, is recommended by these arguments. 1. The beginning of this custom is not found in ecclesiastical law; therefore it must be referred back to divine law. 2. The Pontiffs, Alexander III, cc. 2 and 7, *de Convers. coniugat.*, and Innocent III, c. 14, same title, acknowledge this custom in the Church, of which, nevertheless, they

say neither they themselves nor their predecessors are the authors, but rather they derive it from divine revelation. 3. The dissolution of ratified marriage is a most certain thing; therefore it must be reduced to a certain cause; but it is most uncertain whether this sort of dissolution can be established by a general law of the Church; therefore. Cf. Sanchez, l. c.

V. Yet this opinion is subject to grave difficulties both on the part of the arguments by which it is supported and on the part of the thing itself affirmed. Indeed, as regards the arguments, the second would be the most important; but the divine revelation to which appeal is made is not that which was made to the Apostles for the universal Church, but a particular revelation made to certain saints, which comes back to a certain special illumination. Alexander III says, l. c., c. 2: *After lawful consent de praesenti it is permitted for either one, even with the other resisting in this way, to choose a monastery, just as certain saints also, called from nuptials, did.* Innocent III, c. 14, denying that marriage, even only ratified, can be dissolved at the decision of a spouse, adds: *unless perhaps otherwise should be done by divine revelation, which surpasses every law, just as it is read to have been done by certain saints.* From this, nevertheless, it is at least permissible to gather that the Pontiffs did not recognize any divine law prohibiting the dissolution of the bond on account of religious profession in ratified marriage, in the way in which they recognized it in consummated marriage; for otherwise they would not have referred certain acts of saints to a divine revelation made peculiarly to them, that is, to divine inspiration, but to aberrations of mind.

The difficulty on the part of the thing affirmed is this. The whole doctrine which the Church holds in this matter is that the bond of ratified marriage is dissolved by religious profession, but is not dissolved by a simple vow, even though religious. Therefore, if this doctrine is from Apostolic tradition, it was necessary that religious profession, or the solemnity of vows, and its distinction from simple vows even religious ones, be recognized in that age, and it was necessary that these things be handed down by the Apostles when they handed down that ratified marriage is dissolved by religious profession. But who will affirm with any certainty this historical fact, of which no memory exists? especially since Boniface VIII testifies that the solemnity of vows was devised by the Church, c. un. *de Voto* in 6°. Cf. Suarez, *de Religione*, l. IX, c. 23, who judges that this law was established by ecclesiastical law, which is the second opinion.

VI. Perhaps these things can be composed if we say that it was received by Apostolic tradition that Christian marriage, so long as it has not been consummated, does not, by the privilege of Christ, impede the assumption of the more perfect state placed in the obligation of observing the counsels. But because this observance can be manifold, first indeed it was introduced by the law or custom of the Church that monastic profession, in whatever way it was made, should sever ratified marriage; then, however, after a distinction had been made (which already appears in the age of Innocent I; cf. his testimony, Thesis XXIX, 11) between vows called solemn in professing religion and non-solemn vows, it was established that religious profession alone should enjoy the privilege of Christ; and although afterward it was discovered that by simple vows also, in an approved order, a man truly becomes religious, nevertheless the privilege was not extended to these vows. For this reason the privilege for religious profession would be partly from the concession of Christ, partly from the determination of the Church. Certainly Alexander III, canon 7, *de Convers. coniug.*, in order to prove that it is lawful for a spouse after marriage only ratified to enter the religious state, and lawful in such a way that the other remains free in the world, appeals to the interpretation of the sacred word,

by which it was established that the words of Christ, *it is not lawful for a man to put away his wife except for the cause of fornication*, are to be understood of those whose marriage has been consummated by carnal copula (cf. what was said, Thesis XVII, n. VI). Therefore there flourished in the Church knowledge of this interpretation, which permits the extrinsic dissolution of ratified marriage in a certain hypothesis, namely the one of which the Pontiff was speaking. But because such an interpretation would have no force unless it had proceeded from Apostolic tradition, it must be said that the privilege of Christ was propagated by Apostolic tradition.

You will say: if the determination of that to which the privilege of Christ is annexed depends on the Church, she could establish that even simple vows of religion should sever ratified marriage. I answer by conceding the consequent, since nothing seems to stand in the way; yet if this were done, already, I think, those vows would be judged solemn. Nevertheless, conversely, the Church could not take away the privilege of Christ from solemn religious profession, because if such a privilege belongs to anyone, it certainly belongs to solemn religious profession, which is the most perfect mode of professing the evangelical counsels [1].

[1] Note that in the age of Boniface VIII the solemnity of vows was already in force, but that he, in c. un. *de Voto* in 6°, is not speaking of the dissolution of ratified marriage, but teaches which of the solemn vows (for there were several) sever a subsequent marriage, namely two, that is, in religious profession and in the reception of sacred order.

VII. The fittingness of this dissolution is both negative and positive. Negative, namely, no inconvenience exists in itself; for the marriage is not dissolved without reason, nor is a grave damage properly so called inflicted in itself on the spouse remaining in the world. For the one remaining in the world can marry another, and since the marriage is not consummated, the bride remains a virgin and can be taken by another without any disgrace. But if this or that party left behind undergoes some damage, that is compensated abundantly by the common good which comes to the Church from religious profession, which redounds to the honor of the Church and to the commendation of chastity, and to a common example, the more efficacious because the very right of nuptials is renounced. Nor, when God the author intervenes, can the loss of a right handed over to oneself and accepted be judged an injury, since the other spouse uses his own right which God concedes to him. The positive fittingness is that the religious state is more excellent than the state of marriage; but it was most fitting that in the Church of Christ the excellence of that state over this one not only be taught, but also be rendered, as it were, sensible by the fact, which indeed happens when the religious state has the efficacy of severing the conjugal bond. But consummated marriage could not be severed, because a stronger reason stands opposed on the other side; therefore it was fitting that ratified marriage be severed.

VIII. You will ask, why then is ratified marriage not dissolved by the reception of sacred order, in which a man enslaves himself to God? We answer, 1. the principal reason is the will of God, which sanctioned this for profession, not for sacred order. For we do not demonstrate the dissolution of ratified marriage by religious profession from the natures of things, but from these we gather only the fittingness; but we demonstrate it by Tradition, which makes known the will of God. Wherefore, even if no altogether certain reason of this fittingness could be brought forward, there would be nothing for us to fear. We answer, 2. that there certainly is some difference between religious profession and sacred order, if both are compared with marriage. For that opposition exists between profession and marriage which does not exist between sacred order and marriage. For religious

profession is also formally the profession of perpetual continence, and through it a man becomes incapable of dominion over exterior goods, which nevertheless are necessary to matrimonial life, and he passes into the right of another, governing him and disposing of him in the name of God; which subjection is certainly able to impede the act of seeking and rendering the debt; and to all these things he is perpetually obliged at every instant of his life. Therefore the manner of living which is required from the essence of this state is directly opposed to the manner of living proper to marriage. Consequently from this opposition there could have been one of these outcomes: either that profession after ratified marriage should be rendered invalid, or that the marriage itself should be dissolved, or that, while the bond remained, the work of marriage should be prohibited. But Christ preferred the second, in favor of the state of perfection and for the advantage of the party left behind. But the repugnance of sacred order with marriage is not so great; for the manner of matrimonial life is not excluded by the essence of priesthood, but only by a certain degree of sanctity and decor owed to it and by the perfect execution of certain of its offices. Wherefore it was enough to establish that order should sever a subsequent marriage and prohibit the use of a preceding one. But the vow truly annexed to sacred order by the law of the Church is not of such a kind that it severs a preceding marriage, but follows the character of the principal thing.

IX. Ratified marriage can be severed by the authority of the Roman Pontiff. Concerning this matter there was once doubt. Ruard Tapper, *On Marriage*, art. 18, reprehends Cajetan because "against the common opinion of theologians and of St. Thomas he wrote that the Supreme Pontiff can dispense concerning a ratified marriage not yet consummated." But 1. that disagreement of theologians from the opinion of Cajetan, if you consider the older ones, is rather negative, inasmuch namely as they do not teach it, but, when speaking of the dissolubility of ratified marriage, they consider it only as it can depend on the act of one of the spouses, and therefore mention only religious profession dissolving it. But 2. on the contrary there is present the consent of the canonists, who in this matter certainly deserve to be heard; this consent was already common in the age of St. Antoninus (cf. the place cited below), and it certainly brought about this, that the doctrine of the theologians could not be called common in the Church. Now, however, 3. there is also the consent of theologians: "No question," says Benedict XIV (*Quaest. Canon.*, q. 479), "can any longer be raised concerning the power of the Supreme Pontiff in that which pertains to dispensing concerning ratified and non-consummated marriage; since today the affirmative opinion is common among theologians and canonists and received in practice, as is notorious."

Accordingly it is certain that for many centuries several Roman Pontiffs have dispensed concerning ratified marriage. This is established of Martin V and Eugene IV from the testimony of St. Antoninus in *Summ. Theol.*, p. III, tit. 1. It is established of Paul III and Pius IV by the testimony of Navarrus in *Enchirid.*, c. 22, and then of others down to Pius IX (cf. Perrone, *de Matrim.*, tom. III, p. 509, in note 115). Now 1. when so many Pontiffs did this, they certainly judged that they could do it, whether knowing this certainly from direct principles, or from the reflex principle, inasmuch as it was lawful for them to follow a probable opinion teaching this. But whichever you say, this certainly follows: therefore, from the judgment of so many Roman Pontiffs, it is at least probable that there exists no certain testimony from Scripture and Tradition which is opposed to this power. Moreover, 2. so continued an exercise of this power, in a matter of such moment, of which sort is a sacrament, by the Vicar of Christ, to whom the Holy Spirit assists in governing the Church, an exercise truly not disapproved by the Church, which certainly ought to have happened if you suppose that this does not

agree with revealed doctrine and that therefore the Roman Pontiffs did not wish to settle the question concerning the moral rectitude of the matter, and for this reason an exercise finally equivalently approved by the universal Church, is a sufficient argument of the same power; for in the same way certain other rights of the primacy are customarily demonstrated. Indeed, if this power were lacking, by this sort of dissolution of ratified marriage the Church would be the cause that action was taken against what is morally right in itself, since those dissolved in this way contract other nuptials, which in reality would be nothing but concubinage. But although God can permit this or that Pontiff, acting according to his private opinion, to admit something less morally right in his governance, nevertheless he cannot permit the universal Church, or the Pontiff acting according to the sense of the Church, to be the promoter of these disgraces; therefore.

You will say: Alexander III, c. *Licet*, *de Sponsa duorum*, when he taught that betrothals *de praesenti* are not dissolved by a subsequent consummated marriage, which on the contrary is invalid, affirms that some of his predecessors judged otherwise; therefore Roman Pontiffs can err in particular judgments of this sort. I answer, 1. here there is no question of some Pontiffs, but of several granting this in a continued series of many centuries, with the Church not judging otherwise, so that it can truly be said that this is the judgment of the Church, not only of this or that Pontiff acting according to his own private opinion. But 2. what prevents us from judging in this way that those predecessors of Alexander III acted as they did because they judged that the authority of dispensing concerning ratified marriage was inherent in themselves, so that by their power they could validly decree that the second marriage was valid? Nor is there need to affirm that they followed the opinion of certain persons who judged that in reality the preceding ratified marriage is dissolved by a subsequent consummated marriage. In this way examples would be had of this power exercised by the Roman See before Martin V. Alexander III says that a fact of this sort by his predecessors does not stand in the way of his response, in which indeed he treats only of the intrinsic dissolubility of marriage, which he denies. You will say: if the matter stood thus, those predecessors in reality did not judge otherwise than Alexander III, as he himself says, since they were treating of an entirely different matter, and there was no opposition between them. Observe, 1. that this is said incidentally by the Pontiff, and the understanding of his words could be determined by the letter of the Bishop of Salerno, to whom he writes back; wherefore there was no need for him to declare more broadly in what respect he himself dissented from his predecessors. Observe, 2. that the words of the Pontiff are not to be referred to the doctrine which he hands down, but to the practical conclusion, namely, that the man must be compelled to return to the prior spouse, although certain predecessors had sometimes judged otherwise, decreeing, namely, that he could remain with the second; but why? the Pontiff does not say this, but it is permitted to judge that it was because they dissolved the first ratified marriage.

To this also probably pertains what we already intimated in Thesis XV, n. IV, the response of Gregory II to Boniface, which is reported also by Gratian, Cause 32, q. 6, c. *Quod proposuisti*; and which we reported in the cited place.

That this power is inherent in the Roman Pontiff is also proved from the fact that the Roman Pontiff can dispense in a vow, even a solemn vow of Religion; moreover the bond of this is stronger, since it dissolves ratified marriage; therefore he can also dissolve the bond of ratified marriage. Besides, the power of loosing and binding granted to the Roman Pontiff is most ample, and he can exercise all

those acts which are necessary or useful for the right governance of the Church; but the universal Church itself teaches us that this power is useful to the Church, by approving the exercise of the same. Therefore. Wherefore the Roman Pontiff dissolves ratified marriage by the vicarious power of God, which is the very power of the primacy, which is the ordinary power of the Pontiff himself.

But is not the bond of marriage and the obligation of each to the other a thing of divine law, and in such things the Pope cannot dispense? I answer, with the question set aside whether the Pope can sometimes dispense in divine law (concerning which matter in the last thesis), that here there is not properly a dispensation: for the Pontiff does not, while the law perseveres, relax its obligation for this or that person, in the way that he would do, for example, if while the marriage remained he dispensed the spouses from the mutual obligation; but he dissolves the bond itself of marriage. This dissolution indeed is not an act of legislative power, as dispensation is, but is another act of the fullness of the power of loosing, efficacious of itself or *ex opere operato*. Cf. what we shall say in the last Thesis.

X. You will ask, why then through so many centuries did the Pontiffs never use this power? I answer, 1. that this is not certain, since there are no positive testimonies which teach this, and if the predecessors of Alexander III and Gregory II used it, examples of this thing exist in history even before Martin V and before the year one thousand. 2. Non-use of a power is not of itself an indication of the lack of the power; but non-use for some time, when at another time there exists positive use, proves absolutely nothing. Moreover there could also have been several reasons why the Pontiffs did not use this right, just as formerly they did not use the power of dispensing in diriment impediments: either because dissolution was not being sought, or because the Pontiffs did not then judge it expedient that they should use that power, or also, if you wish, because the knowledge of this power, or of the extension of the power of loosing even to this effect, had not yet been sufficiently explained in the Church, although implicitly believed in the faith of the primacy.

But the Pontiffs who deny that ratified marriage is dissolved except by profession speak of intrinsic dissolution, or of that which is in some way in the power of man; for here he can freely place that condition by which God dissolves the bond.

XI. You will say: therefore ratified marriage ought to be called soluble. I answer in the negative; rather, of itself it is and ought to be called insoluble. For that contract, as we said at the beginning, is insoluble of itself which cannot be dissolved intrinsically; but if it can be dissolved extrinsically, it will be soluble accidentally. Thus a vow by its nature is a perpetual bond, although it can be dissolved by the authority of a superior.

You will ask how this coheres with the words of Christ: *what God has joined, let not man separate*. I answer that it coheres excellently according to the things which we said at the beginning of this thesis. For when the Pontiff dissolves, not man, but God separates; for the Pontiff acts by the vicarious power of God.

XII. Besides these, however, ratified marriage cannot be dissolved. For intrinsically it cannot be dissolved; extrinsically it is dissolved either by the authority of the Vicar of God or by divine law, some condition being placed on the part of man. But this law is not present except for religious profession; for Tradition and Canon Law make mention only of this, and expressly exclude that which would seem able to have this effect, namely, the reception of sacred order, "since neither by divine law

(as regards order itself) nor by the sacred canons (as regards the vow annexed) is it found established," says John XXII, *Extrav. Antiquae, De Voto*. But whether the Roman Pontiff can by universal law decree that, when a certain condition is placed, ratified marriage is severed, for example by the reception of sacred order, or by a subsequent consummated marriage, theologians dispute, but it is difficult to demonstrate the negative side. Cf. Sanchez, l. II, d. 13. Concerning the power of the Pontiff over consummated marriages contracted before baptism we shall speak in the following thesis.

XIII. From the doctrine handed down here concerning the solubility of ratified marriage, perhaps you will gather an argument against the intrinsic indissolubility established in the preceding theses, in this way. Whether it is dissolved extrinsically or intrinsically, it is true that marriage, even then when it is a sacrament, is dissolved; therefore it is false that reason rather favors indissolubility, unless we wish to say that the law of Christ is less conformable to reason. Moreover, the inconveniences which reason brought forward for persuading intrinsic indissolubility, do they not have equal force for extrinsic indissolubility? Therefore either both dissolubilities or neither must be conceded. I answer. There is a great difference between each dissolubility. For by intrinsic dissolubility conjugal society is reduced almost to the condition of a contract and is subjected to the mutable will of men and to depraved desires; but by extrinsic dissolubility the marriage is subordinated to God alone, by whose law or delegated authority the conjugal union is dissolved, retaining the proper character of a natural institution. But just as it is false that it is the same thing for a vow pronounced to God to be dissolved by the private authority of the one vowing or by the authority of God himself or of the Roman Pontiff acting in the name of God, so it is false that it is the same thing to assert some extrinsic or intrinsic dissolubility for marriage. Moreover, reason rightly consulted does not dissuade full dissolubility except intrinsic dissolubility. Besides, what must often be repeated, the cause of full intrinsic indissolubility is the positive institution of God.

Nor do the inconveniences which we brought forward in the preceding Thesis against divorce have force for this extrinsic dissolubility which we defend. For 1. those which suppose divorce to occur after consummated marriage have no place here. 2. If there are any inconveniences, they lose their force because of the more excellent good, when there is question of religious profession. 3. Since the dissolution of ratified marriage which is made by the Roman Pontiff is made by an independent authority, from certain causes, with at least one spouse petitioning, on account of a good which in reality redounds to both, the reins are not loosened for desires, nor is chaste love diminished, but only in certain cases, where the union was made less prudently, a remedy is supplied to the spouses; by which indeed any inconveniences that might have to be feared are sufficiently compensated.

Thesis XXVI

We teach, moreover, that the marriage of unbelievers, even consummated, can be dissolved extrinsically, both when, one party having been converted to the faith, the other refuses to cohabit, or not without injury to the Creator or spiritual harm to the faithful one, and also that it can be dissolved extrinsically by the authority of the Roman Pontiff.

I. These are the canons of the Church in this matter. "Never, while his wife is living, will one even converted to the faith be able lawfully to have another, unless after his own conversion she refuses to cohabit with him, or, even if she consents, nevertheless not without insult to the Creator or so that she may draw him into mortal sin." c. *Gaudemus*, *De Divort*. "If one of the unbelieving spouses is converted to the Catholic faith, while the other in no way, or not without blasphemy of the divine name, or so as to draw the other into mortal sin, is willing to cohabit with him, the one who is left, if he wishes, will pass to second vows." c. *Quanto*, ibid. Therefore the dissolubility of marriage, even consummated, contracted in infidelity, when one of the spouses is converted to the faith, is to be understood under these conditions. Wherefore we do not say that by the very reception of baptism the marriage is dissolved; for this is false, since by baptism marriages are not dissolved, but crimes are remitted, c. d. *Gaudemus*, and we shall prove this a little below. But when the above-mentioned conditions exist, by divine law the bond of marriage can be severed; but when and how it is severed, we shall say afterward. Moreover this doctrine is common to theologians and canonists (cf. St. Thomas, q. LIX, a. 5; Sanchez, l. VII, d. 74), handed down by the Fathers, as by Ambrose, on Luke, l. VIII, n. 2: "If every marriage is from God (not indeed in whatever way, but according to the integral form of divine institution), every marriage may not be dissolved. And how did the Apostle say: but if the unbeliever departs, let him depart? In this he both wondrously did not wish the cause of divorce to reside among Christians, and showed that not every marriage is from God." Namely, according to Ambrose, that marriage is said to be from God which is exacted according to the norm of divine institution and which is entered upon for the worship and honor of God; but the marriage of unbelievers is not of this sort. Likewise Chrysostom, hom. XIX on chapter 7 of 1 Corinthians: "But what is this: if the unbeliever departs, let him depart? As if he commands you to sacrifice, or to be an associate of impiety on account of the marriage, or to withdraw, it is better that the marriage be broken, and not piety," διασπασθῆναι τὸν γάμον, καὶ μὴ τὴν εὐσέβειαν. The doctrine has been confirmed by the practice of the Church through very many centuries and solemnly sanctioned by the Roman See; for the decrees from canon law adduced above proceeded from Innocent III and were transferred by Gregory IX into the canon law by which the universal Church is governed. "It is certain," says Benedict XIV (*De Synod.*, l. VI, c. 4), "that the marriage of unbelievers is dissolved from the privilege granted by Christ the Lord in favor of the faith and promulgated by the Apostle, 1 Cor. VII, when one of the spouses embraces the Christian faith, the other, hardened in his infidelity, refusing to cohabit with the convert, or etc."

II. Accordingly the origin of this doctrine is Apostolic Tradition, which Paul committed to writing in 1 Cor. VII, and Innocent III testifies to this in the said c. *Quanto*; for after the words recited he adds: "And in this case we understand what the Apostle says: if the unbeliever departs, let him depart; for a brother or sister is not subject to servitude in such a case." But there is no small difficulty in gathering this doctrine artificially from the words of the Apostle. They are v. 12 and following: *For to*

the rest I speak, not the Lord. If any brother has an unbelieving wife and she consents to dwell with him, let him not put her away. And if any faithful woman has an unbelieving husband and he consents to dwell with her, let her not put him away. For the unbelieving husband is sanctified through the faithful woman, and the unbelieving woman is sanctified through the faithful husband ... But if the unbeliever departs, let him depart; for a brother or sister is not subject to servitude in such a case: but God has called us in peace. Observe first that *brother* and *sister* here are those who have been aggregated to the Church through baptism; for Paul addresses Christians of this sort, and the Church has not deemed those who were only catechumens, although faithful, worthy of the name *brothers*. Therefore the discourse is about the baptized.

Moreover, from the words of the Apostle this is certain: that marriage is not dissolved by baptism. For even after the baptism of one, the brother is said to have an unbelieving wife, and the woman to have an unbelieving husband. Besides, if by baptism the marriage were dissolved by the law itself, Paul would by no means exhort the faithful one not to put away the unbelieving one, whether by the name of putting away is understood the severing of the bond or separation as to habitation. For if the former is understood, that dismissal would already be impossible; if the latter, since they are no longer husband and wife, there is no reason why they should remain together; indeed there would be an excellent reason for separation on account of the most probable danger of fornication, which reason must prevail over the hope of sanctifying the unbelieving one.

III. The question therefore concerns the genuine sense of the words of the Apostle. Moreover, it is asked first whether the words, *for to the rest* τοῖς δὲ λοιποῖς *I speak, not the Lord*, are referred to what follows or to what precedes. Not a few indeed refer them to what follows, and thus *the rest* are those who are joined in marriage with unbelievers: "he speaks to unequal marriages, that is, where both had not been Christians" (Augustine, *De Adult. coniug.*, l. I, c. 13); and the things which immediately follow are taken as a counsel of Paul, not as a precept of the Lord. And thus, among others, the Fathers of the Synod of Lima, approved by Sixtus V, received them in the decree reported by Father Ballerini in *Op. Th. Mor.*, v. VI, n. 688. From this, indeed, with several authors cited by him, Sanchez gathers (*De Matrim.*, l. VII, d. 73) that the faithful spouse was never obliged to cohabit with the unbelieving one, even if the latter wished to dwell without injury to the Creator and without danger to the faithful one; for Paul suggests only a counsel, not a precept. With this posited, it is easily understood why a prohibition could at times be brought by the Church, that a converted faithful one should not dwell with an unbeliever unwilling to be converted, and why that faithful one by this very fact has the right of passing to other nuptials. Cf. Sanchez, ibid., and the following disputation. Yet it is then with difficulty understood why in canon law certain conditions are required in order that the faithful one may be able to enter other nuptials. But concerning this matter later.

Therefore, to return to the words of Paul, the very learned interpreter Estius, and after him Cornelius a Lapide, in this place, judge on the contrary that these words, *to the rest I speak, not the Lord*, are to be referred to what precedes. And indeed those words, as Cornelius observes, are separated from what follows by a period in the Roman edition, namely the Clementine of the year 1593, and in the Plantin and other very correct editions; therefore it is lawful to read in this way. Then the things which follow can simply present the doctrine and precept of the Lord, and there the discourse can be about a dismissal which is a severing of the bond. If the context is considered, the opinion of these interpreters seems to us very probable. For the words, *to the rest I speak, not the Lord*, are opposed to the preceding words in v. 10: *But to those who are joined in marriage I command, not I, but the Lord*; moreover,

the rest besides the married are the unmarried. But addressing these above he had said in v. 8: *But I say to the unmarried and widows: it is good for them if they remain as I also am.* Therefore what he had said, he now warns in v. 12 (and the admonition is sufficiently opportune) is his counsel, not a precept of the Lord; just as afterward he says: *concerning virgins I have no precept of the Lord, but I give counsel.* Moreover, with this interpretation applied, the doctrine of the Church concerning the dissolubility of the marriage of unbelievers is established in this way.

IV. Namely, when Paul begins, *if any brother*, etc., he makes a transition to another question proposed to him by the Corinthians, and teaches that if the unbelieving one wishes to dwell with the faithful one, he should not be put away; but if he departs, let him depart, because the faithful one is not in this matter subject to servitude. It is asked what faculty is given to the faithful by God. It is certain that the words, *but if the unbeliever departs, let him depart*, etc., are sufficiently apt for signifying that the faithful one left behind can enter other nuptials. For the sense is: if the unbelieving one separates himself and puts away the faithful one, or, as he says above, if he does not consent to dwell with the faithful one, let him be left, let him be permitted to go away. But of what sort this leaving is, is explained by the reason added: because *in such a case*, that is, in this matter (cf. Estius, ibid.), as regards the conjugal bond, the faithful one *is not subject to servitude*, namely toward the unbelieving one. Moreover this reason shows that the unbelieving one can be left in such a way that the bond also is dissolved; otherwise the faithful one would be especially liable to servitude toward the unbelieving one, for he would remain bound by the bond and would not be able to use marriage because of the malice of the unbelieving one himself. And indeed either the denial of servitude consists only in this, that the one left is not bound to follow and be reconciled to one departing without a just cause, of which sort this unbeliever is, or it consists in this, that the one left is no longer bound by the bond by which he had been bound. But the first holds equally in the departure of both unbelieving and believing spouses without just cause, so that one unjustly left is not bound to be reconciled, and it is also common to unbelievers among themselves. But the Apostle speaks specifically about the departure of an unbeliever and about some prerogative of the faithful. Therefore the second remains.

Now observe that, if with the opinion of others you hold that in the prior words of the Apostle (*if any brother ... let him not put her away*, etc.) there is contained a counsel of the Apostle, not a precept of God, by this very fact it is signified that this dismissal is not prohibited by God himself but permitted, although the Apostle dissuades it on account of certain causes, that is, the good of the unbelieving one and of the children. With this posited it follows that much more the things which follow (*if he departs, let him depart*, etc.) signify permission made by God of dissolving the nuptials, since that would not be forbidden by God even in the prior hypothesis, that the unbelieving one wishes to cohabit.

Accordingly, if the unbelieving one departs, if he does not consent to dwell with the faithful one, let him depart, let him go where he wishes. And thus it must certainly be understood that that is conceded which, with this condition not existing, the Apostle perhaps would not have approved, that is, that the faithful one may put away the departing unbeliever. Namely, the faithful one can exempt himself from the bond of the marriage contracted with him; he can contract another marriage. And this is the doctrine of the Church set forth in the canons cited above.

Observe that Paul only says, if the unbelieving one departs, or does not consent to dwell with the faithful one. But he also who is unwilling to dwell without injury to God, or without drawing the faithful one to sin, is rightly judged to depart; because, even if he does not withdraw in body, nevertheless he compels the faithful one to withdraw, because then the faithful one ought, or certainly has the right, to withdraw from the society of the unbelieving one. And thus this one, supplying to the other a cause of flight, puts him to flight (Sanchez, l. VII, d. 74).

V. But what must be said when the unbelieving one indeed refuses to be converted, yet wishes to dwell without insult to the Creator and without drawing the faithful one to sin? Is it then lawful for the convert to dissolve the marriage, other nuptials having been entered upon? Sanchez, l. VII, d. 74, proposes two opinions: the one denying, which he himself judges very probable, and which rests especially on the texts of canon law, which demand those conditions; the other affirming, which Sanchez considers the truer. But its demonstration supposes what he proved in the preceding disputation, namely, that "today it is illicit for the faithful one to dwell with an unbelieving spouse in obstinate infidelity, even if the latter wishes to dwell without insult to God and without drawing the other to sin." Cf. the cited disputation. "Practice bears," says the distinguished Ballerini in the notes to Gury, *de Matrim.*, at n. 759; cf. also *Opusc. Th. Mor.*, l. c., "that in places of unbelievers, for example among the Chinese, Indians, etc., it is permitted to converts both to cohabit with an unbeliever and again to be able to pass to other nuptials according to the doctrine of Paul, if the unbeliever either is unwilling to cohabit or does not consent to cohabit except with injury to the Creator; and to this pertains chapter *Gaudemus* of Innocent III and the declaration alleged by Benedict XIV (*de Syn.*, l. XIII, c. 21, n. 1). But among Christian nations the practice has prevailed that cohabitation is not permitted with the party who obstinately adheres to an unbelieving sect, for example the Jewish, although this party protests that he wishes to cohabit peacefully." With this posited, Sanchez proves his opinion thus: because it is lawful for the convert to enter another marriage as often as the unbelieving one departs and leaves the faithful one. Now at that time the faithful one is said to be left and deserted by the unbelieving one withdrawing, as often as either the unbelieving one withdraws altogether, or chooses that cohabitation which is illicit for the faithful one. Since therefore today cohabitation with an unbelieving one is illicit for the faithful one, this one, unwilling to be converted, will be said truly to withdraw, and it will be lawful for the faithful one to contract another marriage. Indeed Paul "only explained the case in which the unbelieving one refuses to cohabit, and from this follow two other cases, namely when he does not wish to cohabit without insult to God or drawing the other to sin, because then the unbelieving one is truly said to withdraw, choosing that cohabitation alone which is forbidden to the faithful one. But in the present case today precisely the same reason holds, since the unbelieving one, unwilling to be converted, chooses cohabitation forbidden to the faithful one. Therefore this case will today be comprehended in that privilege of Christ explained by Paul." This is confirmed from the end of the privilege, for, with that law posited, the faithful one would be compelled to remain unmarried and would be especially subject to servitude.

Moreover you see that if the words of the Apostle, *if any brother has an unbelieving wife and she consents to dwell with him, let him not put her away; and if any faithful woman has an unbelieving husband and he consents to dwell with her, let her not put him away*; if these words, I say, contain only a counsel of Paul, nothing is had from the same Paul which stands in the way of this law or practice now in force, by which cohabitation with an unbelieving spouse is forbidden to the faithful one; for counsels can be changed according to diverse circumstances of persons, times, and places. But if those words contain a law of

the Lord, how could this new law or practice have been introduced, which simply forbids converts habitation with an unbelieving spouse? It can be answered that that law of the Lord does not exclude this new law of the Church. For the law of the Lord is not universally that the unbelieving one willing to cohabit should not be put away, but (as the Church has always understood it, and as is also gathered from the following words of the Apostle: *for he is not subject to servitude*, etc.) that the unbelieving one willing to cohabit without spiritual harm to the faithful one should not be put away. But when a harm of this sort exists and must be met by separation, God left this to be determined by the Church, with which, therefore, diverse practice could be in use. Since, accordingly, in the apostolic age and thereafter it was not judged expedient that every convert should be separated from an unbelieving spouse, nor had a law been passed concerning this matter or a practice introduced forbidding cohabitation, the law of the Lord promulgated by Paul could still be observed in certain cases, which Paul certainly supposes (cf. the commentary of Cyril of Alexandria on this place, v. 8). Nevertheless, nothing prevented that afterward, because of the very condition established by the Lord, if the unbelieving one wishes to cohabit, but nevertheless to be understood with this limitation, without spiritual harm to the faithful one, cohabitation itself with an unbeliever unwilling to be converted should be prohibited, when it had been established that greater harm to the faithful one was to be feared from this cohabitation than the good to be hoped for from the same, namely the conversion of the unbelieving one. Since therefore the end of the law is the sanctification of the unbelieving one, and the condition of the law is that cohabitation should not harm the faithful one, and these things can be determined in diverse ways according to diverse circumstances of affairs, it comes about that the law of the Lord could be fulfilled now in this way, now in that, and that once Christianity was already grown, it has sometimes been fulfilled, and is fulfilled, otherwise among unbelieving nations, otherwise among Christian ones.

VI. It is asked finally, when and how is the marriage which the convert to the faith contracted in infidelity dissolved? The power to dissolve it is had when one of the enumerated conditions exists; but it is dissolved when another marriage is contracted. This is manifest from c. *Gaudemus*; for Innocent says: "But if she should follow the one converted to the faith, and herself converted (who had before refused to cohabit, etc.), before he, on account of the aforesaid causes, takes a legitimate wife, he will be compelled to receive her." Therefore until another marriage is contracted, the prior bond remains; this therefore is dissolved as soon as the second marriage is made, just as the corruption of one and the generation of the other are simultaneous. Therefore the prior marriage is dissolved not intrinsically from the will of one spouse, but extrinsically from the law of God, with the second marriage intervening, which is ratified.

VII. This is the privilege granted by God in favor of the faith received by baptism, which Paul promulgated, teaching that when the unbelieving one departs, the brother, that is, the Christian, is not subject to servitude in this matter, namely in the bond of marriage contracted with an unbelieving one. The reason for this privilege sufficiently appears, namely, both on account of the dignity of the sacrament of faith, and at the same time on account of the necessity by which the faithful one is bound to avoid cohabitation with the unbelieving one in these cases. *In peace*, says the Apostle, *God has called us*: namely, God wills that agreement in the faith and peace obtain in the family and in Christian society. But since Christ did not wish anyone to be obliged to the celibate life without his own will, and the obligation of continence would be a most grave burden imposed on neophytes and could deter unbelievers themselves from conversion, it was granted to the baptized

under these conditions to enter other nuptials (Sanchez, ibid.). Moreover both from the words of Paul and from the interpretation of the Church it is clear that any marriage whatever of unbelievers, and the same even consummated, can be dissolved in favor of the faith.

Yet note what Innocent teaches in c. *Quanto*: "But if one of the faithful spouses either lapses into heresy or passes into the error of gentility, we do not believe that in this case the one who is left can, while the other is living, fly to second nuptials, although in this case a greater insult to the Creator appears. For although true marriage exists between unbelievers, nevertheless it is not ratified; but between believers true and ratified marriage exists, because the sacrament of Faith, which once has been admitted, is never lost; but it makes the sacrament of marriage ratified, so that it endures in the spouses themselves while that sacrament lasts." And the Council of Trent defined this, *de Matrim.*, can. 5. Namely, the dignity of the sacrament prevails over the liberty of the innocent one and prevents that privilege from being granted to the innocent spouse; and Paul accurately warned that the faithful one is not subject to servitude *in such a case*, that is, in this obligation with an unbelieving one, of which he speaks. Therefore it is not lawful to extend the privilege of Christ to others; its supreme reason, finally, is the will of God manifested by the Apostle.

VIII. Since by the privilege of Christ promulgated by the Apostle the marriage which a convert to the faith contracted in infidelity can be severed, provided, nevertheless, that certain conditions exist, it is necessary for this, that the convert (at least existing in an unbelieving nation, where the cohabitation of unbelievers is not prohibited) may be able lawfully to use that privilege, that he know that these conditions, or some one sufficient from these, are present. Wherefore it is necessary that the faithful one be made more certain that the unbelieving spouse is unwilling to cohabit, or, if he wishes to cohabit, that he is not going to cohabit without injury to the Creator, or without attempting to draw the faithful one to sin. But if for some cause knowledge of this sort cannot be obtained, either because the spouse is absent and it is unknown where in the world he or she may be, or because, since someone has had several wives, he does not know which is legitimate, there is no place for the use of this privilege. But this inconvenience can be met by another way. Namely, the Roman Pontiff has power in these circumstances of dissolving a marriage contracted in infidelity, even consummated, and thus of making the faculty for the convert to marry whomever he wishes in the Lord. For if the Roman Pontiff can dissolve a ratified marriage, which is a sacrament, he can also dissolve a consummated marriage of unbelievers, which has less firmness. Indeed, 1. that marriage is dissolved by the ratified marriage of one converted to the faith; therefore it is less firm than it. 2. Indissolubility belongs to marriage chiefly by reason of signification; but that signification is had by a stronger right in sacramental marriage, and especially in consummated sacramental marriage. Therefore marriage, even consummated marriage of unbelievers, since it is not properly a sacrament, is less firm than ratified marriage (q. LIX, a. 5, ad 1); therefore. The Roman Pontiffs have asserted this power for themselves and have used it, Pius V in the Apostolic letters *Romani Pontificis* and Gregory XIII in the Apostolic letters *Quoniam saepe contingit*, and others. Moreover Pius V has these things: *Since, as we have received, several wives are permitted to Indians remaining in their infidelity, whom they themselves also repudiate for very slight causes, it has therefore happened that those receiving baptism have been permitted to remain with that wife who exists together with the baptized husband* (you would certainly wrongly demonstrate that this was rightly done from the Pauline privilege). *And because it often happens that she is not the first, whence both ministers and bishops are tormented by very grave scruples, thinking that that is not a true marriage; but because it would be very hard to separate them from the wives with whom those Indians*

themselves received baptism, especially because it would be very difficult to find the first spouse: therefore, wishing kindly to provide with paternal affection for the state of the said Indians, and to free the bishops and ministers themselves from scruples of this sort, by our own motion and from our certain knowledge and from the fullness of Apostolic power, we declare by Apostolic authority, by the tenor of these presents, that Indians baptized in this way, as is premised, and those to be baptized in the future, should have to remain with the wife who was baptized and will be baptized with them, as with a legitimate wife, the others having been dismissed, and that the marriage between them stands as legitimate (therefore he also approves for the future the practice commemorated from the beginning). Likewise Gregory XIII speaks thus: "*We, attending to the fact that marriages of this sort contracted among unbelievers are indeed true, yet are not judged so ratified that, necessity urging, they cannot be dissolved, grant to each of the ordinaries and pastors of the said places ... the faculty of dispensing with any Christian faithful of either sex inhabiting the said regions ... that any one of them, even with the unbelieving spouse surviving and his or her consent by no means required, and without awaiting a response* (therefore also in the hypothesis that the spouse does not depart), *may be able lawfully to contract marriages with any faithful person, otherwise however duly, and afterward to remain in them, once consummated by carnal copula, as long as they live*." From these things you have two points: 1. the reason indicated beneath why marriage of this sort can be dissolved, namely because it is not ratified as Christian marriage is, or it is less firm than ratified marriage, that is, it does not enjoy perfect firmness; 2. that these marriages are dissolved by the authority of the Roman Pontiff delegated to him by God. For he who dispenses and grants the faculty of dispensing produces the effect by authority inherent in himself, either proper or delegated; but the Roman Pontiff conducted himself in this way.

IX. You will object two things. 1. It is the opinion of Benedict XIV (*De Syn.*, l. XIII, c. 21) that in these things the Roman Pontiffs acted only as interpreters of divine law, tempering the rigor of canonical laws in that which pertains to the judicial interpellation which would have to be made to the unbelieving spouse.

I answer, 1. that an authentic interpretation of divine law is itself also a certain act of authority; 2. that this private opinion of Benedict XIV cannot be received. For an interpretation of law does not change the law nor establish a new law; but the divine law promulgated by Paul is one thing, and this law which is contained in the letters of the Roman Pontiffs is another. For even if it is not established that the unbelieving one is unwilling to dwell without harm to the faithful one, even then, when the cohabitation of both is licit, there is made by the Roman Pontiff a power of dissolving the bond; but this would not yet be lawful if account were taken only of the Pauline privilege. And certainly it is strange that it is denied that the Pontiff dispenses by his own authority, when Gregory expressly affirms that he dispenses and grants the faculty of dispensing, and indeed because the consummated marriage of unbelievers is less firm than ratified marriage. To what purpose is this reason, if there were question of tempering the rigor of canonical laws as regards the use of the Pauline privilege? Cf. Ballerini, *Op. Th. Mor.*, v. VI, n. 706 ff.

You object, 2. that consummated marriage of unbelievers is stronger than ratified marriage of Christians, because ratified marriage signifies that union of Christ the Lord by which he joins himself to just souls; but consummated marriage signifies the union of Christ with the Church through the assumption of flesh, as Innocent III teaches, c. *Debitum, de Bigamis*; and therefore consummated marriage is firmer. But consummated marriage of unbelievers also represents the union of Christ

with the Church through the incarnation; for "the sacrament of marriage exists among believers and unbelievers, as the Apostle shows," says the same Innocent, c. *Gaudemus*, *de divortiis*.

I answer, 1. that these things do not cohere with the judgment of Gregory XIII reported above; 2. if the reason of the indissolubility of consummated marriage is only the representation of the union of Christ with the Church through the incarnation, and this is said to be had equally in consummated marriage of unbelievers and of believers, it must be said that consummated marriage of unbelievers is altogether, even extrinsically, indissoluble in every case. But this is false, for it is dissolved in favor of the one converted to the faith. 3. When ratified marriage is said to represent the union of God with the soul of the just man, this must not be taken exclusively, as we already warned in Thesis XXIV; for it too signifies the union of Christ with the Church through will and love, which will and love are perpetual (Master of the Sentences, in IV, d. 26, n. 6), and then it also signifies, although less perfectly, the perpetual union of Christ with the Church through the assumption of flesh. For the mutual obligation, by which each hands over his body to the other, so that it may be the other's, sufficiently signifies the union of Christ with the Church through flesh. But because in ratified marriage the bond of souls is eminent, while in consummated marriage the commingling of flesh is eminent, hence the representation of the union of Christ with the Church through will, which union is a certain bond of souls and has place in the very union of Christ with the Church, is appropriated to ratified marriage; but the representation of the union through the assumption of flesh is appropriated to consummated marriage. And because finally the union of God with the Church through grace contains the union of God through grace with individual just persons, which is soluble, hence, since it was established from elsewhere that ratified marriage can sometimes be dissolved, in order to explain this it was said that ratified marriage represents the union of God with just souls (q. LXI, a. 2, ad 1), not excluding the representation of the other union of Christ with the Church, but excluding only the perfect representation of the union through the assumption of flesh. That this explanation of the signification of ratified marriage is to be taken in this way is evident from this, that when the solubility of ratified marriage had to be demonstrated, appeal was made to the proper argument, that is, to tradition (cf. the things adduced above); it is evident again from this, that although the union of Christ God through grace with a just man is dissolved by the will of man, nevertheless it was not thence inferred that ratified marriage could be dissolved by the will of the spouses, and they wished that this marriage, except in the case of a privilege granted by God, be firm, even if a spouse should receive sacred orders or pass over to infidelity; the reason for this last point is brought forward by Innocent III, because ratified marriage is a Sacrament.

Accordingly, 4. we answer that the efficient reason why consummated marriage of Christians is extrinsically also indissoluble is indeed the will of God, but that the reason of fittingness, by which, as it were, God is conceived as determined to willing this, is the representation of the union of Christ with the Church through the assumption of flesh, but that representation which is made by sacramental marriage. If this condition is lacking, marriage is less firm, not indeed intrinsically but extrinsically. And because this intrinsic condition precedes consummation, from which extrinsic insolubility arises, and when the former is removed the consequent is removed, hence it is not strange that marriages which are not ratified have less firmness than those simply ratified. Namely, the dignity of the Sacrament is that on which extrinsic indissolubility depends. "Indissolubility belongs to the bond of marriage especially insofar as it is a Sacrament," says Pius VII in the letters given to the Archbishop of Mainz, October 3, 1803.

Wherefore, 5. although we do not deny that even marriages of unbelievers which are made according to the primitive institution, and therefore endowed with unity and indissolubility, and the same marriages consummated, represent in some measure the union of Christ with the Church, which signification was established for marriage in the very institution, nevertheless there is not yet a firm reason of perfect indissolubility; because the character of the sacrament is lacking, through which the union of Christ with the Church is signified in a perfect mode, that is, according to the character of holiness.

X. Here again someone may seize the occasion of arguing against the indissolubility of marriage established above, or against the suasive argument drawn from reason, since now so many marriages, even consummated, are most easily dissolved, without reason complaining.

I answer that deservedly reason ceases from complaints. For the arguments which reason can bring forward in favor of marriage duly entered upon, than which none more excellent can be had, certainly lose their force if they are brought forward in favor of an imperfect marriage not exacted to that norm which the Savior of the human race restored by recalling the first institution and perfected by completing it, so that it could be said by Ambrose that the marriages of unbelievers are not from God. Indeed, the danger to the faith which would arise of itself is a greater evil than any other inconvenience of one remaining in infidelity.

Thesis XXVII

The Pauline privilege does not pertain only to those who follow the Catholic faith, but to all who have professed the Christian faith by the reception of baptism.

I. The question can be raised whether the Pauline privilege has force also when some unbeliever is indeed converted, yet not to the Catholic Church but to a heretical or schismatic sect; for example, if some Turk should embrace the schism of the Greeks or the Anglican sect. There will perhaps be some to whom the privilege seems not to have force for men of this sort. For the privilege is said to have been granted in favor of the faith; but in heretical sects there is not faith, or heresy is not faith, but a vice opposed to faith. What of the fact that Innocent III, c. *Gaudemus* cited above, in explaining this privilege, expressly makes mention of the Catholic faith? "If one," he says, "of the unbelievers is converted to the Catholic faith, etc." And indeed what reason is there why Christ should be believed to have wished to grant a privilege to his enemies, who are worse than pagan unbelievers (2a 2ae, q. X, a. 6), when punishment, not benefit, is owed to them?

II. Nevertheless I answer that unless sects of this sort have so fallen away that they have retained only the name of Christianity, and are therefore such that in them the religion of the true God and Christian profession, although vitiated, still flourish, and therefore baptism still obtains, the Pauline privilege seems to us to have force for them also. We know that Cardinal Camillus Tarquini composed a dissertation affirming this opinion, which nevertheless was not published, nor have we been able to find a manuscript copy. The reason by which we are moved is indeed one, yet proceeding, as it were, through certain steps. Namely, that privilege rests, as on an intrinsic condition, on disparity of worship; but Christian worship, although in sects separated from the Catholic Church, is in reality disparate from the worship of unbelievers, whether they are Jews or pagans. A certain indication of this matter is that there is no marriage of a heretic with a pagan or Jew because of the impediment of disparity of worship. But the right of using this privilege is acquired by the very fact that baptism has been received, which is the sacrament of faith; for certainly this right does not belong to catechumens, although perfectly believing. Therefore it is not faith alone, but the profession of Christian faith through baptism, or in other words the sacrament of faith, which confers such a right. But in heretical or schismatic sects also there is profession of the Christian faith through reception of baptism, or there is the sacrament of faith. Therefore. As regards schismatics indeed there is no difficulty in this matter; but as regards heretics, observe with St. Thomas, 2a 2ae, q. XI, a. 1, that "heresy is a species of unbelief pertaining to those who profess the faith of Christ, but corrupt its dogmas." Therefore, although in heretics there is not the interior habit of infused faith, nevertheless there is the exterior profession of Christian faith, although vitiated, and there is a true sacrament of faith, which is the solemn profession of the Christian faith. Now, according to the mind of theologians, the right of using this privilege is traced back to the power of baptism itself. "He who approaches baptism is regenerated in Christ and dies to the former life, since the generation of one thing is the corruption of another. And therefore he is freed from the obligation by which he was held to render the debt to his wife, and he is not held to cohabit with her when she is unwilling to be converted" (*in Suppl.*, q. LIX, a. 4); and "if she is unwilling to cohabit without injury to the Creator ... the faithful husband departing can be joined to another through marriage" (ibid., a. 5). Therefore all baptized persons enjoy this right. Finally, at that time the marriage contracted in

infidelity is dissolved when the convert enters another marriage. But the efficacy of this marriage is customarily explained in this way: that "the stronger bond always dissolves the less strong, if it is contrary to it ... and marriage in infidelity is not altogether firm and ratified" (ibid., a. 5, ad 1), that is, it is not altogether firm because it is not ratified. Therefore the matter is conceived thus, that the second marriage dissolves that which preceded because that which the convert enters is ratified. But the marriage of any baptized person whatever is ratified. "The sacrament of faith, which once admitted is never lost, makes the sacrament of marriage ratified" (c. *Quanto* cited). Therefore, if account is taken of the reason of this common explanation, it is evident that theologians recognize the right of the Pauline privilege where the sacrament of faith has existed, and therefore also in schismatics and heretics having true baptism.

This indeed is the common persuasion of theologians, as is clear even from the fact that, when they discuss the Pauline privilege accurately and one by one, they do not even touch on this distinction between a Catholic Christian and a heretical Christian, or they do not ask whether Catholics alone, or other baptized persons also, enjoy that privilege.

There can be no reason for this omission except this: namely, because it was evident to all that the faithful brother and sister of whom Paul speaks are the same as the baptized.

III. What, then, must be said to those things which were proposed for the contrary opinion? To the first we answer that the profession of Christian faith and the sacrament of faith are found also in heretical and schismatic sects; but the faith in favor of which the privilege is said to have been granted is the profession of Christian faith, is the sacrament of faith. Nevertheless, because God of himself does not will there to be anything except the profession of the Catholic Christian faith, it is permissible to concede that first and of itself (by priority of nature, not of time) this privilege was granted to the profession of Christian faith and to baptism received in the Catholic Church, but secondarily, on account of the identity of baptism and generic communion in the profession of Christian faith, it was extended also to heretical sects. Indeed, if (per impossibile) only heretical sects existed, not the Catholic Church, we do not think that God would have granted any privilege to them. To the second we answer that Innocent there names the Catholic faith because previously in the same place mention of the same had occurred, and the question proposed to the Pontiff was in reality concerned with this fact, that some unbeliever had been converted to the Catholic faith. Wherefore only historically is that appositive *Catholic* added to *faith* by Innocent, not however dogmatically, so that it would determine the necessary conditions for the force of the privilege; therefore those words are not to be taken exclusively. To the third we say that the privilege was granted not on account of heresy or schism, but on account of the profession of Christian faith and baptism. But although the persons may be evil, this does not prevent them from having those things which follow upon baptism from the will of God and do not require the state of justice, just as they can also be had by evil Catholics. But what is affirmed concerning the greater malice of heretics than pagans is true if you consider the crimes subjectively; but if objectively you compare pagan or Jewish worship after Christ with the profession of the Christian religion, although corrupted in certain dogmas, that assertion is certainly false. Cf. St. Thomas, 2a 2ae, q. cited, and Ballerini, *Opus Th. Mor.*, v. 6, n. 683 ff.

Scholion

I. The doctrine has been defined by Trent, can. 8, that the Church does not err when, for many causes, it decrees that separation between spouses as to bed, or as to cohabitation, can be made for a definite or indefinite time.

In this matter it must be observed that those causes are reduced to three genera, that is, mutual consent, grave danger of soul or body, and crime. Crime indeed is distinguished as threefold, namely, adultery of the other party, apostasy from the true religion, whether through unbelief or through heresy, and seduction to sin, so that the one who is seduced is placed in danger of sinning. But this third returns to the second of the three genera. Moreover the first of these crimes is a cause of separation proper and intrinsic to marriage; but the other causes are common to other societies, and therefore, as it were, extrinsic to marriage. Nevertheless, unbelief, which is also called spiritual fornication, is especially against the good of marriage, which is offspring to be educated for the worship of God (q. LXII, a. 1, ad 3). Likewise, as regards the first crime, one act suffices, and it is the reason for perpetual separation, so that, even if the sinning spouse comes to his senses, the innocent party is not bound to return, unless he himself should fornicate (c. *Ex literis*, *De Divortiis*), but can, for example, vow perpetual continence or enter religion. But in the other crimes a certain custom is required, and they are causes of themselves temporal; when these cease, the innocent party is bound to be reconciled to the penitent (c. *De illa*, *De Divortiis*; cf. St. Thomas, l. c.). Then it must be observed that separation as to bed, since it is a private matter, can be made by one's own will; but separation as to habitation, since it is a public matter, ought to be made by the judgment of the Church (c. *Porro*, *De Divortiis*).

II. Now, that separation as to bed or habitation can lawfully be made for these causes, while the conjugal bond remains, is proved: 1. because there is no repugnance that, while dominion is retained, the use of the thing, or the proximate right to use, should be lost for some causes, whether from one's own will or from the disposition of law; 2. because from the Gospel we are taught that divorce of this sort can be made for these causes. For divorce which is made from mutual consent is indicated as lawful by those words of Christ, Matt. XIX, 29: *Everyone who has left house ... wives or children*, etc., *will receive a hundredfold and will possess eternal life*. Cf. the title *de Conversione coniugatorum*. The Apostle supposes that divorce from the cause of crime is lawful in 1 Cor. VII, 11, where, as we have already noted, there is discourse about departure for a just cause. Christ proves the cause of fornication, Matt. V, 32, if the sentence of Christ is taken according to the more common interpretation, where the dismissal which is granted is not as to the bond, because he who marries the dismissed woman commits adultery; but some dismissal is granted on account of fornication. For he who on account of it dismisses his wife is not imputed the crime of adultery which his wife is afterward going to commit, as it is imputed to him who dismisses an innocent woman; therefore he does not sin, but acts lawfully. Moreover the dismissal is not only separation as to bed, but also as to habitation. Paul indicated generally the cause of apostasy from the faith with danger of the perversion of the other party in Titus III, 10. Cf. c. ult., *De Convers. Coniug.* and c. 2, *De Divortiis*. Christ proves the cause of seduction to sin in Matt. XVIII, 9: *If your eye scandalizes you, pluck it out and cast it from you*, which reason proves is to be understood also of a spouse. Natural reason proves the cause of grave bodily danger,

such as danger of life, mutilation, and frequent intolerable cruelties; cf. c. 13, at the end, *De Restitutione Spoliatorum*.

Accordingly this doctrine is not new, both because it is handed down in the Gospel and by the Apostle, and because it is handed down by the Fathers, as can be established from their testimonies cited above. The same is confirmed by canon law and the continual practice of the Church.

III. Nor is it opposed to the Gospel, which mentions one cause, fornication, if that interpretation is true. For that mention is not exclusive, since other causes are sufficiently indicated elsewhere in the Gospel; but that cause alone is explicitly indicated because Christ wished to signify the proper and intrinsic cause, and one which is also perpetual, since the other causes are not of themselves perpetual, but when they cease, the spouses are to be recalled. Nor is it opposed to the moral law that the bond remains after separation has been made; for 1. the grace of God is always present, by which this loss can be patiently tolerated; 2. if the evils which can proceed from the perpetuity of the bond and from its dissolution are compared, those which would arise from dissolution are much greater, as being against the greater good, that is, of family, society, religion, and against the good of the Sacrament. Cf. Thesis XXIII.

Seek the rest among the canonists.

Chapter IV: On the Power of Establishing Impediments of Christian Marriage and of Dispensing in Them

Praenotiones

Christian marriage, when it is entered into, is a contract (as we said above, Th. I and Question I from p. 102, compared with Th. XXIII, n. II), and it is a Sacrament. It is permissible to regard each aspect separately. Therefore, if the aspect of contract alone is considered, which properly obtains in marriage *in fieri*, it itself 1° is a natural contract; for nature itself urges toward it, in whose office it is (q. XLI, a. 1), and it itself preceded every public society, of which the origin is through the family; and consequently it could validly be entered into without the aid or authority of any public power.

2° But since this same contract is made by men existing in society, it itself, like other contracts, even those which are made by the law of nature, is subordinated to the public authority ruling that society in which the contract is made. This indeed is the general law of contracts. For nature has not determined all things ἐν ἀτόμῳ, in the individual, which are required so that in any given case contracts which are made by the law of nature may be made as they ought; but it has left them to the determination of the public authority having coercive force, which, on account of the good itself of men united together, has from God the power of establishing the form according to which natural contracts may be made both licitly and validly. Moreover, neither nature nor its institutor has determined everything one by one with respect to entering into the matrimonial contract: for example, with respect to degrees of consanguinity, of affinity, with respect to sacred persons, criminal persons, etc., in which bare reason, the nature of the thing considered, establishes nothing as to many things concerning whether matrimony ought or ought not to be permitted. The same reason therefore teaches that there must exist in society a rule by which this is determined. For many cases occur in which, even if, with only the natural right of marriage inspected, marriage seems able to be entered into, nevertheless, once other rights are inspected which arise from the relations of other essences, a certain repugnance at once appears to its being done licitly or even validly. Nor has the author of nature and institutor of marriage sufficiently determined all things by positive law. Therefore, since it is necessary that a certain norm exist according to which this contract may be rightly made by all in so many diverse circumstances, it follows that the public authority of some society, in which the same contract is entered into, has the power of pre-establishing the form according to which it may be made licitly and validly; therefore the contract of marriage is subordinated to the public authority of that society in which it is made. Nor is there a question concerning this matter among theologians, philosophers, and jurists, who indeed dispute to which authority under God this contract is subject, yet all grant or suppose that it is subject to some authority. Wherefore there is no need for us to dwell much on this matter, especially because discourse concerning the same matter will necessarily return when it will be necessary to demonstrate the authority of the Church in particular.

3° Now the power of establishing the form according to which a contract is made validly is at the same time the power of invalidating contracts made otherwise. But to invalidate the matrimonial contract is to prevent the mutual consent of the contracting parties from being efficacious or sufficient for transferring dominion over bodies, or it is to render persons incapable of contracting. The former is called direct invalidation, the latter indirect (Sanchez L. III, D. 4). But when this latter invalidation is had, the former also is consequently present. For when the persons are incapable, their consent does nothing. Trent mentions each mode, Decree on Marriage, in the invalidating clause.

4° Wherefore by the law of nature, indeed, legitimate consent is efficacious; but nature alone does not determine what consent is legitimate; whence contracts, as to their formal being or value, depend also on public authority, which ultimately and in the individual prescribes the form of a valid contract. Once this has been posited, even those contracts which are made otherwise, and which, if only the law of nature were in force, would be valid (because the law of nature by its primary precepts does not prohibit them, but leaves them to be prohibited by social or superior authority, dictating that they are less becoming), are null, not because public authority is opposing the law of nature, but because it is declaring and determining it.

5° Thus the matter and form of the matrimonial contract is (Th. XIII) efficacious mutual consent expressed by words, by which namely there is made a mutual handing over of dominion over bodies; but its value or efficacy also depends on the manner or form of contracting, which is established by public authority.

6° But the end of this contract is mutual power toward carnal copulation; the end of this power, by the law of nature, is the procreation and education of offspring, by which the human race is propagated and the act of creation of the same is, as it were, continued. But because the adequate reason why men exist is the glory of God, by procuring and obtaining which men themselves also become happy, to which reason the other things are subordinated as means, even existence itself in society; hence it comes about that this end of marriage is necessarily the procreation and education of offspring for the worship and honor of God, and consequently the power ruling it is, insofar as such, a religious power, whether this be distinct from the supreme civil power or not, as could happen in pure nature; for we are not now disputing about this distinction.

II. But if the aspect of Sacrament is considered, Christian marriage 1° is certainly a sacred thing, such as, before all things, a sacrament is. Moreover 2° it is a sacred thing in such a way that it is not something mixed from a purely natural thing and a sacred thing, as from two elements; but it is a physically simple thing, intrinsically and essentially sacred, indeed retaining the entity of nature, but supernaturally elevated. Namely, to be sacred is not some nature or substance, but is a certain mode of a thing which is some nature; whence, in order that something be intrinsically sacred, it cannot be required that it be only sacred, and not something of nature, which would be absurd; for what, indeed, is more sacred than the Humanity of Christ? which nevertheless is certainly a thing of nature. Therefore they are deceived who wish to prove that Christian marriage is mixed from a natural thing and a sacred thing, because the aspect and thing of nature remains in it. And certainly a mixture from a natural thing and a sacred thing supposes two really distinct elements, although united, of which the former is a purely natural thing, that is, lacking the mode which is to be sacred; for if it has this mode, then to be sacred is not another thing, but one. But that Christian marriage is not a mixture of this sort is clear from Th. X, in which it was proved that the contract and the sacrament are the same thing. Therefore the same marriage is a physically simple thing, and the multiplicity of aspects or formalities certainly does not obstruct this simplicity; for what is simpler than God? Now this simple thing is intrinsically and essentially sacred. In order that something be such, it is required that the aspect of sacredness be its mode, which is predicated of it in the direct case, that it be an absolute mode, not a pure relation, and that it be a necessary mode, without which it cannot exist. But Christian marriage is a sacrament in such a way that the being of sacrament is predicated of it in the direct case; for it is truly said: marriage is a sacrament. This being of sacrament is an absolute mode,

not a pure relation; for it returns to this, that it is efficacious of grace and has such a form which is the foundation of the likeness between itself and the union of Christ and the Church. Finally this being of Sacrament is inseparable from Christian marriage; for, if this mode does not exist, neither is the thing, that is, there is no marriage or matrimonial contract. Cf. Th. X. Therefore there remains a thing of nature, but supernaturally elevated, that is, intrinsically and essentially made a Sacrament, and therefore a sacred thing.

3° Now it is certain that the Church has no power over the matters and forms of the Sacraments instituted by Christ, insofar as she cannot substitute others for them and cannot bring it about that, when they are posited with due intention, there is no Sacrament; but the administration of the Sacraments has been entrusted to the Church herself, and to her it belongs to establish the mode and form by which they may be licitly administered and to pass judgment concerning their existence and value.

4° But the difference between the matter and form of the Sacrament of marriage and of the other Sacraments must especially be noted. For the matter and form of marriage is not consent alone, but efficacious consent, that is, efficacious of the bond; but there can be true consent without its being efficacious, and its efficacy can depend on some public authority which prescribes the form for the contract. Wherefore the defect of power over the very matters and forms of the sacraments does not exclude the power of assigning a form to the contract and of invalidating it; for by that power are established the conditions which, when posited, make the matter and form of the sacrament itself, and which, when lacking, make it not to be. Wherefore by laws of this sort assigning a form, the matter and form of the Sacrament is changed materially, not formally; for formally it is always mutual expressed consent signifying and effecting the handing over of power. Just as (says Sanchez, l. c.) if the Church could bring it about that this word *body* no longer signified what it signifies, but that this were signified only by another term, then the Church would bring it about that no longer the word *body*, but this new term, belonged to the form of the Eucharist; nevertheless the change would be only material, not formal; for the signification would remain the same, which is the formal reason why the word *body* belongs to the form of the Eucharist.

5° Wherefore the power of the Church to administer the Sacrament of marriage can also extend itself, unless something else prevents it, to this: that she assign the form to a valid contract and invalidate one made otherwise. Concerning this matter it will have to be disputed more fully hereafter.

6° But this power (that we may sketch its notion) has a twofold act, each positive. For it invalidates contracts made apart from the form prescribed by itself, and it approves and holds ratified contracts made according to that form. Now this approval, either explicit or at least implicit, is necessary with respect to those contracts which can be invalidated by legislative power, when they are in reality subject to that power. For if they can be invalidated by legislative power, the law of nature has not yet determined their value ultimately and independently of that power; but it has indeed given them the possibility that they should be valid, while as to actual value it has left them, as it were indifferent, to be determined by the legislative power to which the contracting parties are subject; otherwise they could not be invalidated by it. For positive human law cannot make invalid that which the law of nature wills to be valid. Therefore the permission, even by itself alone, of this power that those contracts actually be valid confers upon them that determination which they do not have from nature alone; whence even that permission is an act positive as to value, since it is the cause, and that a

necessary cause, of a positive effect. Wherefore when the competent power assigns the form for the value of the contract, it exercises a twofold act, namely it prevents those entered into otherwise from having value, or invalidates them, and it approves and makes valid those which are made according to that form; so that he who would reject those contracts would act not only against the law of nature, but also against the law of that power.

7° Such a power is not borne immediately upon the bond itself, so as to render it null if it exists; nor is it immediately borne upon the matter and form of an existing Sacrament, so as to impede their effect if they actually are present; but it is borne immediately upon the consent or the persons, which consent can be valid and invalid, which persons can be capable or incapable; and it establishes those conditions or the form by which the former is valid and the latter are capable. Therefore only mediately does it touch the matter and form of the Sacrament, which the contracting parties posit, and the bond which follows. For immediately the form and matter are posited by the contracting parties; but that power antecedently establishes the conditions by which, if they are observed, the contracting parties can enter into a valid contract.

III. With these things posited, let us enter the question. The question is not whether in Christian society there is a power of establishing the form of the matrimonial contract; but the question is concerning the subject of this power. This question can be twofold, namely concerning the power of establishing the form for the honesty of the act, or of establishing impedient impediments, and concerning the power of establishing the form for the value of the act, or of establishing diriment impediments. Moreover they are called diriment impediments because they prevent the bond from existing, and bring it about that the persons who seem to be joined, if marriage has been attempted, are in reality separated as before and must be separated. Concerning the first there is no need that we dispute separately, both because no one denies it to the Church, whose authority we are going to defend, and because from what is to be said for the other question the matter will be sufficiently known. The other question to be disputed by us can be distinguished in three ways: 1° whether this sort of power belongs to the Church; 2° whether it belongs to her by her own right; 3° whether it belongs to her alone. The affirmative opinion can be proved by a twofold kind of argument, namely by a demonstration demonstrating that the thing is so, and by one demonstrating why the thing is so. But first a certain inept imagination of Launoius must be excluded (in the work *On Royal Power over Marriage*, p. I, a. IV, c. 4, and a. II, c. 8). Let it therefore be:

Thesis XXVIII

In can. 4 of Trent (*if anyone shall say that the Church could not constitute impediments diriment of marriage, or that she has erred in constituting them. A. S.*), by the name of the Church are signified not kings and secular princes, but the sacred principate: moreover that canon is dogmatic.

I. Namely, we teach that the Church is not said to be able to do this because some persons who belong to the body of the Church, and these either determined persons, namely kings, or taken indefinitely, whether Priests or Kings, can do it, but because the sacred Principate or body of Pastors who succeed the Apostles, or the Roman Pontiff their head, that is, the ecclesiastical authority which was communicated by Christ to the Apostles and their successors, and it alone, can do this.

The single argument, proposed in many ways, of the Launoian interpretation (supposing indeed what he thinks he has demonstrated, that the right of establishing impediments of marriage, even of Christians, is of itself civil) consists in this, that the Church has never been defined as the assembly of Priests of the first or second order, but as the congregation of the faithful; consequently, without merit, that definition is substituted for the term Church in the canon. Namely the Tridentine Synod would have spoken in a new and unusual manner if, by the name Church, it had understood Priests of the first order or even of the second order. Launoius also adorns this argument with dialectical lights. For he says that the supposition of the name Church is simple when it is taken of the assembly of the faithful, because this is its immediate definition; but that the supposition is personal when certain persons are understood. But a transition cannot be made from simple supposition to personal; therefore.

II. It must be observed that Launoius errs in the definition of the Church. In Tom. V of his works, p. 2 of the epistles, L. 8, there stands epistle 13 to Nicolaus Gatinaeus. In it, by many arguments, he strives to refute the definition of the Church given by Bellarmine, which he says is contrary to the laws of dialectic, and to belong to explaining the state and government of the Church, not to explaining its nature. But he contends from the Scriptures and perpetual Tradition that the Church is to be defined as an assembly of the faithful or of Catholics. As though government and authority in a society were something accidental, not belonging to its intrinsic nature, or as though, in order that the Church of Christ exist, it would be enough that men exist coming together into the same faith, as Protestants will. The Church is indeed an assembly of the faithful, but an assembly of many can be had in many ways; but it belongs to the essence of this assembly of the faithful instituted by Christ that it be united by the apostolic government and authority vicarious of Christ, which flourished first in the Apostles and then in their successors, the Bishops, and especially and most fully in Peter and his successors, the Roman Pontiffs, to whom the sheep of Christ subject constitute that assembly of the faithful which is the Church of Christ. But concerning this matter, in the treatise on the Church.

III. But that the interpretation of Launoius is inept and false is easily demonstrated. And first indeed, the consequence of that argument is denied. For if from the fact that the Church is an assembly of the faithful it does not follow that, by the name Church, Priests, who are a part of the Church, are to be understood in the canon, why will Kings have to be understood, who are neither a necessary part nor an equally noble part? The consequent will be that this power is in the hands of the faithful and therefore that the right of establishing the form of the matrimonial contract belongs to the multitude

of the faithful gathered together, and that the same multitude can delegate this its power to others as to its ministers. But why (on this false hypothesis having indeed been made) it would have delegated its power rather to kings, who can be lacking in the Church and who in the Church are simple faithful, and not to Priests, who belong to the Church insofar as it is Church and are a necessary part of it, is not yet clear, and Launoius forgot to declare it. It is indeed supposed that this right is of itself civil and that this has been demonstrated; but besides the fact that it has not been demonstrated, is it permitted, not only to one defending himself but to one arguing, as Launoius does here in the interpretation of this canon, to derive the force of his argument from a hypothesis which the adversaries deny, and, once this hypothesis is set aside, there is no force of the argument?

Then we do not understand why, with this interpretation posited, Launoius grants that those who in can. 12 are called ecclesiastical judges are judges from the priestly order or having authority from it; for if the Church is nothing except the assembly of the faithful, ecclesiastical judges will be judges from the faithful, or any faithful persons whatsoever.

But, these absurdities having been omitted, who does not see that, when the Church is introduced as bearing laws, the name of Church is drawn from the common usage of speaking to stand for the ruling Church, just as the name of kingdom, empire, or state, according to the words of Christ, Matt. XVIII, 17.

IV. And indeed is not the object of the canon at once power and infallibility in the use of this power (*could constitute, has not erred in constituting them*)? But the subject of power and at the same time of infallibility is only the ruling and teaching Church, not kings or civil powers or the people of the faithful. But what is proscribed in this canon? The error of Luther, who denied to the Church, that is, to the Roman See, the power of establishing diriment impediments; yet he did not deny it to secular princes. "The union of man and woman is of divine right, which holds in whatever way it may have occurred against the laws of men, and the laws of men ought to yield to it without any scruple (*De Captiv. Babyl. de Matrimonio*)": these men he afterward calls Roman tyrants. Then in the *Extemporaneous Response to the articles which our masters extracted from the Babylonian Captivity*, to that doctrinal head, "Nothing by any right can be imposed on Christians, whether by man or by Angels, except as much as they will," he himself says: "I said this not about civil laws but about ecclesiastical laws." Therefore the civil power, which was not denied, did not have to be asserted by the Fathers, but the ecclesiastical power proper to priests, which alone was denied.

What of the fact that the same thing is evidently plain from the practical interpretation itself which the Council furnished to its canon? For the Council itself afterwards, by its own authority, constituted new diriment impediments, and tempered certain old ones, and besides established that marriages of children entered into without the consent of parents have validity, even though certain Princes wished otherwise, as the King of the Gauls, and pressed sharply for the opposite decision. Therefore by their own deed the Tridentine Fathers interpreted their canon. For why do the Fathers, who judged that this right belonged to Kings, without these having been heard, and with no account taken of their will or desire, decree absolutely what pleases themselves? Why did kings acquiesce? Moreover, in this whole matter concerning Marriage, the Church to which some authority or power concerning the Sacrament of Marriage is asserted is always the ruling and teaching Church; cf. cann. 7, 8, 12; and the same is understood in those words: celebration of marriage in the face of the Church. For such a celebration is understood, which is made before a qualified witness constituted by

the ruling Church herself, and which is public so that the marriage may become known, or of itself can become known, to the ruling Church, which must pass judgment concerning matrimonial causes. For this form of celebration was prescribed because, when an evil had arisen from clandestine marriages, the Church, which does not judge concerning hidden things, cannot meet it. Decr. *De Reform. Matrim.*

V. We add that this canon is dogmatic. For it treats of the right of the Church and of her infallibility in the exercise of this right; but right and infallibility are the object of dogma and are presupposed by discipline as its cause; therefore they are not disciplinary matters. Moreover, it does not treat of one who is disobedient, but of one who affirms that the Church lacks this power or that she has erred in its use; but by affirmation or negation truth is attacked; therefore the Council treats of establishing truth, which is dogma, not discipline. Cf. the Treatise of Cardinal Gerdil *On Marriage*, Works, Tom. XV, Rome 1809, P. II, § 5.

But what we have said concerning can. 4 must also be said concerning can. 3, which has itself thus: "If anyone shall say that only those degrees of consanguinity and affinity which are expressed in Leviticus (c. XVIII) can impede marriage to be contracted and dirimently dissolve one contracted, and that the Church cannot dispense in some of them, or constitute that more degrees impede and dirimently dissolve: A. S."

You see, therefore, that we gather the argument not from the fact that the canons are established under penalty of anathema; for who is ignorant that even transgressions of law can be punished by anathema? but from the fact that the object of the canon is doctrine and truth to be asserted and believed.

Thesis XXIX

Historically it is established that the Church by her own judgment established impediments diriment of the marriage of Christians.

I. We are now considering only the historical matter and the fact alone. Whether the Church did this by right or by wrong will have to be judged in the following Theses. For the moment, since the adversaries, among whom after Marcus Antonius de Dominis John Launoius stands forth as chief, contend that all impediments were first constituted by the secular power and in this way obtained force in the Church, we wish to demonstrate the historical falsity of this opinion, which nevertheless is the foundation of the whole doctrine of the adversaries. But in order that this historical thesis may be demonstrated, certain things must be premised.

1° A twofold function of Ecclesiastical authority or jurisdiction must be distinguished: the one by which it authentically proposes divine doctrine and divine law and commands that the former be believed and the latter observed; the other by which, by force of the power divinely conferred upon it, the Church sanctions positive laws which must be observed. Moreover, since in the present question ecclesiastical jurisdiction is being treated, the question is not properly concerning the first, but concerning the second. For the adversaries do not deny that God can bear laws concerning marriage and establish impediments, nor do they deny that the Church is an authentic witness of divine revelation; but they deny that there has been made by God to the Church the power of bearing laws concerning the bond of marriage, or that she alone has this power. Wherefore the things which the Apostle decreed in 1 Cor. would not now be brought into the middle very opportunely; for in certain things he certainly acted as a witness of revelation and of divine law, while in others he can be seen to have acted otherwise.

2° It must be held not only that the legal Jewish economy was abolished by Christ through the institution of the Church, but also that this was always believed in the Church; and therefore that it was believed that the positive precepts which exist in the law of Moses no longer have, of themselves, the force of obliging. Yet this does not prevent one from being able to appeal to them as to a norm according to which the Church may found her laws; for that which at some time proceeded from God, although only for a definite time, always retains the dignity of a certain norm to which men may conform their actions when they are placed in the same or similar circumstances, so that they may act more perfectly. Therefore if it happens that impediments are found to have been established by the Church which God had already established by positive law through Moses, someone would wrongly infer that these were constituted from divine right and by its command.

3° In order that it be demonstrated that the Church has used her own authority, there is no need to bring forward decrees of the universal Church; rather even decrees of particular Synods which, with none contradicting, established something are sufficient.

4° In order that we may demonstrate what we have proposed in the thesis, it is not necessary that we describe the origin of each single impediment, but it is enough to dwell on some. For if it is established that the Church by her own judgment established certain diriment impediments, what we affirm in the Thesis is already true.

Now indeed the account is the same whether of the power of establishing impediments in particular or of the power of decreeing the form of contracting necessary for the value of the contract (cf. Praenot. n. II). It is permitted to take the beginning from that impediment concerning which, with Bellarmine as witness, there is a question among theologians whether it is of Ecclesiastical right or of divine right; for if it is not of divine right, it is certainly demonstrated that it was constituted by the authority of the Church.

II. Therefore a) It is established that the vow of religious profession is a diriment impediment of marriage. Seeking the antiquity and origin of this impediment, we warn that we are disputing only concerning virgins or women consecrated to God, whose solemnity of consecration to God is certainly more ancient in the Church. The testimonies pertaining here are these. Gelasius I, epistle to the Bishops through Lucania, the Bruttii, and Sicily, ep. 20, says: "We have learned that certain men rashly associate themselves with sacred virgins, and after a purpose dedicated to God mix incestuous and sacrilegious covenants." Moreover an incestuous covenant is not a marriage. Before him Siricius, whose decree 4 from the epistle to Himerius and decree 1 from the Synodical epistle to the Gauls may be compared in the Appendix, and then Innocent I, in the letters given to Victricius, Bishop of Rouen, declares the matter more distinctly. "Those women who have spiritually married Christ and have merited to be veiled by a Priest, if afterward they have married either publicly, or have secretly corrupted themselves, are not to be admitted to penance unless he to whom they had joined themselves has departed from this world. For if in all cases this rule is observed, that whoever, while her husband is living, has married another is held to be an adulteress, and the license of doing penance is not granted to her unless one of them has died, how much more must it be held concerning her who before had joined herself to an immortal spouse, and afterward migrated to human nuptials. But those who, not yet covered with the sacred veil, nevertheless had promised always to remain in the virginal purpose, although they have not been veiled, for these penance is to be done at some time, because their promise was held by the Lord. For if among men a contract of good faith is accustomed to be dissolved by no reason, how much more ought that promise which they contracted with God not to be dissolved without vengeance?" You have the distinction, even if not by name, yet in reality, between solemn vows of religion and non-solemn vows; you have the distinct double class of virgins, namely of the veiled and of those not yet veiled. The Bishop imposed the veil in the public and solemn ceremony of the profession of chastity, which took place at Easter. Read Ambrose, *Exhortation of Virginity*, c. 7, and the same or another writer, *On the Fall of a Virgin*, c. 5. Jerome, epist. CXXX, n. 2, calls this veil the virginal flame-colored veil; Optatus, L. II, c. 19, and L. VI, c. 4, calls them mitres or little mitres, "which were made from wool dyed purple, by which the head was veiled, and which were, as he himself says, signs of profession... so that neither he who was betrothing would persist in seeking a thing now devoted to God, nor a ravisher dare to violate it." Cf. also the book of Tertullian, *On the Veiling of Virgins*, from which it appears that at that age this custom of veiling virgins had not yet been received among all. Therefore Innocent decrees that matrimonial unions of veiled women are adulteries; and when he denies that the fallen woman can be admitted to penance while the spouse lives, he signifies that that union is such that by no reason can it be made honorable, which indeed would happen if it were valid. The same is evinced from the opposition of the veiled virgin with another not veiled; for concerning the vow of the latter alone it is affirmed that it is dissolved with vengeance; for the other is not dissolved.

The author of the *Sermon to a Fallen Virgin* (among the works of Ambrose; cf. p. 65, in the Treatise *On Penance*), c. 5, says: "Someone says, it is better to marry than to burn. This saying pertains to one not promised, to one not yet veiled. But she who has promised herself to Christ and has received the holy veil has already married, has already been joined to an immortal husband. Even if she should wish to marry by the common law of matrimony, she perpetrates adultery; she is made a handmaid of death." Ambrose, in the book *On Virginity*, c. 3, after he had said that it is disapproved by some that a father has vowed the integrity of his daughter, adds: "In this business even we are called into fault. What fault, pray? because we have prohibited illicit nuptials. Let them therefore call even John the Baptist into the same fault... Or have we brought forward an author of whom we must be ashamed? but recall in your mind what other cause he had of martyrdom. The cause of that suffering certainly was this: It is not lawful for you to have her as wife. If this is said concerning the wife of a man, how much more concerning a consecrated virgin?" (Namely, if it is not lawful to have the wife of another, how much less a consecrated virgin.) "Thanks therefore to the Divinity that here there is no Herod, and would that there were no Herodias."

Jerome, L. I against Jovinian, c. 7: "If a virgin has married, she has not sinned; not that virgin who has once dedicated herself to the worship of God; for if this one has married, she will have condemnation, because she has made void her first faith (1 Tim. V). Virgins who have married after consecration are not so much adulteresses as incestuous women." Basil, in the first canonical Epistle to Amphilochius, established in cn. 6: "Let the fornications of canonesses not be reckoned as marriage, but let their union be entirely torn apart." But in the second epistle, cn. 18, discoursing more fully concerning this matter, he indeed speaks directly concerning the penance to be enjoined on fallen virgins; at the same time, however, he teaches what he thinks concerning their unions. It is indeed permissible to doubt whether Basil brings forward that sentence as his own or as common (cf. in the Appendix); but it is established that he agrees with many. Therefore he says: "If a widow is subjected to a very grave judgment, as one who has made void her faith in Christ, what must be thought by us concerning a virgin who is the bride of Christ and a sacred vessel dedicated to the Lord? It is indeed a great sin for even a maidservant, giving herself to clandestine marriages, to fill the house with dishonor, and by a worse life to do injury to her possessor; but it is far graver for a bride to become an adulteress, and, bringing disgrace upon her union with the spouse, to give herself over to impure pleasures. Therefore a widow is condemned as a corrupted maidservant, but a virgin is subjected to the judgment of an adulteress. Therefore just as we call him who is with another's wife an adulterer, not admitting him to communion before he has ceased from sin, so certainly also concerning him who has a virgin we shall establish. But this must now be established by us beforehand, that she is called a virgin who of her own accord has offered herself to the Lord, and has sent a refusal to nuptials and has embraced the institute of holiness." This, therefore, is the sentence of the Fathers of the fourth century, inculcated at the beginning of the fifth century by Innocent.

III. Moreover, if we consult Synods, among the canons collected from several synods in the Carthaginian Council of the year 398, canon 104 is reported. It indeed is not certain, since it was found in one Urgellian manuscript codex (cf. Mansi, Councils, Tom. IV) and does not seem to cohere sufficiently with the doctrine of Augustine to be cited below, who is said to have subscribed the synod in which the canon was framed; nevertheless this canon, without doubt ancient, has itself thus. "If any widows, however much still placed in lesser years and left by a husband in mature age, have devoted themselves to the Lord and, having cast off lay clothing, have appeared under the

testimony of the Bishop and the Church in religious habit, but afterward have passed over to secular nuptials, according to the Apostle they will have condemnation, since they dared to make void the faith of chastity which they had vowed to the Lord. Therefore let such persons remain without the communion of Christians, who also are not to communicate at banquets. For if adulterous wives are liable by guilt to their husbands, how much more will widows who have changed their religious state be marked by the crime of adultery, if they corrupt with lustful pleasure the devotion which they had offered to God of their own accord and not by compulsion, and have made a passage to second nuptials? And these, even if they have suffered violence rushing upon them from someone and afterward, by delight of the flesh and lust, have consented to remain in union with the ravisher or violent man, will be held liable to the condemnation comprehended above." Although religious women of this sort have suffered violence, nevertheless if afterward they consent to the ravisher, they are struck with the same penalty as those who freely passed over to these secular nuptials. But since they themselves are compared to adulteresses, and no discourse is made concerning permission to remain in the union after penance has been completed, but only a most grave penalty is indicated for those persevering in such a union, the Fathers seem to have judged such nuptials null; especially since in that age not a few judged concerning these nuptials thus, as is clear from the testimony of Augustine to be cited shortly. Among the more ancient canons, cf. in the Appendix can. XIII from the Council of Elvira, and can. XVIII of Basil. Nevertheless we do not wish to press the authority of this canon very much.

The First Council of Toledo, year 400, cn. 16, decreed: "that a devoted woman sinning is not to be received in the Church, unless first she has desisted and, desisting, has done suitable penance for ten years... but she who has taken a husband is not to be admitted to penance unless, while the man himself is still living, she has begun to live chastely, or after he has died." From this the same thing must be gathered which we gathered from the decree of Innocent. In the Fifth Council of Orleans, year 549, cn. 19, concerning girls who, having entered a monastery, have chosen to remain in it, if afterward they transgress the holy purpose by worldly ambition, it is decreed that "with those with whom they are joined in marriage, they be deprived of the communion of the Church." But "if they shall heal the fault by separation, they are recalled to the grace of communion." Since separation is absolutely commanded, the nuptials are judged null. The Second Synod of Tours, year 567, cn. 20, having first recited the response of Innocent to Victricius which we have already heard, and the testimony of the Apostle, 1 Tim. V, 12, adds: "We therefore, following this which either the Apostle Paul or Pope Innocent established, inserting it in our canons, establish that it is to be observed, that no one presume either to seize or to seek in marriage or to preserve to himself as wife a virgin consecrated to God, who has changed her clothing in honor of Christ; because even Roman law constituted that whoever perhaps has seized a virgin or widow consecrated to God, if afterward they agree with them concerning union, they are struck by capital sentence (Cod. Theod., l. I, *De Raptu*)... therefore those who shall have wished to persist in this obstinacy and to remain more in the wallowing-place of evil conduct than to separate themselves from a forbidden marriage, are condemned by perpetual excommunication." Behold for you, says Launoius wittily (cited work), an impediment more than diriment established by the Emperor, and the Synod executes the imperial laws. But 1° the Synod says that it follows Paul the Apostle and Pope Innocent; moreover the citation of Roman law is employed for the confirmation of the fittingness of the canon, which that little word *even* sufficiently indicates. 2° It could not happen that the Bishops by their canon were executing the

law of the Emperor; because the law speaks only of ravishers, but the Synod generally of the marriage of these virgins.

Therefore, as is established from the things cited, in not a few Churches already from the fourth century, although not yet universally received, it was constituted that the nuptials of girls or virgins who, having changed clothing or having received the veil or in monasteries, had consecrated themselves to God, are null. The Fathers establish this by appealing to the tradition of the Ancients. Were any civil laws then extant concerning this matter?

IV. Christianus Lupus (in the first prooemial dissertation to Tome IV, on the continence of the Latin Bishops and clerics, c. 10) says that nuptials of this sort were made invalid by an Imperial law, namely of Constantius Augustus, whose law exists in the Theodosian Code, and which Jovian renewed, augmented with capital punishment, to which law the Synod of Tours appealed. Moreover his law (Cod. Theod. L. IX, Tit. 25, *De Raptu*) has itself thus: "If anyone, I will not say to seize, but even to attempt, for the sake of joining marriage, sacred virgins, or unwilling women (or, perhaps, widows?), he shall be struck by capital sentence." Sozomen opens the cause of the bearing of this law, L. VI, c. 3: "He carried that law for this reason, because certain wicked men, in the reign of Julian the Apostate, had joined such virgins to themselves in marriage, induced to this corruption either by force or by persuasion." Therefore the law had been borne against ravishers or violent corruptors or seducers of virgins; but if religious women, having abandoned their purpose, afterward had wished to marry, they were not prohibited by this law, as Valesius rightly observes. But the Fathers speak of the virgins themselves, who of their own accord make void their first faith bound to God; therefore, even if it were admitted that by that law the nuptials of such men were established as null, that law is wrongly brought forward in our question.

V. But on the contrary, besides the decrees of Innocent, which do not signify that something new is established, we also have conciliar canons more ancient than Constantius decreeing concerning this matter. These directly indeed look to this, that they constitute a mode of penance for the offense; nevertheless they also signify in what place nuptials of this sort were held by the Church. The Council of Elvira, cn. 13, established: "Virgins who have dedicated themselves to God and have betrayed the covenant of virginity and have served the same lust, not understanding what they have lost, it pleased that communion be not given to them even at the end. But if, persuaded once, having fallen into the vices of the lowest body (thus the Synod of Cologne, year 887, cn. 6, reads this clause), such women have done penance for the whole time of their life so that they abstain from intercourse, because they seem rather to have fallen, it pleased that they ought to receive communion at the end." The canon supposes that these fallen virgins ought to abstain from intercourse, that is, that they are to be separated in perpetuity from those to whom they had joined themselves. This indeed of itself is equivalent to a declaration that such nuptials are null. Now observe that the Fathers of Elvira do not first decree this, but rather suppose it; but they decree the penalty. From this you may infer that already by ecclesiastical law it had been provided that such nuptials would be null. For you would be inept if in that age you were to seek civil laws establishing this.

Wherefore already in the third century Cyprian, epist. LX, calls virgins "members dedicated to Christ, and devoted in chaste virtue to the honor of continence forever"; and in epist. LXII, the same virgins dedicated to God, who had once decided to hold their state continently and firmly (or, as he says in *On the Habit of Virgins*, c. 4, "had dedicated themselves to Christ, and, withdrawing from carnal

concupiscence, had vowed themselves to God both in flesh and in spirit"), afterward corrupted from commerce with men, he calls adulteresses of Christ, and commands them to be wholly separated, no hypothesis being made of any marital union which could have existed between them and could be valid: "but if they persist obstinately and do not separate themselves from each other, let them know that with this their impure obstinacy they can never be admitted by us into the Church." Moreover Tertullian also mentions the vow of continence which virgins professed, in *On the Veiling of Virgins*.

From all these things the law of the Church establishing that a solemn vow of chastity renders null the nuptials which are afterward entered into seems to be most ancient.

VI. Nevertheless 1° Cyprian himself, in the cited epistle, stands opposed when he says: "Intervention must be made quickly for such persons (virgins who were sleeping with men, who nevertheless confessed that they were still intact), so that they may be separated while they can still be separated innocent; because afterward they will not be able to be divided by our intervention after they have coalesced with a most grave conscience... but if by faith they have dedicated themselves to Christ, let them persevere modest and chaste without any fable, and so let them, strong and stable, await the reward of virginity. But if they do not wish, or are not able, to persevere, it is better that they marry than fall into fire by their offenses."

But 1° that they cannot be divided does not arise from the fact that the union is valid; otherwise Cyprian would not affirm that they can never be admitted into the Church unless they are separated. Rather it is from the difficulty of abstaining which those experience who give their effort to these illicit matters. 2° But what is added, that it is better to marry, is said not to virgins already dedicated to God, but to those still about to dedicate themselves; namely those who cannot persevere, or do not have the intention of persevering and are placed in danger of incontinence, it is better that they marry than that, vowing continence to God and afterward violating it, they fall into fire.

2° Augustine stands more opposed, who, *On the Good of Widowhood*, cc. 9, 10, says: "Since, as the Lord says, not all receive this word, therefore let her who can receive it receive it, and let her who does not contain herself marry; let her who has not received deliberate, let her who has undertaken persevere. For in the conjugal bond, if chastity is preserved, condemnation is not feared; but in widowed and virginal continence, the excellence of a greater gift is sought, and when it has been sought and chosen and offered by the debt of a vow, now not only to enter nuptials, but even if one does not marry, to wish to marry is damnable... not because the nuptials themselves, even of such women, are judged to be condemned; but the fraud of purpose is condemned, the faith of the vow broken is condemned... finally such women are condemned not because they afterward entered conjugal faith, but because they made void the first faith of continence... Therefore those who say that the nuptials of such women are not nuptials but rather adulteries, do not seem to me to consider sufficiently sharply and diligently what they say; for the likeness of truth deceives them. For because those who do not marry by Christian holiness are said to choose the marriage of Christ, hence certain persons argue, saying: if a woman who marries another while her husband is living is an adulteress, therefore while Christ is living, she who had chosen marriage with him, if she marries a man, is an adulteress. Those who say this are indeed moved sharply, but they pay little attention how great an absurdity of things follows this argumentation"; the absurdities follow. He proceeds: "But through this less considered opinion, by which they think that the marriages of women fallen from a holy purpose, if they have married, are not marriages, a not small evil happens: that wives are separated from husbands, as if they were

adulteresses and not wives; and when they wish to restore them, once separated, to continence, they make their husbands true adulterers, when, while their wives are living, they have taken another. Wherefore I cannot indeed say that women fallen from a better purpose, if they have married, are adulteries, not marriages; but plainly I would not hesitate to say that falls and ruins from the holier chastity which is vowed to the Lord are worse than adulteries."

From these words of Augustine you have, first, in what sense formerly the unions of religious women with men were said to be adulteries, namely because the nuptials were null; and Augustine therefore abstains from this manner of speaking. Moreover this manner of speaking was not only that of certain persons, but rather common, as is clear from the testimonies brought forward. But what is to be said concerning the sentence of Augustine? A suitable response is that by this opinion of Augustine only this is proved: that in his age it had not yet been universally received or established by a universal law that such nuptials are null, which we do not contend. But it is not proved that this had not been admitted in many places. This alone we contend, that in not a few places it had been established; which indeed, as we warned, the very testimony of Augustine confirms. But what is reported from Epiphanius (Haer. LXI, c. 7), Basil (first canonical epistle, cn. 7), and Leo (epistle to Rusticus, response 14), pertains to monks, concerning whom we do not have testimonies so clear, nor do we dispute.

VII. Therefore it is established that in the first centuries of the Church this sentence flourished in the Church: that the nuptials of girls after virginity solemnly consecrated to God are not merely illicit, but also null; that there indeed existed some who thought otherwise; but that this does not derogate from the antiquity of the law, but only from its full universality, which, in a matter not yet constituted by a certain canon for the universal Church, everyone sees can have place. This being posited, no difficulty arises from Bernard (*On Precept and Dispensation*, c. 17), who does not wish to pass judgment on the sentence of Augustine which we have reported, and on the manner in which Gregory the Great acted toward a certain monk Venantius.

It is established, further, that in a business of this sort Emperors or Kings vindicated no part for themselves; for no secular laws concerning this matter had been issued before the cited decrees of the Church. Wrongly, therefore, did Launoius derive this impediment from the imperial law cited by the Synod of Tours.

The whole question therefore returns to this: whether it was constituted by divine or ecclesiastical or apostolic right. But from the very fact that this law was not immediately admitted by all and that discipline was once varied, it is sufficiently established that this impediment was introduced by the authority of the Church; especially since not every vow of chastity induced this effect, as is clear from the words of Innocent.

VIII. Certain impediments of affinity and consanguinity, and others, the Church decreed by her own authority. Certainly b) the Council of Elvira, c. 61, established: "If anyone after the death of his wife shall have taken her sister, and she shall be faithful, it pleased that he abstain from communion for five years." At least the prohibition of this matter is contained in this canon. Concerning this canon Francis Mendoza says (*On Confirming the Council of Elvira to Clement VIII*): "The first decree of the Church, as I think, committed to letters, by which it was constituted that matrimony is impeded by affinity, seems to be this one of the Spanish bishops, the ancient Roman law being abrogated, by which it was lawful to contract marriage with the sister of one's deceased wife." This decree indeed

agrees with the Mosaic law, Lev. XVIII, 18, in a certain respect, insofar as there a man is prohibited from receiving in rivalry the sister of his wife while she is still living.

The Council of Neocaesarea, year 314, c. 2, decrees something more concerning the same matter. "A woman, if she has married two brothers, is to be expelled until death. But at death, on account of humanity, if she shall say that, when she recovers, she will dissolve the marriage, she will have penance." If penance is not given except under the promise of separation or dissolution of the marriage, either it is supposed that the marriage itself was in reality null, or by this very canon it is implicitly proclaimed; but the adversaries wish it indeed to be supposed invalid, but by force of another law.

Therefore by what law was this union invalidated? No law of Emperors existed in that age. Launoius indeed brings forward the law *Etsi licitum*, issued by Constantine and Constans Augusti and Julian Caesar in the year 355 (it exists in Cod. Theod. L. III, Tit. 12), which other laws of Honorius and Justinian afterward followed; but all these are later than these canons and later than Basil, who had already not only disapproved nuptials of this sort, but had taught that they are disapproved by the Church and held null, epist. CLX, to Diodorus of Tarsus, in these words: "First, therefore, that which is greatest in matters of this sort, we can object our custom, as having the force of law, because the rules were handed down to us by holy men. But that custom is of this sort: that if anyone, overcome at some time by the vice of impurity, falls into an illicit union of two sisters, neither is it to be judged a marriage, nor are they to be admitted at all into the assembly of the Church before they are separated from each other. Wherefore, even if nothing else could be said, the custom itself would be sufficient for the custody of good." Then he dissolves the sophisms of him who was defending that this is lawful because it was not prohibited in the law of Moses; first warning this with Basil: "whatever things the law says, it says to those who are in the law." Cf. the words of Zacharias R. P. to be cited shortly. Now receive the words of Pius VI in the letters given in the year 1782 to the Archbishop of Trier. "Here especially it can be observed that the impediment itself of affinity in those first centuries (namely, as he says, when the Church was enduring most grave persecutions from Princes) was declared as diriment by ecclesiastical law, as we have from the epistle of St. Basil to Diodorus and from the Council of Neocaesarea, c. 2."

From these things, moreover, we reason thus: the Fathers of the Church prohibited and decreed that marriage of this sort was null even when it was lawful by civil laws, and they judged that there was in themselves the power of prohibiting and invalidating it; therefore by her own judgment the Church constituted this impediment and judged this authority to belong to herself. Moreover the canons of the Council of Neocaesarea were anciently received by the universal Church. You see that we do not assert that the universal Church introduced this impediment in that age, and that it was observed everywhere; this now has nothing to do with our matter. It is enough for us that the Fathers of the Church judged that a right of this sort belongs to Ecclesiastical authority and that Ecclesiastical authority used this right. These two things are established from the Synod of Neocaesarea and from Basil's testimony. But since this Synod was particular, there is nothing wondrous if that custom of which Basil speaks did not then obtain among all.

IX. c) The Council of Epaone in the kingdom of Burgundy, year 517, cn. 30, forbids several incestuous unions and reserves no pardon for them unless they shall have healed the adultery by separation. Among these are reckoned if anyone should take the widow of his brother, if anyone the

sister of his wife, if anyone a stepmother; if anyone is joined to the widow of a maternal uncle, which pertain to affinity. Then also, as regards consanguinity: if anyone should associate himself with a female cousin or niece; to which these words are immediately added by the Council: "that, as we prohibit from the present time, so those (marriages of this sort) which were established earlier we do not dissolve." And they conclude: "Certainly those to whom illicit union is interdicted will have the liberty of entering a better marriage." By these words they signify that they so prohibit those nuptials as to invalidate them, namely so that no bond exists between those contracting thus.

Launoius says with others that the Fathers relied upon the law of Theodosius the Elder, who "forbade paternal cousins and maternal cousins to come together among themselves under the name of marriage," as Ambrose testifies, epist. LX to Paternus, n. 8. It is objected to them that this law was abrogated by Arcadius, law *Celebrandis*, which exists in the Code of Justinian, L. V, Tit. 4, c. 17. Concerning this, see the things which Gothofredus disputes on the Theodosian Code, L. III, Tit. 12, law *Manente*, where he demonstrates that there is no reason why doubt should be entertained concerning that law *Celebrandis*; cf. besides the things we say in the Appendix. But, they say, in either hypothesis, whether it was abrogated or otherwise, the authority of the secular Prince over the matrimonial contract is plain. For if, after the empire of Theodosius the Elder, marriages among paternal cousins or maternal cousins had validity, this must be said to have happened by the authority of Arcadius and Justinian, who abrogated that law. But if these marriages were prohibited, that must be traced back to the law of Theodosius the Elder still in force. This is the same as if you were to say that at the same time two contrary laws could have force. Therefore to those arguing so ineptly, Cardinal Gerdil, in the cited work, skillfully replies with this dilemma. Either the law of Theodosius was revoked, or it was not. If it was not revoked at least until Justinian, as the adversaries themselves confess, it flourished. Therefore if this law had force in Gaul, marriages contracted against that law would have been held null. And nevertheless such marriages were being contracted there, and the Fathers of Epaone, prohibiting those marriages for the future, held those contracted earlier ratified. Therefore those Fathers had no account of the secular law. But if the law was revoked, therefore by force of civil authority those marriages were lawful; and nevertheless the Fathers of Epaone prohibit and invalidate them for the future; therefore again they had no account of secular power. Was there some law of the Goths or Burgundians which the Fathers followed? But one of two things: either the law of that nation prohibited unions of this sort, or permitted them. If it permitted them, the Fathers, invalidating the same, do not follow the law. If it prohibited them, the Fathers, holding ratified those hitherto entered into, contradict the law. Namely, in this fact there stands forth the authority of the Church, which by her own right bears laws concerning the matrimonial contract. The Synod of Auxerre, year 578, cn. 31, established the same thing a little afterward, and later, in the year 721, Gregory II in the Roman Council, and Zacharias in the year 743 in the Roman Council (cf. Appendix), with no mention made of imperial laws, but only of the Mosaic law. But hear the same Zacharias in the epistle to Pepin and to the bishops and nobles of the Gauls, c. 22: "Concerning those who have married two brothers or have taken two sisters, it is contained in the Council of Neocaesarea, c. 2, etc. But we, with divine grace assisting, confirming much more according to the decrees of the preceding Pontiffs, say that so long as generation has known itself, according to the rite and norm of Christianity and of the religion of the Romans, marriages are not to be coupled." You see here that the authority of the Roman See alone exercises force, and that Zacharias makes mention only of his predecessors. Moreover one would like to inquire this of Launoius. Since that law of

Theodosius was abrogated by Arcadius, or certainly by Justinian, who inserted the law *Celebrandis* into his code, did this diriment impediment continue to have force in the Church, or did it cease, so that it was lawful for the faithful to contract such nuptials? If it continued, therefore the marriages of Christians were not bound by that impediment by force of imperial law. If it ceased, since afterward it certainly again had force, just as now it has force, and no other imperial law occurs, but only ecclesiastical law, of which sort, for example, are the canons of Gregory II and Zacharias already cited, the consequence finally is that the Church established impediments by her own judgment.

X. d) The Second Synod of Macon, year 585, cn. 16, declared marriages contracted by widows of clerics invalid. "This also seemed right to us to dispose: that she who had been the wife of a subdeacon or exorcist or acolyte, after he has died, should not dare to associate herself to a second marriage. But if she shall do this, let her be separated and handed over to God in monasteries of girls, so that she may remain there until the end of her life." The Synod of Auxerre, a little earlier, namely in the year 578, had forbidden the same thing, cn. 22, with respect to the widow of a presbyter, deacon, and subdeacon (cf. Natalis Alexander, H. E. sec. VI). Moreover Zacharias R. P. in the year 743, in the Roman Council, established the same thing, cn. 5: "Let no one presume to join to himself in a nefarious marriage a presbytera, deaconess, nun, or monkess, or even a spiritual co-mother. For he who has perpetrated a work of this sort should know that he is bound by the bond of anathema." Now nefarious nuptials are null nuptials. The same Gregory II had established a little before in the Roman Council, cann. 1, 4. No civil law preceded either the Bishops of Gaul or the Roman Pontiff which constituted this; nor do I see by what right an authority which seeks only civil good could constitute this, that the nuptials of those women who have been left by presbyters or deacons, entered into after the death of these men, should be null. This law still flourishes, at least most probably. Cf. Ballerini, *Moral Theological Work*, V, 6, n. 814, 2°.

XI. e) As regards the impediment of abduction, it is indeed established that marriage between the abductor and the abducted woman was forbidden by imperial law (l. un. C. *De Raptu*); but it is likewise established that this law was tempered by the authority of the Church, which permits marriage either if betrothal preceded (Gregory II, Roman Council, cn. 11) or if after the abduction the abducted girl consented (Innocent III, final epistle *De Raptoribus*).

XII. f) As to the impediment of disparity of worship, theologians with Bellarmine (*De Matrim.* L. I, c. 23) judge that it was established by no law, but by universal custom, which after the eleventh century obtained the force and authority of law. But who will deny that this custom is ecclesiastical and had force from the consent of the Church? But Launoius finds a civil origin for this impediment. For the Emperors Valentinian and Valens, in the year 365, carried a law which exists in Cod. Theod. L. III, tit. 14, l. 1, by which it is prescribed that "no one of the provincials, of whatever order or place he shall have been, is to have marriage with a barbarian wife, nor is a provincial woman to be coupled to any of the gentiles." Likewise the Emperors Valentinian, Theodosius, and Arcadius, in the year 388, carried a law "that no Jew take a Christian woman in marriage, nor should a Christian be allotted a Jewish woman in marriage. But if he shall have done this, they wish adultery to be imputed."

But 1° as regards the former law, Gothofredus observes in the same place that gentiles and barbarians are here taken promiscuously and are not so called with respect to faith, but with respect to the Romans, and that they are those who from various nations, following the fortune of the Romans, had betaken themselves to the Roman empire, of which sort were the Alemanni, Sarmatians, Goths, who

served in the Roman army. Moreover from these men it was to be feared lest, with affinities contracted with Romans and supported by these, they might attempt something against the security of the Roman Empire.

As regards the other law which prohibits nuptials on account of disparity of worship, Christians already knew that they could not give Christian girls except to Christians, as Augustine says, epist. 255 to Rusticus. Gothofredus suspects that Theodosius carried this law at the persuasion of Acholius, Bishop of Thessalonica; for it was given at Thessalonica.

Moreover, if you say that these imperial laws were by their own force invalidating unions, it will have to be said that the Church had no account of these laws; for only after the thousandth year did this invalidating force obtain commonly in the Church.

XIII. g) We find the impediment of crime sanctioned in the Synod of Tribur, year 895, in Germany, can. 51, by which it is established that "if anyone has fornicated with another's wife while he is living, then when he dies, by synodal judgment, the illicit approach is closed to him, nor is she further joined to him in marriage whom he previously polluted by adultery." Launoius says that the Fathers of Tribur established this by the authority of Arnulph the Emperor. From where, then, does Launoius gather this? Because, namely, at the beginning of the Synod the Fathers asked of the Emperor with what zeal or with what kindness he would deign to defend the Church of Christ. Namely, to request from a Prince the owed office of defense is to receive authority from the same! But Launoius insists that already before the Fathers of Tribur, Nicholas I signified that this impediment depends on civil law. For in epist. 48, speaking of Waldrada, the concubine of King Lothair, he says that, even if Theutberga, his legitimate wife, should die, by no laws and no rules could Lothair ever be permitted to take Waldrada, the adulteress, as wife without danger to himself. Behold, Nicholas appeals to laws, not to canons. What an inept interpreter! He did not see, of course, that if this depended on secular laws, it would have been open to Lothair, as King, to disregard or abrogate them, for according to Launoius himself the power over marriages belonged to him.

Therefore already in the ninth century this impediment flourished in the Church, and Launoius was able to find no law of the ancient Emperors which confirmed it. Therefore the Church established it by her own judgment.

XIV. h) Gregory the Great, in his epistle to Augustine (Epistles L. XI, ep. LXIV, response 6), permits the English to be joined in the third or fourth generation, the second being interdicted. For he speaks thus. "A certain earthly law (namely that law *Celebrandis* of which we have already spoken) permits in the Roman republic that either the son and daughter of a brother, or of a sister, or of two full brothers, or of two sisters, be mingled. But by experience we have learned that from such a union offspring cannot increase. And the sacred law (Lev. XVIII) prohibits uncovering the turpitude of kinship. Whence it is necessary that now the third or fourth generation of the faithful should licitly be joined to itself. For the second, of which we spoke, must in every way abstain from itself." You hear the Roman Pontiff not very much solicitous what the earthly law had granted, indeed rejecting it. Moreover Gregory established a decree of this sort by his own authority, and without the consent of secular princes in England being asked or awaited.

Therefore. But that this was a dispensation from a law already in force in the Church, Gregory himself signifies in the epistle to Felix, Bishop of Messina (LXIV, ep. XVII, n. 2): "But as to what I

wrote to Augustine, Bishop of the nation of the English, concerning the union of consanguinity, know that I wrote this specially to him and to the nation of the English, which had recently come to the faith, lest fearing harsher things it should recede from the good which it had begun, and not generally to the others. Whence also the whole Roman city was witness to me, nor with that intention did I command these things to be written to them, that after they have been solidly rooted in faith by a firm root, if they are found within their own consanguinity, they should not be separated, or that they should be joined within the line of affinity, that is, up to the seventh generation." Now he who can dispense in a law, no one's consent being asked, can himself properly found the law; because that is an act proper to legislation. Therefore.

Certain learned men doubt the genuineness of the epistle cited to Augustine, among whom is Sebastian Berardi (*Genuine Canons of Gratian*, p. 72, c. 59, sect. 7), whose arguments, however, being rather intrinsic, are of very little value, and he falsely supposes that Augustine found no Christians in England. He who doubts concerning this epistle also doubts concerning the cited epistle to Felix of Messina. But 1° the genuineness of this other epistle is proved by the testimony of John the Deacon, who recites a part of it, L. II, c. 37. Hincmar also often makes mention of it, especially in the little work *On the Divorce of Lothair*, Interrog. 12, near the end. Zacharias the Pontiff manifestly alludes to it in the place cited below. This epistle of Gregory is also found in several manuscripts. These and other things the editor of the works of Gregory has in the notes to that epistle in the Venetian edition. Now 2° from these things it follows that the former epistle to Augustine is also the work of Gregory. The same Hincmar expressly mentions this, epist. 36, n. 15 (ed. Migne), and the same John the Deacon in the same cited place, and Zacharias R. P. in the epistle to Theodore, Bishop of Pavia (cf. Mansi, Councils, Tom. XII, among the epistles of Zacharias, epist. 18). Bede, a witness most suitable in this matter, recites the same, Book I, *History of the English*, c. 27, and it exists in several manuscript codices. But in the Excerpts of Egbert, Archbishop of York, from the year 735 to 771, exc. 137, there is reported the response of Gregory to Bishop Felix which exists in his epistle to him (cf. ibid. the editor's notes and Natalis Alexander, H. E. sec. VI, c. IV, a. 16). But, they say, Boniface, the Apostle of the Germans, who was an Englishman, seems to have been ignorant of it in the eighth century; for thus he writes, epist. 15, to Nothelm, Bishop of Canterbury: "I beseech you that you take care to direct to me a copy of that epistle in which, as they say, the questions of Augustine, Pontiff and first Preacher of the English, and the responses of St. Gregory the Pope are contained, that in the third generation of propinquity it is lawful for the faithful to be joined in marriages, and that you study to investigate with scrupulous diligence whether that above-mentioned writing is proved to be of our Father Gregory or not, because, in the archive of the Roman Church, as the archivists affirm, when sought with the other copies of the above-mentioned Pontiff, it was not found." But Boniface could speak doubtfully for this very reason, although he had previously held it as certainly Gregory's, because namely it was not found at Rome. And although someone might wonder that it was not found at Rome, it would have been more wondrous that Bede, a century later, should have supposed that fiction to Gregory, and that Zacharias R. P. should have made mention of Gregory's epistle to Felix, which necessarily supposes that former epistle. Pius VI appealed to this dispensation of Gregory the Great in the letters given in the year 1782 to the Archbishop of Trier. Cf. the things we shall say concerning this matter in the Appendix.

But what certain men say, that the concession of Gregory the Great pertains to unions entered into by the English in infidelity before baptism, is refuted by the very words of the Pontiff, which establish a

norm for future marriages, and it is refuted by the declaration of the same concession made by Zacharias in the cited epistle to the Bishop of Pavia. Then Gregory the Great speaks of nuptials contracted in infidelity immediately in the response following that concession.

XV. i) At the beginning of the tenth century a grave dissension flared up in the Greek Church because Emperor Leo the Wise had entered into fourth nuptials. For the Patriarch of Constantinople, with other metropolitans, did not wish to approve those nuptials, because they were against the discipline of the Church. Leo wrote to all the Patriarchs that they should wish to define the matter. Then, with Nicholas Mysticus, Patriarch of Constantinople, cast into exile and deprived of authority, he substituted Euthymius, who approved the nuptials. But while the dissension still continued, Nicholas, finally restored by Leo himself, gave letters to the Roman Pontiff, persuading and imploring him not to wish to approve so great a crime. Finally under Constantine Porphyrogenitus, son of Leo, peace was entered into among the Greek Bishops on this condition, that Leo indeed be absolved, just as his son was asking, but for the future those nuptials be prohibited. Now indeed from this fact it is clear that at that age Emperors and Bishops judged that judgment in a cause of marriage belonged not to civil authority, but to ecclesiastical authority, and in reality the Church alone bore the sentence in this matter and ended the cause.

l) In the same century, namely in the year 912, Henry surnamed the Fowler was compelled by Sigismund, Bishop of Halberstadt, to dismiss the woman whom he had joined to himself in marriage, who as a widow had entered a monastery and had received the veil. Again in the year 949, Fulbert, Bishop of Cambrai, with parents and friends begging and threatening in vain, declared that a certain incestuous marriage was to be dissolved, which was to be contracted with the daughter of Isaac, Count of Cambrai.

XVI. m) Near the end of the eleventh century and the beginning of the following, when Philip I, King of the Gauls, while his wife was living, had joined another, that is, Bertrada, to himself, by the authority of Urban II he was compelled to dismiss her. But when the former wife had died, Ivo, Bishop of Chartres, asked or persuaded the Roman Pontiff Paschal II that he should wish to dispense Philip to lead Bertrada (cf. Ivo's epist. 144); but the dispensation was denied. Wherefore Bertrada is said "as a wanton adulterous concubine to have adhered to the king until death." Moreover in cases of this sort there was no dealing with impediments from divine right. Why, then, did secular lords and kings not vindicate for themselves or for secular judges the cognizance of these causes? Why did no doubt arise concerning the authority of the Church?

n) When Robert, King of the Franks, had taken Bertha, his blood-relative, as wife, with the Bishops of the Kingdom consenting, Gregory V, having convoked a council at Rome in the year 998, compelled the King to dismiss the woman whom he had taken and subjected each to penance. Therefore at that age Kings did not judge that marriage was subject to civil authority and that the right of establishing impediments and dispensing in them belonged to themselves; but both the laity and the whole clergy referred this power to the Church alone.

XVII. o) At the beginning of the thirteenth century Otto IV wished to take as wife the daughter of the deceased Philip, who had contended with him concerning the empire. She was joined to Otto in the fifth degree of consanguinity, which was then held as a diriment impediment. Therefore dispensation was demanded from Innocent III, who granted it only after much entreaty. Now indeed here there was question of an impediment not of divine right but of human right. The Kings and Emperors of

Germany were most keen defenders of their own authority, and the nobles of the age defended it even against the very rights of the Church. How did it happen that it came into no one's mind that the power of establishing impediments and therefore also of dispensing from them resides by original and immutable right with the Princes of civil society? Why did Innocent, who granted this by no means gladly, not free himself from this care by responding to Otto that he himself or the civil magistrate could dispense in this matter? Therefore it was certain in that age to all, even to Princes, who were not ignorant of their own rights, that the power belongs to the Church by her own right.

XVIII. p) In the Council held at Tribur already cited, canon 39 has itself thus: "If one of two (a Frank and a Bavarian woman) should contrive to divide one flesh into two and to disjoin the nuptial bond, saying that they had not contracted the rights of marriage according to the law of his nation and therefore could be separated, by canonical institution we define, and by our judgment and the judgment of all the orthodox we establish, that whatever is imperfect in law be perfected and that the right of marriage in no way be dissolved." Therefore these Fathers were persuaded that the value of marriage depends not on civil laws but on the canons of the Church, and that this was the sentence of all the orthodox: that civil laws are to be emended according to ecclesiastical canons; and the Fathers of Tribur used their own authority against civil laws. Therefore.

XIX. q) In the Council of Trent it was asked by the Orators of the Kingdom of the Gauls that, under certain conditions, marriages contracted by children without the consent of parents be invalidated. It was especially dear to them to obtain this. Already in the Kingdom of the Gauls nuptials of this sort had been prohibited by royal authority, and after the Council also, as much as civil authority could strive, it rejected them. We ask: why did secular Kings not invalidate those nuptials? Why did the Tridentine Fathers refuse to accommodate the Princes of the age, and instead condemn by anathema those who would affirm that such marriages are invalid? It is manifest that the certain and common sentence in that age was that the authority of bearing laws concerning the value of the matrimonial contract is only in the possession of the Church, and that the Church herself used this authority when she decreed that those marriages were ratified and valid.

XX. We judge that the monuments brought forward thus far are sufficient for the demonstration of the fact, namely that the Church in every age by her own judgment decreed concerning those things which pertain to the marriage of Christians and the value of its contract. Already from the beginning of the nascent Church her providence manifests itself concerning the marriages of the faithful. Hence it is that Ignatius the martyr says to Polycarp, c. 5: "It is fitting that bridegrooms and brides make marriage by the sentence of the Bishop, so that the nuptials may be according to the Lord and not according to cupidity." And Tertullian (*On Monogamy*, c. 11) is a witness that in his age he who wished to enter marriage asked it from the bishop or the presbyter, and they gave wives and husbands to them. But what perhaps ought to have been placed first must not be passed over: that at the beginning of the third century Callistus, Roman Pontiff, granted Christian women capacity for marriages which by civil law were decreed null; just as learned men gather from the words of the author of *Philosoph.* L. IX, c. 12 (cf. de Rossi, *Bullet. Archeol.*, year 4, p. 27 ff., and Appendix here, sec. III).

Thesis XXX

The power of establishing diriment impediments of marriage belongs to the Church, and it belongs to her by proper right.

I. It is proved first from the fact, that is, from the use of this power. For the Church has always used this right and has judged that she could use it and could bind all the faithful by her laws; but this could not be done if in reality the Church lacked this power; therefore. The major is clear from the preceding thesis; the minor is established from the inerrancy of the Church. For by this constant fact she has at least implicitly taught both that she received this power from Christ, and therefore that this power is truly her own, and she has explicitly prescribed for the faithful a moral norm concerning marriages; if these were destitute of their foundation, that is, of the authority of the Church, the Church would of herself lead the faithful into that which is dishonorable. Therefore from either side an error in a matter of faith or morals would be handed on by the Church; since, therefore, this is repugnant, it follows that the Church by no means lacks this power.

II. The historical truth of this fact, namely that from the beginning the Church enacted laws on which the very validity of the matrimonial contract depended, may also be demonstrated in this way, as it were *a priori*. Namely, all agree that in a well-ordered society there ought to be positive laws by which marriages and the validity of the conjugal bond are ruled and determined; therefore also in the primitive Church laws of this sort were enacted as opportunity required; and therefore there existed an authority which could enact these laws. But now the very nature of the Christian religious society was such that certain laws would specially befit it, impeding marriages, which laws would not be required in other societies; and this is proper to each society, especially a religious one, that certain laws should befit it, both in other matters and also in the matter of marriages. But in the first centuries of the Church who could have been judge in this matter and have enacted such laws? Certainly not the civil authority, alien to the Church and hostile to her. Therefore by ecclesiastical authority itself, which could loose and bind all things that were necessary and useful for the Church, laws concerning marriages, whether simply prohibiting or even invalidating them, were even then enacted as opportunity required.

III. And indeed the reason why this is so is evident. For there surely belongs to the Church a right over sacred things, and to her has been entrusted the administration of the Sacraments; but Christian marriage is intrinsically and essentially a sacred thing and a Sacrament; and to the administration of this Sacrament there also pertains the constitution of diriment impediments, or the assignment of a form for the validity of the act. For the right of administering the Sacraments, apart from the matters and forms instituted by Christ, extends itself to all those things which are necessary or fitting that the Sacrament be celebrated rightly; and it is necessary, or at least especially fitting, that certain unions not only be prohibited, but also be invalidated; and this invalidation does not change the form and matter of the Sacrament, but posits antecedent conditions by which there can exist a contract which is the matter and form of the Sacrament, as we shall demonstrate more fully in the following Thesis. Therefore this right is contained in the right of administering the Sacraments; therefore.

IV. Moreover, we teach that not by concession or permission of the civil authority, and much less from an unjust usurpation, but from her own and innate power immediately received from Christ,

the Church establishes and can establish diriment impediments of Christian marriage. The adversaries, namely, say that this right is proper and original to the civil principate; that secular princes, however, conceded to the Roman Pontiff and to the Church the exercise of this right. But let it be observed that the Church has so exercised this right that she has used it even when princes were unwilling. Therefore the adversaries must say that princes so conceded to the Church the exercise of that right that they established that they themselves would no longer use it.

The doctrine which we defend is of faith, asserted by Pius VI in the Constitution *Auctorem fidei*, who not only teaches that doctrine, calling the contrary heretical, but also teaches that it is contained in canons 3, 4, 9, and 12 of Session XXIV of the Council of Trent. Moreover the magisterium of the Roman Pontiff is infallible when, functioning in the office of Pastor and Doctor of all Christians, by his supreme Apostolic Authority he defines doctrine concerning faith or morals to be held by the universal Church (Vatican Council, Session 4); and certainly Pius VI does this in this Constitution. Thus he says in n. 59: "The doctrine of the Synod asserting that it belongs originally only to the supreme civil power to place impediments upon the contract of marriage of that kind which render it null and are called diriment... adding that, supposing the assent and connivance of princes, the Church could justly constitute diriment impediments of the very contract of marriage, as if the Church had not always been able and were not able, in the marriages of Christians, by proper right to constitute impediments which not only impede marriage but render it null as to the bond, by which Christians are held bound even in the lands of infidels, and to dispense in the same: a doctrine subversive of canons 3, 4, 9, and 12 of Session XXIV of the Council of Trent, heretical."

V. Indeed canon 4 of Trent is: "If anyone shall say that the Church cannot constitute diriment impediments of marriage, or that she has erred in constituting them: let him be anathema." And canon 3 says: "If anyone shall say that only those degrees of consanguinity which are expressed in Leviticus can impede the contracting of marriage and dirime a contract, and that the Church cannot dispense in some of them or establish that more degrees impede and dirime: let him be anathema." Now it is clear that those canons are dogmatic by the same demonstration which we gave in Thesis XXVIII, part II. Therefore in them there is asserted a truth to be believed, not indeed some truth of dogmatic fact, for the discourse is not about a fact but about a right; nor some truth natural in itself and connected with a revealed truth, for here there is no indication of such a connection; and indeed, since the matter concerns the power of the Church, although this can in some instances be determined also by the law of nature, nevertheless it must also be wholly contained in revelation, from which we have received the Church and all her properties and power. Therefore by these canons there is asserted the revealed truth of the Church's power of establishing diriment impediments, which for that reason is a truth to be believed with divine faith. But the power of the Church which must be believed with divine faith must be her own, belonging to her by divine right, not something adscititious from the concession of princes; therefore. The minor is proved. That which is to be believed with divine faith must rest upon divine revelation; but a delegated power of the Church from princes would rest only upon that right on which the power itself of princes rests, namely a natural or social right, and indeed one not very evident, since it is not yet most certain among all that princes have the right of making laws of this sort which touch the validity of marriage. But things drawn from these natural sources are not proposed to the faithful as to be believed with divine faith. 2. If this power of the Church were not her own, but existed from the concession of princes, that faculty could be revoked by princes and the Church thus could lack that power, and therefore then the

definition of the Church would be false and would no longer have to be believed; but a dogma of faith can at no time be false; therefore.

But that in this hypothesis that faculty could be revoked by princes is manifest. For in this hypothesis such a power would be proper to the civil principate in itself for the good of civil society; but such a power necessarily inheres in the civil power, so that, although a prince can concede the exercise of it to another, nevertheless 1. he cannot divest himself of that power, because it necessarily remains while the civil authority remains, for it is an essential element of it; 2. he cannot so concede the exercise that he takes away from himself the faculty of revoking the concession. For although certain rights not essential to a society or to a social authority can be renounced by a prince without the authority itself ceasing, and can be so renounced that what has been conceded to another not inferior can no longer be reclaimed, this cannot be said of rights essential to a society or social authority, of which sort would be the right of using the power of establishing impediments, so that while the social authority itself remains, it would lose these rights. And indeed that which is for the good of society is not so much the power as the exercise to which the power is ordered; therefore, just as the prince himself perseveres as the one who by right can and ought to consult for the good of society and does so by the use of his authority, so there always remains in him the right of revoking the concession, when he judges that its use is not conducive to the good of society.

Besides, the proper right of the Church independent of the civil authority, or what is the same, the divine right by which the Church acts, becomes manifest from the fact that this power and its exercise always have been and are in the Church, even under infidel princes. Cf. the preceding Thesis. For if this power inhered and also inheres in the Church when either the whole Church herself or that part of the flock over which it is exercised is under the dominion of infidels and enemies, it cannot be said that the Church borrowed it from princes. Thus indeed Pius VI argues in letters given in the year 1782 to the Archbishop of Trier: "Since at no time could or can a dogma of faith have been false, it is necessary that from the origin of the Church and in every time already past it was true, and in every subsequent age it will be true, that the Church possesses that power which is asserted by the Council. But if at least a tacit concession of princes were required for having that power, it would follow that this could not have been true in the first times of the Church under princes who were, of course, pagan, nor could it be true at this time in those places in which Christ's faithful dwell under the dominion of infidels. And if, for some reason of state, as they call it, princes, after revoking that indulgence which is alleged, could abrogate the impediments sanctioned by the Church, it could happen that what was defined by Trent would cease to be true, and this monstrosity would exist, that at some time it would have to be said that the Church cannot do what the Holy Spirit, by the oracle of an ecumenical Synod, declared that the Church can do."

VI. Besides, that right cannot be judged to have been received from princes which the Church exercised against those very princes, though they were by no means unresisting, without this exception being heard: that in matrimonial causes secular princes are the supreme judges. For this certainly would have happened if ecclesiastical authority had used this right from the concession of princes.

VII. And indeed, if this concession was made, let it be taught at what time and by what prince it was made. This right certainly was not conceded in the first centuries of the Church before Constantine, as is sufficiently clear. Nor can it be affirmed that that concession was made in that space of time

which intervened between the beginning of the fourth century and the Middle Age; for in that age the adversaries themselves note that the Emperors sanctioned impediments of marriage by their own laws. Moreover the Middle Age, in which very great controversies between the Church and the Empire arose and were never fully extinguished, while the Emperors were claiming for themselves rights most of all undue, not merely civil but also sacred, forbids us to think that the Supreme Princes conceded to the Church a faculty of this kind, or, if some conceded it, that others did not revoke it. Let the name of one prince who conceded this privilege to the Church be recited, if it can be done; let one act of concession be brought forward from some monument of antiquity: nothing has thus far been produced in public.

And in truth the fable of that concession has been invented quite ineptly. For either one prince conceded it on behalf of all, or all did so singly; then either that one or those others conceded it for their own age only, or for all subsequent ages. But not one on behalf of all; for there never existed one to whom all Christians, as far as the world extended, were subject. Not all singly; for otherwise, from so many monuments which would have existed of this fact, some one surely would survive for us. But if the concession made by them was temporary, which, with the death of the one conceding intervening, ought to expire, it is necessary that there have been composed as many acts of this concession as there were princes; and yet from these let the Jew Apella believe that none survives. But now we have seen that it was not in the power of princes, if that right is their own proper right, so to abdicate it that they took away from their successors the faculty of using the same right; therefore.

VIII. Nevertheless the adversaries set forth certain things which need a solution. They argue first from St. Ambrose, who (Epistle LX to Paternus), when he gathers all the things by which he can dissuade Paternus from wishing to give to his son as wife a granddaughter by his own daughter, has no ecclesiastical law which would prohibit it, but partly from Leviticus and natural equity, partly from the imperial law of Theodosius, draws an argument by similitude for disapproving that marriage. For which reason, at that age Ambrose judged that the right of decreeing impediments of marriage was situated not in ecclesiastical but rather in imperial power.

I answer. Ambrose, after showing from natural equity that this marriage is illicit and that there is no room for doubt about this matter, adds: "For what is there that can be doubted, since the divine law also forbids paternal cousins, who are joined to each other in the fourth degree, to come together in conjugal union? But that degree is the third, which even by civil law seems to be excepted from the fellowship of marriage. But first let us ask the decrees of the sacred law; for you allege in your letters that by divine law a marriage of this sort with such pledges of affection is thought to be permitted, because it is not prohibited. But I assert that it is prohibited, because, since lighter things are forbidden concerning paternal cousins, much more do I judge this, which is full of a closer relationship, to be forbidden. For he who binds lighter things does not loose heavier things, but binds them... Is it therefore lawful because it is not prohibited (expressly?) By no means. For it is forbidden by the law of nature, it is forbidden by the law which is in the hearts of individual persons, it is forbidden by the inviolable prescription of piety, by the title of relationship. How many things of this sort will you find not forbidden by the law issued through Moses, and yet they are forbidden by a certain voice of nature?... But if divine things pass you by, at least the precepts of the emperors, from whom you have received very ample honor, ought by no means to have passed you by. For the

emperor Theodosius also forbade paternal cousins and maternal cousins to come together among themselves under the name of marriage, and he established a most severe penalty if anyone should have dared to violate the pious pledges of brothers; and yet they are mutually equal to one another," otherwise than an uncle and niece, of which sort were those whom Paternus wished to join together. The argument of Ambrose drawn from positive law is this: sacred or divine law and imperial law prohibit marriages to be joined between paternal cousins and maternal cousins; therefore also the marriage of an uncle with a niece, between whom there is a closer relationship, ought to be judged prohibited. He adds that the third degree also seems by civil law to be excepted from the fellowship of marriage.

It is asked what this divine or sacred law is, to which the holy Doctor appeals. In the first place, it is clear from the very argument set forth that for Ambrose the divine and the sacred law are the same; but this law, to which Paternus himself appealed, seems able to be judged no other than that which is contained in Leviticus; for afterward, speaking of the same law, Ambrose simply calls it the law and the law of Moses. But the difficulty is that in the Law of Moses that prohibition, that paternal cousins and female cousins may not come together in conjugal union, is not found. Why did Ambrose not rather appeal to the similar law of Moses prohibiting the marriage of a woman with her paternal uncle, Lev. XVIII. 14? Therefore either the divine and sacred law is some law of the Church, or Ambrose seems to have suffered a lapse of memory.

For the rest it is clear 1. that Ambrose does not seek from the law of Theodosius the demonstrative force of the dishonorableness of that marriage which Paternus was attempting; for that law speaks of another matter, nor could he have shown from that law that that marriage was null, because again that law regarded other marriages. But from that law Ambrose gathered only a persuasion, and he presses it as it were *ad hominem* against one who was thought to be unwilling to admit what would not be approved by Theodosius, since he had received very ample honors from him.

2. As to the argument taken from civil law, when Ambrose says that this third degree also seems by civil law to be excepted from the fellowship of marriage, it must be noted that among the fragments of the jurist Ulpian, who under Alexander Severus was praetorian prefect, this is found, Title V: "among kindred in the transverse degree, formerly indeed marriages could not be contracted as far as the fourth degree; but now from the third degree it is lawful to take a wife, yet only the daughter of a brother, not also of a sister, nor a paternal aunt nor a maternal aunt, although they are of the same degree." See the Observations of Cujacius, book 13, chapter 15. The same Cujacius in the Code, book V, title 5, says: "In the Pandects you will nowhere find among illicit marriages the marriage of a paternal uncle with the daughter of a brother brought forward. Today indeed they are illicit, I admit (from the law of Diocletian, Cod. law 17, title 4, book V). For a long time they were licit; nevertheless it was never lawful for a maternal uncle to marry the daughter of a sister, which is strange." But this is the case proposed to Ambrose by Paternus; and hence it is apparent why the holy Doctor said that this third degree seems to be excepted also by civil law.

Nevertheless, with these things posited, it seems rather to us that from this whole history an argument is to be gathered for the doctrine which we defend. Indeed 1. Paternus, certainly a man skilled in the laws, when the matter concerned marriage, consulted not the secular laws or judges,

but his own Bishop, and, when he was uncertain, Ambrose; nor does he mention any civil law, but only the divine law, although the civil law already clearly proposed, namely the law of Diocletian and Maximian (Code of Justinian, loc. cit.), was openly opposed to that marriage. Therefore Paternus and his Bishop did not judge that the marriages of Christians were bound by civil laws; for, once that law was posited, no question would then have remained. 2. Ambrose himself certainly knew this same disposition of civil law; and nevertheless he only casts in a mention of it, without solving the question from it, but adduces other arguments to prove his opinion and presses especially the law of Theodosius, which did not properly pertain to the matter, but by which Paternus could be persuaded that Theodosius did not approve that marriage; and Ambrose judged that this would be especially effective for deterring Paternus from that marriage. In sum, Ambrose gathers only suasive arguments and does not solve the question by the authority of civil law. These things must certainly be explained by those who contend that in that age Christians were persuaded that the power of making laws concerning the marriages of Christians belonged to the civil principate. For to us, on the contrary, they are an argument that the faithful of the fourth century, no otherwise than the Church of the nineteenth century, judged that a power of this sort resided with the Church alone.

3. Why, therefore, does the holy Doctor not appeal to a law of the Church? But we have indeed proved that from the beginning the Church had power and exercised it over the marriage of Christians; we have not, however, affirmed that already from the beginning she constituted all impediments. Therefore from the silence of Ambrose only this could be consequent: that, since such unions were sought so rarely, that law had not yet been enacted by the Church. But from the fact that Ambrose's response does not rest upon the civil law already then prohibiting those nuptials, there is gathered a certain argument that he himself did not judge that the marriages of Christians were to be ruled by civil law.

IX. They argue from Augustine, who (*De Civitate Dei*, book XV, chapter 16), in order to exclude marriages of cousins, amplifies several congruences of equity and brings forward no ecclesiastical law, but only a recent civil law, by the force of which he signifies that it came about that those nuptials were illicit. "We have experienced," he says, "in the marriages of cousins, even in our times, on account of the degree of kinship next to the fraternal degree, how rarely that took place through custom which was permitted to take place through laws; because divine law did not prohibit it, and human law had not yet prohibited it," that is, the law enacted by Theodosius.

I answer. What can be deduced from Augustine's words is this: 1. before Theodosius the Church had not prohibited those nuptials, or at least Augustine did not know this prohibition if it had been made somewhere; 2. even when that law did not exist, those nuptials were rarely undertaken by the force of customs; 3. but they ceased to be contracted after they were forbidden by human law. But 1. it is not certain that those among whom they rarely occurred were Christians; for Augustine speaks universally of the men of his own age, in which many pagans still existed; and therefore 2. it cannot be gathered from Augustine's words that Christians abstained from those nuptials by the force of the imperial law. Much less 3. can it be inferred that Augustine did not judge that the Church could prohibit and invalidate those nuptials; for he only narrates a fact, he does not dispute about right. Hence it is indeed permissible to infer that the Church had not yet enacted that law, but not that she could not enact it, or that the authority of the Church was not needed in order that that law be valid for Christian marriages, as we shall demonstrate in Thesis XXXII. With this posited, under the name

of human law, which is opposed to divine law, the positive law of the Church also can be comprehended, or either of the two, ecclesiastical or civil, can be signified; wherefore by that distinction Augustine does not teach that marriages can be prohibited only either by divine law or by the human law of civil society, but either by divine law or by human law, whether civil for infidels, or ecclesiastical for the faithful, and this latter either decreeing by itself or approving the civil law. But as to the fact concerned, since the only human law then existing was civil, and it was valid for infidels, in Augustine's context the expression "human law" is supposed historically for civil law alone. Unless, which it was not necessary for Augustine to report, there was added the approbation of the Church, which wished Christian marriages to be bound by that law.

X. It is objected in vain that Athenagoras in the *Legatio* professes that Christians take a wife according to laws laid down by the Emperors.[1] For he does not say that these laws are valid for Christians apart from the approbation of the Church, and that apart from it Christians take wives. But he simply affirms only this, that is, the fact, which was conducive to the end intended by him, namely the defense of Christians. For neither could he deny that Christians entered marriage according to the judgment of the Bishop. In vain also is there brought forward the canon of the Council of Carthage (p. 154), in which, after second marriages while the former spouse is living have been prohibited, the Fathers say that an imperial law is to be sought and promulgated; for this is nothing other than an imploring of the secular arm for restraining the contumacious. Indeed that prohibition is divine, and it does not need the confirmation of human power. In the same way one must take what is found in the laws of the Lombards: King Luitprand, prohibiting the marrying of the widow of a cousin or of a second cousin, says, "because, with God as witness, the Pope of the City of Rome by his letter exhorted us that we should in no way permit such a marriage to be made"; for this exhortation did not tend to this, that the King himself should establish a diriment impediment, but that he should conform himself to the Church by not permitting, namely, what the Church prohibited; and this permission, although invalid, would have been an occasion of scandals. Moreover, it is an indication of prudence and modesty in the Pontiff to use exhortation without command; it is not a defect of power. Nor does canon 5 of the Lateran Council in the year 1123 help the cause of the adversaries: "We prohibit unions of blood-relations from being made; because both divine and secular laws prohibit them. For the divine laws, doing this, not only reject them and those who spring from them, but call them accursed; but the laws of the age call them infamous and repel them from inheritance. We, therefore, following our fathers, mark them with infamy and judge them to be infamous." First indeed, the Fathers of this council say that in making the decree they follow their fathers; but Bishops gathered into a Synod do not call any but preceding Bishops and Doctors of the Church their fathers, not laymen or emperors. Then the divine law which prohibits the unions of blood-relations can be understood both as that which is contained in Sacred Scripture and as that which has been constituted by the Church. But these Fathers follow their own fathers when they themselves decree that those whom the former had called accursed are infamous.

[1] The published reading indeed has ὑφ' ἡμῶν; but not a few learned men judge that ὑφ' ὑμῶν should be read (that is, by the emperors), with whom we agree not unwillingly.

The arguments which are brought forward from laws enacted by emperors on this matter and from the deference of the Roman Pontiffs toward them we shall dispatch in the following theses.

XI. Van Espen (*Ius Eccles.*, tom. 1, part 2, title 13, chapter 1, § 20) says: "We do not in any way doubt that the Church has authority for introducing similar (diriment) impediments, as has been defined by the Council of Trent; but this also must be admitted, that the Council did not define whether this authority of introducing diriment impediments belongs to the Church from the institution of Christ, or whether from the tacit or express indulgence of princes." Yet these things are said most shamelessly. For the Church does not sanction as a dogma of faith that which is mutable and can become false; but if the power of the Church in establishing impediments is from the concession of princes, it can cease, and therefore the assertion that that power belongs to her can become false. Therefore by the definition itself that mode of having that power is excluded.

XII. We have proved that such a power belongs to the Church by her own right, not from the concession of princes. But the reason why it belongs in this way is at hand. For by proper right, derived immediately from divine institution, there belongs to the Church power over sacred things; since, therefore, the Christian matrimonial contract is a sacrament, by divine right the Church has the power of establishing all things which are necessary that it take place honorably and validly. But this power over sacred things is independent of any civil power, as is proved in the treatise on the Church; therefore.

Corollary I. Therefore inept are those who, being unable to bring forward any document by which the formal concession of princes or their explicit consent in favor of the exercise of ecclesiastical power is proved, have recourse to tacit consent, which would have bestowed force upon the laws of the Church. For in order that such a tacit consent be affirmed, it is necessary that the authority of the civil principate be required for the validity of the act; but it is established that this very authority is not required for the validity of ecclesiastical laws with respect to impediments of marriage; therefore this consent, which can do nothing, is wrongly invented here. Besides, tacit consent is ineptly supposed when the one who is said to consent resists as much as he can; but not rarely in past centuries princes resisted the authority of the Church over marriage as much as was in them, either by opposing her decrees or by wishing to bring her to define what pleased them; therefore.

Corollary II. Therefore it is much more false that the exercise of this power in the possession of the Church is a usurpation of the power of laymen; indeed this affirmation is a heretical blasphemy.

Thesis XXXI

Although the secular Prince has the right of making laws concerning the civil conditions and effects of marriage, it does not, however, follow that he has the right of making laws concerning Christian marriage itself.

I. We wish to dispatch this question before we demonstrate that the right of prescribing the form for the validity of the matrimonial contract among Christians belongs to the Church alone, so that that demonstration may be fuller and more evident. In marriage, indeed, the essentials must be distinguished from the accessories. The essentials are consent, the indissoluble bond, the right and duty of dwelling together, the offspring being legitimate, that is, born from a just marriage, and the right of parents over children according to the very laws of nature. The accessories are those things which are added to marriage, without which marriage itself can exist, as dowry and those things which are called rights or effects, both civil and ecclesiastical, according as they have force in either society (for even in the Church these have a place, of which sort is, for example, that bigamists cannot be ordained); of this sort are capacity for obtaining public offices or duties, a certain determinate right of paternal power, the right of offspring to inheritance, participation in the status and honor of the parents, the faculty of making a will, etc. For the dispenser of these goods is the supreme power of the society to which they pertain; and since they are not essential to marriage, there is no need that they be determined by that power to which the essence of marriage is subject. Indeed, since according to the different character of civil societies one and another communication of these goods can befit each society, the determination of rights and effects of this kind ought to be in the possession of the individual civil authorities.

II. But in order that civil authority may rightly decree concerning these civil conditions or effects, there is no need that it itself have the right of making laws concerning the very bond of marriage and of prescribing the form for the validity of the contract itself; rather, without this power it can stand wholly intact. The reason is that the exercise of power concerning all these things by its own nature supposes a true marriage already existing; but the end for which this power is exercised is not the intrinsic perfection itself of marriage, but the extrinsic good of society, which, true marriages being indeed supposed, can nevertheless be obtained from them in many ways. Therefore, according to the character of the society and the different conditions in which it is placed, there is room for diverse determinations of effects of this kind, so that the end intended by the society may be obtained more suitably. Thus, although there may be a true marriage between a Prince and a handmaid, nevertheless it can be established that a son born from her does not succeed to the kingdom; thus it can be established that those who marry a fourth or fifth time are rejected from certain duties and honors, just as the Church rejects those who marry a second time from sacred orders. In establishing these laws the essence of marriage is not touched; nor, in order that the good of society be consulted, is there need to establish that there is no marriage between these persons; rather, it is enough to decree that marriages of this sort lack certain rights and do not produce certain effects. And indeed, since all these things are accessories of marriage, they of themselves suppose that its existence has already been constituted; and therefore, in order that some power concerning them be exercised fully, the exercise of its acts can begin from the supposition of a true marriage. Therefore, since power concerning accessories of this kind can be exercised fully, the essence of marriage already constituted

being supposed, if it is proved from another source that Christ has withdrawn the bond of Christian marriage from the civil power and has claimed it for the religious power alone, which now is nothing except the ecclesiastical power, it will follow that nothing remains to civil authority except the power of decreeing concerning civil rights and civil effects, with the truth of marriage according to the laws of the Church being supposed. And so, in determining these civil rights and effects, civil authority stands toward religious authority as it would stand in the state of pure nature toward natural right; namely, just as it is not repugnant that that power should suppose the law of nature concerning the essence of marriage, nor is it demanded that the same power be able to make valid marriages which natural right reproves, so it is not required that it itself be able, against the right of a higher authority, to decree that some marriages are valid or invalid.

Therefore, once the reason of the civil good has been considered, it is lawful for the Prince to deny civil rights or civil goods to certain marriages valid in themselves. Nevertheless it would be most unjust and most base to assert civil goods equally for an invalid marriage, or concubinage, as for a valid one.

Thesis XXXII

The Church alone can posit impediments diriment of Christian marriage; that is, the civil power has no right innate to itself of establishing diriment impediments which affect the very bond of Christian marriage.

I. We are speaking of those impediments which prohibit the bond from existing. When there is discourse about the right of the civil power, the right is understood which is proper to it, flowing from its nature. We prove first that the matter is so, namely that the Church alone has this right. Pius VI proposed the Catholic doctrine in the Brief of September 16, 1788, to the Bishop of Motula, who, after receiving from the king a delegation in the grade of appeal from the judgment of the Neapolitan Bishop in a matrimonial cause, had issued a sentence and had declared that the laws of the Church and of the Holy See would have had no force unless, "after the Gregorian Code had spread through all the provinces of the Catholic world, the civil authority had been added, by only the tacit consent of the supreme powers, whose office it was to make laws concerning nuptials." The principal scope of the Brief is instruction in doctrine. "Receive now, Venerable Brother, the paternal voice of him who, as you know well, since by divine mercy he sits in the Chair of Peter, has the right conferred by the supreme authority of Christ Himself of teaching and confirming; for we are disposed in mind in such a way that we wish both to deal with you lovingly and kindly to admonish you, that you may recognize the error into which you have miserably fallen, and may bring your mind as soon as possible to correct it." Moreover he speaks thus: "It is a dogma of faith that marriage, which before the coming of Christ was nothing other than a certain indissoluble contract, after the coming of Christ became one of the seven Sacraments of the Evangelical law... Hence it comes about that to the Church alone, to whom the whole care of the Sacraments has been entrusted, there belongs every right and power of assigning her own form to this contract elevated to the higher dignity of a Sacrament, and therefore of passing sentence concerning the validity or invalidity of marriages"; and this indeed he confirms by the authority of canon 12 of Trent, whose words he teaches must be interpreted so that "it comprehends and embraces all causes,... and that all these must belong uniquely to ecclesiastical judges." Then he says: "This right (namely of making laws concerning nuptials), as far as the Catholic world extends, resides whole in the Church alone." Then, indicating to him the penalties to which he had made himself liable, he appeals first to canon 12 of Trent, "by which all those are subjected to anathema who deny that matrimonial causes pertain to the Church and to ecclesiastical judges; by which canon it is certain that not only those are comprehended who teach that making laws concerning nuptials belongs to the supreme powers of this age, but also those who confirm this very thing by deeds, and who obtain authority from the lay power, and who define causes of the nullity of marriage as royal delegates." Wherefore the declaration of this truth pertains to the substance of the Pontifical Brief, whether when it teaches or when it then decrees penalties. But Pius VIII, in the Encyclical *Traditi humilitati* to all Patriarchs, Primates, etc., May 21, 1829, commands that the Christian people be carefully taught "that marriage must be ruled not only by human law but also by divine law, and that it must be numbered not among earthly but among sacred things, and therefore must be wholly subject to the Church." Whether the context is considered (that it is a sacred thing, wholly subject to the Church), or the doctrine of Pius VI is compared, it is clear that the former words of Pius VIII yield only this sense: that Christian marriage must be ruled by that

law which is not only human but also divine, of which sort the ecclesiastical law alone is. Therefore the Roman Pontiffs have proposed their opinion openly enough, functioning in the office of Doctor and Pastor of all Christians; for Pius VI speaks from the right of teaching and confirming conferred on him in Peter by Christ, which is the right of primacy, the right of universal magisterium. This right, indeed, need not be exercised toward all at once, but can and must also be exercised toward individuals, namely, those must be confirmed who need confirmation; nor does the authority of this magisterium depend on those to whom it is addressed, but on the person, or the dignity of the person, from whom it proceeds. Moreover he hands down doctrine of faith as intimately connected with the definition of the Council of Trent, which he authentically interprets. But although the same Pius VI, a few years earlier, that is, in 1780, in a letter to the Archbishop of Mechlin, had said that he did not condemn absolutely those Catholic Doctors who had asserted that the prince can add impediments for rendering ineffective and taking away matter apt for the sacrament, nevertheless this does not prevent him from afterward proposing Catholic doctrine by the authority of his Apostolic magisterium. But this doctrine, so expressly proposed by the Holy See, is evidently proved.

II. Indeed 1. The Tridentine canon is canon 12 of Session XXIV: "If anyone shall say that matrimonial causes do not belong to ecclesiastical judges: let him be anathema." Moreover a) the legitimate interpretation of this Canon is that all matrimonial causes are comprehended and that all these belong to ecclesiastical judges alone. For first, that is the authentic interpretation of the supreme legislator; for Pius VI established that it is to be so interpreted in the cited Brief. Then it is proved by reason. And indeed it is clear that all causes are comprehended. For that indefinite expression "matrimonial causes" in the words "if anyone shall say that matrimonial causes," etc.,[1] can be explained in one of these ways: namely, either "if anyone shall say that some cause does not belong," etc., or "if anyone shall say that all causes do not belong," etc., or "if anyone shall say that not all causes belong," etc. But if you take it in the first way, then the truth of the contradictory is consequent, that is, all causes do belong. If in the second way, then this proposition is false: "all matrimonial causes do not belong to ecclesiastical judges"; but now its contradictory is: "some cause does belong," etc.; and its contrary is: "all causes do belong." Which, then, would have to be judged defined? Only the contradictory? But what is this "some cause"? And since this is unknown, what would this canon be worth for practice? Then, are legislators accustomed to speak in this way, when they wish to vindicate to themselves alone the arbitration of some matter, so that they use indefinite terms? Therefore, even in this second hypothesis, that proposition would have to be said to have been established: "all causes belong," etc. If you take it in the third way, the proposition "not all causes belong" is condemned, whose contradictory is: "all causes belong." Therefore in reality "the words of the canon are so general that they comprehend all causes" (Pius VI, loc. cit.). Besides, the reason why these causes belong to the Church is, according to the mind of the Council, with Pius VI as interpreter, because marriage is a sacrament, and no other reason can be assigned; but this reason applies to all causes; therefore. But if all causes belong to ecclesiastical judges, then they belong uniquely to them. For if at least some causes belonged also to the tribunal of the Prince, these would belong either independently of the Church or dependently. If the first, either it would be false that all belong to the Church, or the absurdity would be had that two supreme powers, in the same matter and concerning the same subjects, possess the same right; concerning which hypothesis also below. If the second, then this is not the hypothesis of the adversaries, and then it would always be true that those causes belong to ecclesiastical judges alone, since all power would be derived from them. Now

truly b) from this it follows that the power of positing diriment impediments of Christian marriage is by native right in the possession of the Church alone. For the power which takes cognizance of causes of contracts and which prescribes a form to the same is the same power, the power of the supreme Legislator in a society, which is one. Therefore.

[1] Note that an indefinite proposition of itself is equivalent to a universal proposition.

2. The Tridentine decree *On the Reform of Marriage* says: "It is not to be doubted that clandestine marriages made by the free consent of the contracting parties are valid and true marriages so long as the Church has not made them invalid, and therefore those are rightly to be condemned, as the Holy Synod condemns them with anathema, who deny that they are true and valid." Here the matter concerns right: marriages are valid if the Church does not invalidate them. It concerns truth, for those who deny it are condemned. Therefore a dogma of Faith is established. But this was always and everywhere true, and will be true, and can never be false. But it could be false if the power of establishing diriment impediments also belonged to princes; for when these were established by them, the marriage would be neither true nor valid, although the Church had not invalidated it.

3. If a proper right of establishing impediments for marriages of Christian subjects belongs to the civil power, that right is independent, just as the civil power itself is independent - independent, I say, in its own order - so that for Christian marriage, insofar as it is, as they say, a civil contract, the civil power could independently establish impediments, just as the Church can independently constitute impediments for the same marriage insofar as it is a Sacrament. Therefore we would have a twofold independent power concerning the same thing, indeed under a different respect, yet in such a way that numerically the same reality would be equally subject to each power. But now it is repugnant that, for the same subject men, the same contract should be subject to two diverse independent powers; but Christian marriage is certainly subject to the independent authority of the Church; therefore it cannot equally be subject to the civil power. Indeed, if each power, ecclesiastical and civil, can establish the form for the validity of the act, each will be able to hold as valid what the other invalidates, and to invalidate what the other holds as valid. Namely, for the same men the same thing will at once be licit and not licit, valid and not valid, than which nothing is more absurd in a society. Nor must recourse be had to some pact which the two powers enter into amicably; for either this pact is necessary, so that both powers are bound to enter into it, or it is not necessary. If it is not necessary, it is supposed in vain, both because it certainly can fail to exist, and because it can always follow from the natures of things that the same thing for the same persons, once that pact has been posited, is at once licit and illicit. But if that pact is necessary, because in this hypothesis one power would need the concurrence of the other, neither would be an independent power in its own order concerning that same object, as certainly the Church is, as we have proved (Thesis XXX), and as the adversaries contend concerning the civil power. Therefore, if the civil power has an independent right of establishing impediments for the validity of the conjugal contract, this will follow from the natures of things: that nothing is certain in society, that subjects are ruled by contradictory laws, that is, that there is no law and no power. And indeed from the Bull *Auctorem fidei*, n. 60, it is clear that the opinion "which attributes to the civil power the right either of abolishing or of restricting impediments

> constituted or approved by the authority of the Church" is "subversive of the liberty and power of the Church, contrary to Trent, proceeding from the heretical principle condemned above" (that the Church cannot by proper right constitute diriment impediments). But if the prince has an independent power of establishing diriment impediments, in reality he can abolish impediments established by the Church; for he can prescribe a form for the validity of the act and establish that form which the Church has invalidated; and once this is posited, the impediment established by the Church would be null. Therefore, together with the proper power of the Church, there cannot at the same time be the proper power of the civil principate.

III. A certain learned man says that it is affirmed by many theologians that the same thing cannot be subject to a twofold independent power, but that this has not been proved, nor ever will be proved. To him one may reply that this indeed is affirmed by him, but without any reason, indeed against every reason. For the matter concerns two social powers which regard numerically the same thing for the same subject persons. But in this hypothesis of a twofold independent power it is evident that the subject can be bound by each power at once by two contradictory laws, and therefore be bound and not bound; that the same action of his can be at once good and evil, valid and invalid; which all will certainly grant to be repugnant. Therefore.

You will ask: could not this hypothesis be possible, namely that the civil power has a proper right of establishing impediments of the marriage of Christian subjects, yet the right is subordinated to the authority of the Church, in the same way as the right of coercing the wicked by bodily penalties, which properly belongs to the civil power (though not to it alone), whose exercise the Church can command in her own favor?

I answer that this hypothesis cannot be possible. For this other right of the civil power is subject to the power of the Church only indirectly; hence it can be exercised without the consent of the Church, and it has its own proper matter, which does not pertain to the Church. But that right of establishing impediments of Christian marriage could certainly never be exercised without the consent of the Church, nor would it have any proper matter which does not pertain to the Church, since the matrimonial contract of Christians is a sacrament.

IV. Wherefore the Church has never approved this power in princes, and she has judged that civil laws constituting impediments diriment of the bond have no value, as Benedict XIV testifies in the letters to the Cardinal of York; and Urban VIII (cf. the place cited below) and Pius VII (in letters given to Napoleon on June 27, 1805) showed the same in the question of a marriage entered without the consent of parents, which the civil law was said to require; and Gregory the Great did likewise, who reproved marriages of cousins permitted by earthly law. Besides, from the historical monuments brought forward in Thesis XXIX it is established that, in matrimonial causes of Emperors or Kings, when the matter concerned impediments also established by positive law, they claimed no authority for themselves, but the Church asserted all authority for herself, both in dispensing from laws and in passing sentences. But this could not have happened if it once had been believed that the power, and an independent power, of establishing impediments was in the possession even of secular princes.

V. But the intrinsic reason of this matter is that which Pius VI teaches in the place cited: "These matrimonial causes pertain to the judgment of the Church alone for no other reason than because the

matrimonial contract is truly and properly one of the seven Sacraments of the Evangelical law." This reason indeed must be polished a little.

Therefore the supreme civil power is independent in its own order; but its order is the natural order. If the worship of God and religion were natural, the civil power would extend itself to it, and the same man would be king and pontiff. But by the divine institution of the supernatural order and of the ecclesiastical priestly order, to which has been committed the ordering of men to the supernatural end and the care of supernatural and sacred things, it has been brought about by divine right that the things which pertain to religion and the worship of God in Christian society are wholly withdrawn from the power of kings or princes and pertain to the power of the Church; while upon princes there rests the charge and office of obeying the Church, of defending ecclesiastical laws and urging their execution by restraining the contumacious. Nor has any injury been inflicted upon Christian princes if the rights over sacred things have been taken from them; for God is the one who has so disposed, and the character of an intrinsically supernatural and universal economy demanded it. Wherefore, this economy having been established, the order in which the civil power is engaged, insofar as it is an independent ruling power, is only the natural order; or it can be engaged only concerning those things which are purely natural. For those things of nature which are also supernatural, especially if they are intrinsically and essentially such, by divine right pertain to the power of the Church, to whom surely all the rights of supernatural things have been committed; but supernatural things are nothing other than things of nature intrinsically elevated to a higher order (cf. Praenotiones, n. II), namely, to the divine order.

For this reason, civil power in the society of Christians cannot by a proper independent right extend to everything which is useful to society; for what is more useful to society than religion, the worship of God, Faith, the Sacraments, the Sacrifice? But it can extend to that which is useful and is natural; for God has committed the rest, according to His own judgment, to better and holier administrators. Indeed, neither can the same power by a proper independent right extend to everything which is necessary for society; for what is more necessary to it than religion? Yet whatever pertains to religion in Christian society is subject to the power of the Church.

Namely, it must be observed that men existing in civil society are immediately ordered to some temporal happiness; and the same are ordered to another happiness in another life, which happiness, compared with the former, has the character of an end, and is, in the present order of providence, intrinsically supernatural. Under the former respect men are simply citizens; under the latter they are religious. But religion, or the worship of God, by which men are ordered to the last end, which is God, indeed contributes very greatly also to temporal happiness, but not as a pure means subordinated to it, rather as an excellent cause from which this effect also is naturally born; and the same religion is necessary for civil society, because unless men are rightly ordered to God, they will not be able to be rightly coordinated with themselves; for perversion from the end also removes order concerning the means. But if the last end of man, and therefore also religion, were purely natural, since there would be no one else instituted by God among men to rule the worship of God, and the rule of natural worship of this kind would not exceed the force of the supreme civil power, yet there would have to be someone who would rule social worship; religious authority also would belong to the civil power, and the same man would be king and pontiff. Nevertheless even in this hypothesis it is necessary to employ a certain distinction, which not a few undeservedly pass over. It would indeed

be necessary that there exist someone furnished with religious power; but it would not be necessary that this power be committed by society to the same one to whom the civil power had been entrusted. But even if one man were at the same time king and pontiff, nevertheless these two powers would still be formally distinguished, so that the things which he decreed for the good of religion would not proceed from him insofar as he is king, but insofar as he is pontiff. This distinction indeed is not useless; for it signifies that the exercise of religious power is not some function of the civil power to which it is subordinated, which indeed is repugnant; for even in the order of nature the good of religion and of divine worship ought to stand as an end toward the civil good. And therefore in this hypothesis the authority of the pontiff existing in one subject together with the power of the king would subordinate this latter to itself and would demand that the ordering of the civil state be referred to the good of religion, not conversely religion to the civil good.

Therefore, with a supernatural religious society instituted by God, and that a perfect one, it has been brought about that men, insofar as they are ordered to the supernatural end and in all those things by which they are ordered to it, namely in all things which pertain to religion, in all sacred and supernatural things, depend on the power of the Church alone. Wherefore the power of Princes in Christian society is no longer a religious power, but purely civil, ordering citizens to the happiness of this life; and because this end is essentially subordinated to the last end of men, which the Church regards, the civil power itself also is necessarily subordinated to the power of the Church. Therefore, although religion is necessary for civil society even as regards temporal happiness, nevertheless, because it is not a pure means subordinated to it, but something more excellent in itself, it is not necessary that it be subject to the civil power, whose proper end is the temporal happiness of subjects; and if religion is supernatural, it cannot be subject to the same power. It will indeed be necessary that religion be in society; but it is one thing for religion to be in society, another for it to depend on the civil power; for it can depend on the religious power separately instituted by God. But from the necessity of true religion for civil society it will follow that secular Princes ought to procure, as much as is in them, that true Religion thrive and flourish in their society, and to revere and protect the laws of the true Church divinely instituted. Therefore it is simply false that everything which is useful and necessary to society even for the proper end of temporal good must be subject to civil power. But Christian princes indeed enjoy a certain dependent and subordinated right, or the right of bringing it about that subjects obey the religious power, so that civil society too may be well disposed; but this is rather the office of defense and protection against irreligious men, and is not the right about which we are disputing.

Now, if the relation of marriage to society, both civil and religious, is considered, it is manifest 1. that marriage is not essentially ordered to the proper good of civil society; for it both can exist without it, and its primary end is the existence of one who worships God; but the worship of God is the proper good of religious society; 2. that it is indeed essentially ordered to the good which is proper to religious society, because a good of this kind is the primary end of marriage.

VI. These things posited, behold the process of our demonstration. I say 1. that a contract elevated to the dignity of a sacrament is a natural contract; namely, for it to be a sacrament, only two things are required: a contract posited by the force of nature, and a form established by the Church for the validity of the act. We therefore deny that a contract elevated to the dignity of a sacrament is a civil contract, which indeed was wrongly supposed formerly by not a few and is still supposed now. That

is called a civil contract which has validity in society from the civil power. We prove together both things which we have affirmed and denied. a) Christ elevated to the dignity of a sacrament that contract whose administration He committed by His own right to the Church; but this is a natural contract. The minor is proved. The contract whose administration the Church has by proper right is that which an invalidating law of the Church touches; but this is a natural contract; therefore. The minor is proved thus. If the power of constituting the form of the contract for the validity of the act and of invalidating belonged to the civil authority, then that which this power would touch would be purely the contract posited by the force of nature, which by reason of the form established by civil right would become valid or invalid, just as it is in other contracts. But the power of the Church is the same and acts in the same way as that which would be supposed to be in the prince, because it is independent; for this power belongs to the Church by proper right. Therefore the contract which the Church touches, which the form established by her makes valid or invalid, is a natural contract; therefore. b) Christ elevated to the dignity of a Sacrament that contract concerning which He pronounced: "what God has joined, let not man separate"; but this is the contract concerning which Adam spoke; and Adam spoke of the natural contract, for he spoke of that which God, the author of nature, instituted, and which even precedes every civil society; therefore.

I say 2. Christ did not determine that every natural consent of two persons is efficacious, nor did He determine concerning all persons which are capable and which incapable; but He left this to another, that is, to the Church, to be determined (unless nature itself, and through it the author of nature, has already determined it). This is clear a) because this universal determination of Christ exists nowhere; it is clear b) from the power given to the Church of assigning a form for the validity of the contract; for since this power is borne upon the natural contract (the preceding number), it is necessary that, antecedently to the law of the Church, nothing in those things concerning which the Church exercises her power has been determinately established by Christ; for against this the Church could do nothing.

I say 3. The dignity of the sacrament does not prevent the Church from being able to establish a form for the validity of the Christian matrimonial contract and to place diriment impediments upon it. For the Church, apart from the forms and matters of the sacraments which she cannot change, can establish all those things which she judges to conduce to the honorable and holy administration of the same. But the matter of the sacrament is a valid or efficacious contract; wherefore, when the Church establishes a form for the validity of the act, she does not change the matter, but posits the conditions by which the matter itself exists. But it is especially useful and necessary that in Christian society there be some form, proposed by positive law, of contracting marriages; therefore.

I say 4. The dignity of the sacrament wholly forbids that the civil power should have the right of constituting the form for the validity of the contract. The discourse concerns a native right, which would proceed from the very nature of the civil power and therefore would be proper to the prince because he has supreme civil authority. Indeed the valid matrimonial contract among Christians is a sacrament, and if it is not a sacrament, neither is it a valid contract (Thesis X); wherefore the valid contract of Christians is intrinsically and essentially supernatural (ibid.). Now a twofold power over a Sacrament can be conceived. The first is a power, so to speak, of dominion, which establishes the sacramental rite, matter, and form, granting to them the efficacious power of grace. The other is the power of administration, which in turn can be distinguished as twofold. The first is that which

decrees the manner in which the Sacrament is made licitly and holily; the second is that which establishes the form on which it depends whether that which can be the matter and form of the Sacrament, when it is actually employed, is or is not the proximate matter and form of the Sacrament, and which determines who are suitable ministers and who are unsuitable ministers of the Sacrament. This too is a power of administration over the Sacrament. For 1. it is certainly a power greater than the preceding; 2. he who can posit a law on which it depends whether the ministers of the Sacrament, while they act, do or do not posit the proximate matter and form of the Sacrament, who can determine suitable ministers and exclude others as unsuitable, surely rules the administration of the Sacrament; and therefore his power is a power of administration. But each power of administration belongs to no one except him to whom the care of the Sacraments has been entrusted, to whom the right over Christian sacred things belongs, in whom there is the power of directing men through the Sacraments and the other supernatural means to the supernatural end; but this is the Church alone. But the power of invalidating, or of constituting the form for the validity of the matrimonial contract of Christians, is such a power of administration over a sacrament; for 1. it determines persons capable and incapable of contracting, and since the contract is the sacrament itself, the determination of who are suitable ministers of the sacrament and who are unfit depends on it; 2. on it depends, not indeed efficiently and immediately, but insofar as it antecedently posits conditions that the contract be valid, whether the mutual consent of two persons, which can be valid and can be the matter and form of the Sacrament, when it is actually posited, is or is not valid consent; and because valid consent is intrinsically and essentially the very matter and form of the Sacrament, it depends on this power whether it is or is not the proximate matter and form of the Sacrament.

Wherefore this power differs wholly from that by which anyone can produce or destroy the remote matters of the sacraments; for here the matter is not the remote matter but the proximate matter of the Sacrament, of which sort valid consent is. Yet this proximate matter of the Sacrament, in order to be such, depends also on that power which establishes the conditions according to which the contracting parties contract validly and therefore posit the proximate matter of the Sacrament. Indeed, remote matter exists outside the use of the Sacrament; but by the use itself, when the sacrament is administered, it becomes proximate matter. For this reason he who posits conditions for the matter itself, while it is actually employed, touches not remote matter but proximate matter, and therefore touches something sacred; but he who touches only remote matter touches nothing except something profane, as water is. But the power of establishing impediments touches the proximate matter of the Sacrament. For it touches the very consent which is posited, and which is the proximate matter of the Sacrament, and the very minister of the sacrament while he posits the matter and form. For the form established for the validity of the matrimonial contract tends to this: that the very consent by which the contract and the sacrament actually come to be should be valid, and that the contracting parties themselves, while they actually contract, contract validly, that is, that they be suitable ministers. Namely, this power does not tend to make something suitable so that it can be applied to the use of the sacrament, but it affects that which is applied in the very act of the sacrament; and therefore it truly touches not the remote matter but the proximate. Therefore, just as the prince has no power over the very administration of the water by which baptism is made, that is, over the sacramental ablution, so there can be no power over matrimonial consent and the ministers of marriage.

And so the power of destroying or positing remote matter is not a power of administration, since it in no way affects the ministers of the sacrament or their ministerial operation; but the power of establishing impediments of marriage affects both; therefore.

Hence I say 5. It is repugnant to the dignity of the Sacrament that a civil contract as such be the matter of it. A civil contract is that which has validity in society from the civil power. Now if the matter of the sacrament is the contract insofar as it has validity from the civil power, the matrimonial contract, in order to be valid, depends on the civil power. But if the validity of the contract depends on the civil power, then a power of administration over the sacrament already belongs to the civil authority, as we proved in the preceding number. Therefore.

Nor, what is equivalent, can the civil power directly invalidate the natural contract, so as in this way to withdraw matter from the Sacrament. For if it can invalidate, it can also provide validity; hence this power is the same as the preceding. And indeed the natural contract is that upon which the power of the Church is borne, and which, conformed to the form prescribed by her, is a sacrament. Therefore, if the prince could invalidate this contract, he could also make it valid for Christians; but the valid natural contract of Christians is a Sacrament. Therefore the repugnance stated above returns. And in very truth, either this invalidation, or more generally this constitution of the form for the validity of the act, is valid even against the will of the Church, or it is not. If it is not valid, what does it accomplish, when the Church has prescribed the form and has established that all marriages are valid which have not been made contrary to her invalidating laws? If it is valid, therefore the prince alone determines the valid contract, posits diriment impediments, and rules the administration of the Sacrament, which is absurd.

I say therefore 6. Christians contracting marriage, although they are citizens, do not contract as citizens, but as Christians. For those do not contract as citizens who in contracting are not subject to the civil power, who by contracting minister and receive a sacrament which in no way pertains to civil society, although that which they do can also contribute to the good of civil society.

I say finally 7. All matrimonial causes belong to the tribunal of the Church alone. Matrimonial causes are those in which there is dispute about the bond of marriage, or about those things which depend on the validity of the matrimonial bond, of which sort are the separation of spouses and legitimate offspring, or about those things which dispose toward the bond itself, of which sort are espousals, the determination of which therefore depends on the character of the term to which they are referred.

Now in the demonstration of this thesis we brought forward canon 12 of Trent, drawing an argument from it as from a principle of faith; but the thesis has not been proved by that reason alone. Therefore, with the truth of the Thesis posited, we now prove that which we established in the last place by a theological argument. For judgment in these causes belongs to him who has the power of decreeing when the bond does or does not exist, and who has the power of decreeing how the sacrament must be received rightly; but this belongs to the power of the Church alone, which can prescribe a form for the valid contract from which the bond exists, and which can establish those things which are required for the holy administration and reception of the sacrament. Cf. the Bull *Auctorem fidei*, prop. 58, in which a clear reason for this matter also is given, which is as follows: "The proposition which establishes that espousals properly so called contain a merely civil act, which disposes toward the celebrating of marriage, and that the same are wholly subject to the prescription of civil laws: as if an act disposing toward a sacrament were not, under this respect, subject to the

right of the Church: false, injurious to the right of the Church as regards effects flowing even from espousals by force of canonical sanctions, derogating from discipline constituted by the Church."

Corollary. Therefore Princes cannot posit impediments diriment of the bond of Christians, not because the Church has reserved to herself the use of this power, but because of an intrinsic defect of power. Therefore neither can an infidel prince posit impediments for the marriages of Christian subjects.

VII. The things which we have said concerning the civil power are valid for any lay power; wherefore neither can parents by their own authority invalidate the marriages of their children (*Decree on the Reform of Marriage*, c. 1), since they have no right over the sacrament, nor can a civil law prescribing their consent have invalidating force. Note the words of Paul, 1 Cor. VII. 36, 37, "concerning his virgin," "to keep his virgin"; this does not signify a virgin daughter, but virgin flesh, and therefore "his virgin" is one's own flesh, which one, having power over his own will, can join to another through marriage or keep untouched. Thus Jerome, *Against Jovinian*, book I, and most expressly St. Gaudentius, *On the Reading of the Gospel*, tract I, adding also the reason why it must be so taken, because parents cannot rule over the decision of another's will; nor does Epiphanius, *Against Heresies*, heresy LXI, n. 5, contradict this interpretation, which he mentions; Nicetas of Aquileia, *To a Fallen Virgin*, n. 48, hints at the same interpretation.

It has indeed been doubted by some whether formerly, by the law of the Church, a marriage was invalid to which the legitimate consent of parents was lacking. But I do not know why chapter 3 of the response of Nicholas I to the Bulgarians has been brought forward to prove this, where, reviewing those things which pertain to espousals, which are promised covenants of future nuptials, he says that these are celebrated by the consent of those who contract them and of those in whose power they are. For the same Nicholas in the same chapter warns the Bulgarians that not every omission of those things which he himself reviewed is a sin, as the Greeks teach, and he adds: "and for this reason, according to the laws, only the consent of those whose union is in question should suffice" (that is, for marriage). Therefore in the advanced ninth century this consent of parents was not required by the law of the Church for the validity of marriage. Therefore an appeal is made in vain, to prove the same thing, to the Capitularies of Charlemagne, which were published a little before Nicholas. But the canon of the Fourth Synod of Orleans, held in the year 541, could not bind the universal Church, nor is it sufficiently clear whether it is only prohibiting or also invalidating; nor does it speak universally, but it requires the consent of parents for a daughter, rejecting those who, relying on royal authority, wished to join girls to themselves while the parents dissented. "Let no one," say the Fathers, "dare by the command of power to seek the daughter of another, lest the marriage which is impiously joined against the will of the parents be judged as a captivity; but just as it is prohibited, let it not be admitted. Upon those who have perpetrated such things, let the severity of excommunication be imposed according to the measure of the crime." It seems to be a certain case of abduction. But the chapter *Videtur, Who Can Accuse a Marriage*, does nothing to the matter.

The difficulties of some moment drawn from the natures of things must be judged solved from the whole theory handed down thus far concerning the character of contract and sacrament, and from the propositions established here and their proofs; nevertheless, those in which the adversaries especially trust, we shall now purposely dispatch.

Thesis XXXIII

The arguments which the adversaries gather against the asserted truth, whether from the natures of things, from history, or from the authority of doctors, are altogether weak.

I. First they argue thus from the natures of things. a) Those things are directly subject to the Prince which tend directly to the good of civil society; but marriage is of this kind; therefore.

I respond to the Major. Those things are subject to the Prince which tend directly to the good of society, distinguish: that is, those which by reason of themselves are immediately ordered to the good of civil society, I concede; that is, those which by reason of themselves, on account of their proper perfection, also contribute to the good of civil society, I subdistinguish: if they are supernatural, I deny; if they are natural, I subdistinguish: if they are proper to the civil order, I concede; if they are of the religious order, I subdistinguish: they belong to the Prince, insofar as he is the orderer of society toward the civil good, I deny; insofar as by accident he is also orderer of religious worship, by which men even in the state of nature would tend toward God, I subdistinguish: if there does not exist a supernatural religious society, I pass over; if one does exist, I deny. Indeed I deny the supposition.

To the Minor. Marriage tends directly to the good of civil society, distinguish: that is, by reason of itself it is immediately ordered to the good of civil society and is something natural, I deny; that is, on account of its perfection it contributes to the good of civil society and is something supernatural, I concede. Cf. the things said in the preceding Thesis, n. V.

b) The Prince can make invalidating laws concerning other contracts; therefore also concerning this one especially, which so greatly influences society.

I respond. Distinguish the Antecedent: concerning other natural contracts, I pass over; concerning contracts elevated to the supernatural order, I deny. Cf. what we said concerning the nature of the contract of marriage in Thesis XXIII, n. III.

c) The matter of marriage is in the same order as the matter of baptism; but this latter is subject to the civil power; therefore the former also can be subject to it.

I respond. If you are speaking of the remote matter of baptism, we deny that the comparison is suitable. But if you are speaking of the proximate matter, then distinguish the Major. The matter of marriage is in the same order as every use of water, I deny; as the sacramental use of water, I subdistinguish: and that which is the matter of marriage is nothing except matter, I deny; besides, it is really also form and therefore the whole sacrament, I concede. Distinguish the Minor: the water itself is subject to the civil power, namely to the power of civil jurisdiction, I deny; the use of water is subject, I subdistinguish: some use, I pass over; religious use and sacramental use, I deny. Cf. the preceding Thesis, VI. 4.

d) If the Christian Prince lacks this power, it would have to be said that the marriages of infidels are subject to no human power; but this is absurd.

I respond. Distinguish the Major. If the Christian Prince lacks power over absolutely all marriages of whatever order, it would have to be said..., I concede; if he lacks only power over sacramental marriages, it would have to be said..., I deny. And thus the response to the Minor is clear.

We do not deny that the Prince has power over marriage insofar as it is simply marriage, but over Christian marriage insofar as it is a sacred thing and a sacrament. If it is only a natural thing, as is the marriage of infidels or of Jews, we concede to the Prince, whether infidel or Christian, authority to make even invalidating laws concerning it. For those do not please us who simply and absolutely deny this power to the civil authority, since the scientific demonstration of Catholic truth supposes this principle, namely that the matrimonial contract is ruled by the laws of the authority of that society in which it is made. This is taught by a certain Instruction of the Congregation of the Propagation of the Faith, given to the missionaries of Tonkin in the year 1821; see it in the *Collectanea* of the Propagation of the Faith, p. 540 seq. Yet observe the distinction which we have already given, namely that the Prince in a non-Christian society and for non-Christian subjects possesses this power, not properly insofar as he is prince, but insofar as by accident he is also pontiff. See the preceding Thesis, n. V.

Therefore they are foolish who say: therefore an infidel prince, when he becomes Christian, loses some proper right; or, therefore an infidel prince, who has nothing more than a Christian prince, lacks this right toward infidels. For 1. he lacks this right, not from the fact that the prince is Christian, but from the fact that the subjects are Christian, whether he himself is Christian or pagan; 2. it is false that he loses what he had, for he had right over the marriage of infidels, and this he retains; but it is by accident that, when the subject is lacking, it cannot be exercised. But he never had right over marriage as sacrament. Therefore 3. an infidel prince has this right over the natural marriages of infidel subjects, which are not sacraments, and a faithful king has the same right with respect to the marriages of his subjects, if he has any, who are infidels. And surely 4. does a Christian prince in a Christian society have right over sacred things? Yet he would have it in a pagan society. Therefore the lack of this right in the prince with respect to Christian subjects arises from the very nature of the thing, or from the will of Christ instituting the supernatural order and elevating marriage to the dignity of a sacrament; it is not a diminution of his natural power.

c) The prince can prohibit some marriage from taking place; therefore he can also invalidate it. The consequence is clear, because the former shows that marriage is subject to his authority.

I respond. We are speaking of Christian marriage. Distinguish the Antecedent. He can prohibit by a merely penal law, that is, one depriving the parties of certain civil rights and goods, by which deprivation the subjects are freely moved to abstain from those marriages if they do not wish to undergo those temporal losses, I pass over; by a law immediately binding conscience, I deny. Hence the consequence is denied. Nor is any other right asserted for the Prince than that of making laws concerning civil rights and effects.

II. They argue from history. They say that princes formerly exercised this power, without the Church opposing it, and Launoius brings forward in the cited work several Imperial laws made from Constantine onward.

But account must be taken not only of the fact alone, but the nature of the fact must be considered: namely, whether Christians believed themselves bound by those laws, and, if they believed this, whether by force of imperial authority or rather by force of the authority of the Church, which approved these laws and made them her own when she judged it opportune; and therefore whether they were made not by imperial authority alone, but also by ecclesiastical authority.

Now it is certain that the Church has always held this opinion: that there is no authority of the civil principate over ecclesiastical sacred things. "Do not involve yourself," Hosius said to Constantius, as Athanasius reports in the *History of the Arians*, n. 44, "in ecclesiastical affairs, nor give commands to us concerning these things, but rather learn these things from us: God entrusted the empire to you; He entrusted ecclesiastical things to us." "For the Emperor has no power of looking into the Churches, just as neither has the Pontiff any power in the palace," says St. Gregory II to Leo the Isaurian, epistle 2. And Innocent III, chapter *Ecclesia, On Constitutions*: "To laymen, even religious ones, no faculty has been attributed over churches and ecclesiastical persons; for them there remains the necessity of obeying, not the authority of commanding; and if anything shall have been established by them on their own motion which even regards the advantage and favor of churches, it has no firmness unless it has been approved by the Church." Therefore much less can that have firmness which Princes on their own motion decree concerning the matter of the Sacraments. Accordingly the opinion of the Church has always been, as Benedict XIV testifies to the Cardinal of York, that "a law established by a lay prince ought to have no force in marriages."

Indeed, the Christian Princes themselves have signified, not obscurely, that they thought this. For, making a distinction between civil laws and ecclesiastical canons, Justinian confesses in Novel 137 that the power of making the former was given to him by God, but that the custody of the latter was committed to him: "If we take care that the civil laws, whose power God, according to His kindness toward men, has entrusted to us, are firmly observed by all for the security of those who obey, how much more care ought we to apply concerning the custody of the sacred canons and divine laws, which have been defined concerning the salvation of our souls?" You see that sacred canons and divine laws are joined together, over which Justinian certainly does not claim authority for himself, but only custody. Therefore those things which are defined by the canons of the Church, of which sort are those which pertain to the Christian Sacraments, have been committed not to the power but to the custody of Emperors. Since therefore the form of celebrating Christian marriage is defined by the canons of the Church, and ought to be defined by them, it is withdrawn from the civil power. Nor did the other Emperor, Charlemagne, think otherwise, in whose capitularies there are many decrees concerning sacred things and persons. But how this was done, hear from the Theologian of the Gauls, Natalis Alexander (*Hist. Eccl.*, century VIII, ch. 7, art. 8): "The capitularies were composed in an assembly of Bishops, Abbots, and Counts. They embrace both ecclesiastical and civil laws. The laws concerning ecclesiastical things and persons are, nearly all, taken from the canons of councils and the decrees of Pontiffs. For the greatest King did not arrogate to himself the authority of making merely ecclesiastical laws, but commanded their execution, nor did he publish his capitularies without the counsel of the Bishops. And toward priests and religious men he claimed for himself rather the office of admonisher than of legislator, and he glories in the name of helper and humble defender of the Holy Church of God, as is clear from the preface of the Aachen capitulary." That preface reads thus in the General Capitulary ascribed to the year 789: "I, Charles, by the grace of God and by the gift of His mercy King and Rector of the kingdom of the Franks, and devout defender and helper of the Holy Church of God in all things belonging to the Apostolic See." That many decrees pertaining to ecclesiastical things contained in these capitularies of Charlemagne and of his sons must be understood in this way is clear even from the fact that they were understood so in that age. For Benedict the Deacon of Mainz, another collector of those capitularies, placed before the collection the letter of Pope Zachary and two Synods celebrated by Boniface, legate of the Apostolic See. Moreover

Benedict placed these at the front of his collection for this end, "that," as he himself says in his preface, "all may recognize that these capitularies of the aforesaid princes were chiefly confirmed by apostolic authority." Therefore it is established that the certain opinion of the Church has always been that there is no authority of the civil principate, both generally over sacred things and over the very marriage of Christians, which is essentially a sacred thing and a sacrament. Therefore we conclude: if imperial laws had any force in this matter, this was done from the consent and authority of the Church approving them.

Indeed, in order that the Church might exercise her right from the beginning, it was not necessary for her to abrogate all civil laws and immediately establish new ones; for this is foreign to the spirit of the Church, which abhors ostentation. But it was enough that she teach the faithful that those laws which were approved by her had force for them because the Church approved them. Moreover, that the ancient faithful judged the approval of the Church necessary can be argued even from those things which we said when explaining the letter of Ambrose to Paternus.

For the rest, it is established that the ancient Emperors promulgated in the code of their laws also ecclesiastical canons, not in order that they might add force to them, but in order that they might protect and urge their observance, although from time to time they exceeded the measure and arrogated to themselves more than was fitting; but this excess was reproved by the Church. Wherefore the things which they establish concerning the validity of marriage are to be understood either of civil effects, or of the intrinsic validity of marriage with respect to Christians on account of the law or consent of the Church, or of its intrinsic validity with respect to infidels. For since there were still many subjects of the Empire who were infidels, and since the prince could make laws with respect to their marriages, those same Emperors could not then wholly abstain from making these laws.

III. Concerning certain laws made by the Emperors about impediments of marriage and brought forward by Launoius, we have already spoken in Thesis XXIX with respect to the impediments of consanguinity, affinity, vow, abduction, disparity of cult, and crime, and we have seen that impediments diriment of Christian marriage are falsely gathered from those laws. But Launoius brings forward others in order to demonstrate besides that the impediments of public honesty, legal and spiritual kinship, servile condition, and even sacred order borrowed their origin from Imperial laws. But besides the general observation just applied, if these impediments are considered one by one, and the laws to which Launoius appeals, it is clear that he argues very badly.

a) For whom, for example, will he persuade that the impediment of order was established by this law of Justinian (Novel 22, c. 42): "if anyone placed among the most reverend clerics - we mean beyond cantor and lector - shall contract nuptials at all, we establish and will that he fall from the priesthood by our constitution"? Therefore will the penalty of deposition also be inflicted by a secular Prince? Who does not know that by very ancient ecclesiastical law nuptials, or the use of nuptials, were prohibited to Bishops, Presbyters, Deacons, and even Subdeacons? Here the Emperor protects and executes this law of the Church. Cf. the things we shall note in the Appendix, at the Canons of Elvira and following.

b) As for the impediment of servile condition, if the consent of the free contracting party is lacking, the very nature of the thing at least suggests that there is no contract. Certainly St. Leo, epistle 167 to Rusticus, affirms in rule 4: "the covenants of nuptials are legitimate between freeborn persons and

between equals, the Lord Himself having established this very thing much earlier than the beginning of Roman law existed." Therefore there was no reason why Launoius should appeal to the Novel of Justinian cited above.

c) The impediment of legal kinship indeed supposes adoption established by law, which law can also be civil, but theologians with St. Thomas, whose words we shall recite a little later, deny that it borrows the force of a diriment impediment from civil law. Nor do the laws of Justinian brought from the Digest by Launoius prove this, as is manifest even from the general observation applied above. But the fact that Pope Nicholas, in the responses to the consultations of the Bulgarians, c. 2, appeals to the venerable Roman laws (Institutes, book I, *On Nuptials*) to prove that marriage cannot exist between such persons shows that Roman laws produce this effect insofar as they have been approved and received by the Church. For this is the Nicholas who, following the tradition of his elders, taught with Gelasius that the Emperor presides, with God as author, only over civil things, the Pontiff over sacred things, and that the offices of each power are so distinct that Christian Emperors need Pontiffs for eternal life, and Pontiffs use imperial laws only for the course of temporal things (epistle 8 to Michael the Emperor). Moreover Nicholas proves in the same response that spiritual kinship impedes marriage, not from imperial law, but, with the law of the Church supposed, he persuades from the impediment of legal kinship that marriage is much more impeded by spiritual kinship. Cf. what we shall say in the appendix at the words of Nicholas.

Finally, as for the impediment of honesty, Launoius derives it from the Digest, book XXIII, *On the Rite of Nuptials*, law 12, from Ulpian: "Between me and my father's betrothed, nuptials cannot be contracted, although she is not properly called my stepmother; but also, conversely, my betrothed will not be able to marry my father, although she is not properly called his daughter-in-law." But this is not the whole impediment of public honesty such as was formerly admitted by the Church and is still admitted; therefore this impediment does not have force in the Church by force of this opinion.

And this is again the general observation that must be made: namely, that there are many impediments according to the canons which are lacking in the laws; many, already established by the laws, were afterward either amplified, restricted, or moderated by the canons, so that the Church always manifested from this her own proper independent authority toward the faithful.

Therefore if sometimes the Roman Pontiffs call the laws of Roman law, this occurs because they have made those laws their own, and because by tacit consent it was agreed that the laws of the code, in those things which are not opposed to the canons, would be received also in ecclesiastical judgments, where the disposition of an ecclesiastical canon was lacking.

IV. But Launoius, besides the imperial laws, also adduces the practice of Kings and Emperors of the middle age, in order to prove that it was always retained as properly royal right by which diriment impediments are established for Christian marriage. It will be enough to consider the principal facts which he brings forward.

a) First there is brought forward a twofold history from the life of St. Godeberta and St. Saleberga, who were betrothed only with the consent of the King in whose power they were. Evidently, the consent of those in whose power a girl is, which is required for the honorableness of marriage, is confused with political power over the bond of marriage. Again from Gregory of Tours, *History*, book V, c. 2: King Chilperic dissolved the nuptials of his son Merovech with Queen Brunhild, or separated

them, because, as the king said, "Merovech had taken the wife of his uncle contrary to divine and canonical law." Therefore the King executed the canons; he did not establish a law.

b) Likewise King Clotarius made this law: "Let no one presume, by our authority, to seek the marriage of a widow or girl without their will, nor let them be unjustly carried off by surreptitious suggestions. Likewise let no one dare to associate consecrated women to himself in marriage." Evidently the King defended the rights of individuals and the canons. Let us come to the more important matters.

c) Baldwin, Count of Flanders, without the knowledge of King Charles the Bald, carried off his daughter Judith, a widow, who nevertheless freely followed him. When this matter was first condemned in a civil judgment, at the king's own request, the bishops afterward punished the guilty parties with spiritual penalties. But Nicholas I, to whom Baldwin fled, in letters given to the King, asked that he be willing to pardon the injury and receive Baldwin back into favor. Evidently, the matter concerned an injury inflicted on the king and father, and the Bishops punished it according to the decrees of Gregory II in a Roman synod: if anyone has stolen a widow as wife, and those consenting to him, let them be anathema. Nicholas did not wish to grant pardon from the anathema before expiation of the fault, but he acted the part of intercessor with the king, who had a just cause of anger and the power of invalidating the marriage as regards civil effects (cf. the *Critica* of Antonius Pagi at the year 862, VII). Moreover, the judgment of worldly law preceded in this affair because the matter concerned chiefly not the bond of marriage, but the injury inflicted on the King, which civil law also prohibits. But Nicholas does not ask the King to permit the marriage to be valid, but to pardon the injury and receive Baldwin into favor and allow him to enjoy the marriage peacefully. Read Nicholas's letters to King Charles, 20 and 30, among the letters of Nicholas. Nor is it certain that nuptials had already been entered then; for only this is said, that Judith followed Baldwin, that she ran with the thief; and what is added, "and made herself a portion of adultery," can be understood of the very following and of the will and promise of marriage. Indeed Nicholas commanded not that the spouses should be united again, but that, with the King indeed permitting, the union of Baldwin and Judith should take place without any delay. Cf. Flodoard, *History of Reims*, book III, c. 12.

d) But behold a dissolution of the matrimonial bond commanded by the Emperor Louis the Bavarian, who in his letters asserted that this power of constituting diriment impediments belongs to civil authority. But this heretical and excommunicated man, who had drawn the heresy concerning the supreme right of the civil power even in sacred things from Marsilius of Padua, and who was excommunicated for this reason, because he had joined some persons in prohibited degrees, proves no more that this power belongs to Princes than the rebellion of Henry VIII, king of England, proves that every king is the supreme head of the Church in his own kingdom.

e) Again Louis the Stammerer, son of Charles the Bald, was forced by his father to dismiss the noble girl Ansgard, whom he had secretly joined to himself without his father's consent and from whom he had received two sons, Louis and Carloman; and another wife, Adelaide, was given to him by his father, whom he left pregnant with Charles the Simple, who succeeded him. Launoius thinks that the marriage was dissolved or regarded as null, and he rests on this argument, that the sons of the earlier girl were regarded as spurious and did not succeed in the kingdom, but only administered the kingdom as tutors of Charles the Simple. But in these things he is notably deceived; for Louis and Carloman succeeded in the kingdom of their Father as legitimate sons. Read Flodoard, *History of*

Reims, book III, c. 19. Cf. Antonius Pagi, *Critica*, at the year 879. Therefore, whatever may be said of the tyrannical separation of the first wife, she was regarded as a true wife. Yet here Launoius plays on an equivocation, as also in not a few other facts of the kings of the Gauls. For it is one thing that kings, supposing in error that the nuptials of their sons and agnates made without their consent were null by a custom received by the Gallican church itself, ordered them to be dissolved; it is another thing that they themselves interposed royal authority to confirm or dissolve the bond of marriage. But this history of Louis the Stammerer and similar ones, if they proved anything, would establish the first, not the second; yet Launoius undertook to prove the second.

f) Therefore to the same point returns what Louis XIII attempted in the year 1632 concerning the marriage entered by Gaston, Duke of Orleans, with Margaret of Lorraine without the King's consent. The Gallican clergy, consulted by the King, judged that marriages of Princes of the royal house contracted against the will of the head of the family, regard being had to the custom and practice of the Church of France and also to the consent and approval of the Church, were invalid; thus also the Parisian theologians judged. But Urban VIII, in the year 1635, responded that it was not in his power to call into invalidity a marriage contracted according to the rules and prescription of the Synod of Trent; that the special laws of France had no force in a Sacrament which depends on Christ the institutor and on the canons of the Church; that whatever the civil effects of these laws might be, the bond of marriage persisted and remained unmoved (Roskovany, cited work, vol. 1, p. 95). For the rest, the King finally permitted that marriage, nor was a new consent demanded; but after seven years a solemn celebration was again performed before the Bishop of Paris, who used this formula: I join you in marriage, insofar as there is need. But in the opinion of the Gallicans there was indeed an error of fact; nevertheless, as far as right is concerned, they themselves judged that such a power belongs to the Church alone.

Before we dismiss Launoius, we note that this author, although at the beginning of the work he seems to wish only to defend the royal power over the marriage of Christians besides the ecclesiastical power, nevertheless afterward advances to such a point that he asserts this right for the civil power alone, and wishes marriage to be a merely civil affair, with the contract of course distinguished from the sacrament.

V. They argue from authority, and first from St. Thomas. But the opinion of St. Thomas is set forth in *Supplement*, q. LVII, a. 2: "by human laws (civil laws, or Roman law) it is prohibited that marriage be contracted between such persons (the adopted and the adopter, etc.), and such prohibition has been approved by the Church; and from this it is that legal kinship impedes marriage." And to the fourth: "it must be said that the prohibition of human law would not suffice to impede marriage, unless the authority of the Church intervened, which also forbids the same thing." Consonant with these are the things which he has in *Quodlibet* V, a. 16, where, after he has taught that the Church relates to those things which pertain to marriage in a threefold way, namely 1. by way of judging, 2. by way of prohibiting or punishing, 3. by way of establishing, he says of this third way that "it is done only by the authority of the Supreme Pontiff, and according to this some persons are called illegitimate for contracting."

Yet his doctrine is objected from *Supplement*, q. L, single article, ad 1, and in book IV, *Against the Gentiles*, c. 78, which returns to this: since marriage is ordered to diverse ends, it needs to have diverse things directing it to its end. It is ordered to the perpetuity of the species, to the perpetuity of

the people in the city, and to the perpetuity of the Church. With respect to the first it is directed by nature inclining to this end; with respect to the second it is subject to the ordinance of civil law; with respect to the third it is subject to the rule of the Church. Or, marriage insofar as it is for the office of nature is established by the law of nature; insofar as it is a sacrament it is established by divine right; insofar as it is for the office of the community it is established by civil law. And therefore, he concludes, by any one of the said laws some person can be made illegitimate for contracting marriage. But 1. if diverse marriages are considered by St. Thomas, it is certain that natural marriages, which are made in civil society, can be ruled and established by civil law; but marriages which are Sacraments ought to be ruled and established by the law of the Church. But if 2. St. Thomas speaks of the same marriage, which Christians existing in civil society contract, then we observe that the words of St. Thomas are general and that their specific sense must be determined from the subject to which they are referred. Both the Church and the civil power establish laws and direct marriage, but in one way and another. The Church does this with respect to the bond itself and the Sacrament; the civil power with respect to civil effects. For direction of this sort suffices for obtaining the end of the civil power, or for that good which can follow from marriage in civil society and which the civil power can procure in Christian society. Therefore by civil law a person is made illegitimate, not simply for contracting marriage, but in a qualified respect, that is, for contracting a marriage capable of civil effects. The texts cited in the first place demand this interpretation.

VI. Against the doctrine defended thus far, arguments and the authority of certain Scholastics are also customarily brought forward, from whom the adversaries have borrowed their principal arguments. Indeed Petrus a Soto says (*Institutions for Priests*, on Marriage, lecture 4): "Positive laws can also render some persons illegitimate; whence Blessed Thomas fearlessly asserts that civil rights themselves and the laws of the emperor render some persons illegitimate for contracting, in such a way, namely, that there is no marriage. Nor do others deny this, although they do not assert it so expressly... For if divine right permits the Church to prohibit what it itself does not prohibit, why will the Church not permit the secular power to prohibit what she herself does not prohibit? Let us therefore confess that civil laws cannot make a marriage licit which ecclesiastical laws render illicit, just as ecclesiastical laws cannot approve what divine right reproves; for this would be for the inferior to contradict the superior. But what ecclesiastical laws do not prohibit, why will secular laws not be able to prohibit, just as what divine right does not prohibit, ecclesiastical laws prohibit? The Prelates of the Church ought not receive it with reluctance if secular Princes establish what they have seen to be necessary for temporal peace, nor is there reason for them to oppose them, but rather they should permit marriage to be ordered by human laws, since it is an office of nature; although civil laws in all these matters have surely and easily yielded to the Church from the piety and will of Princes, so that now no marriage is judged illegitimate which the Church does not judge such." Thus far Petrus a Soto. Observe first of all that he wrote these things and died before the celebration of Session XXIV of Trent on Marriage. His doctrine certainly does not cohere with canon 12 and the interpretation of Pius VI, nor with the affirmation of Benedict XIV, nor with the doctrine of St. Thomas. For the rest, it must be considered that the power of the Church is held by him as superior, and he seems to judge that the Church, if she wishes, can prevent secular Princes from establishing impediments of marriage; therefore he only exhorts Prelates to permit the exercise of civil right. But the argument of this Theologian must be more accurately weighed: what ecclesiastical laws do not prohibit, why will secular laws not be able to prohibit, just as ecclesiastical laws prohibit what divine right does not

prohibit? The response is, namely, that ecclesiastical laws prohibit what divine right does not prohibit because divine right left the matter in many respects under indetermination and made for the Church the power of establishing the form for the validity of the act, so that those contracts would be null which the Church invalidated, and those would be valid which the Church did not make invalid (*Decree on Marriage*). Civil laws cannot prohibit what the Church does not prohibit, 1. because divine right has made no power for the civil authority over this matter; 2. because by the very fact that the Church does not invalidate those contracts, they are already valid (cf. Praenotiones, this chapter, n. 6), and valid by that right which is higher than civil right; 3. because if the civil power by its own right could invalidate some contracts which the Church does not invalidate, it would in reality have right over a spiritual thing, such as the matter of a Sacrament is (cf. the preceding Thesis, IV. 4).

Ambrosius Catharinus, in the little work *On Clandestine Marriages*, published at Rome with the privilege of the Roman Pontiff, says: "Whatever is not against the law of God and the law of nature, I believe Princes can provide for by their laws concerning Marriage as concerning their own and not another's matter; and therefore I think that a law made by them had force by which marriages contracted without consulting parents were invalidated." Note again that Catharinus died before Petrus a Soto. What is placed as a principle must be conceded; but it is the law of God that, with respect to the validity of the act, Christian marriage is subject to the power of the Church alone; for it is a sacrament, which is left to the ecclesiastical power alone to be administered; therefore. There are indeed in the Code of Justinian, book V, title 4, *On Nuptials*, laws which require, for the just nuptials of children existing under the power of the Father, the consent of the Father. Cf. also the *Institutes*, book I, title 10. There is not one opinion of the interpreters of civil law in this matter. Some judge that these nuptials were regarded altogether as null, but others deny it. Thus Jacobus Cujacius, on book 30 of Paul, says: they are not just, I confess; nevertheless, once contracted, they are not dissolved. Wherefore laws of this kind are called imperfect, as laws which prohibit nuptials from taking place without the consent of parents, but do not dissolve them once contracted. For the rest, it does not matter to us what the civil law wished. For if formerly it had the effect of invalidating these nuptials, it certainly obtained this from the consent of the Church. And indeed the Tridentine Synod sufficiently declared this with respect to these marriages in the decree *On Marriage*: "Although it is not to be doubted that clandestine marriages made by the free consent of the contracting parties are valid and true marriages, so long as the Church has not made them invalid; and therefore those are rightly to be condemned, as the Holy Synod condemns them with anathema, who deny that they are true and valid, and who falsely affirm that marriages contracted by children of families without the consent of parents are invalid, and that parents can make them valid or invalid, nevertheless etc." The prior part of the condemned doctrine, namely of those who deny that clandestine marriages are true and valid, is understood with that limitation: so long as the Church has not made them invalid. This limitation also can and must be understood in the other part, by which it is denied that marriages of children of families contracted without the consent of parents are invalid. But no other limitation, drawn from the force of another authority, can be understood. For the context offers none; the Synod in this decree protects and confirms the supreme authority of the Church. Therefore unless the Church invalidates these marriages of children, they are valid according to the opinion of the Tridentine Synod.

Thomas Sanchez, *On Marriage*, book VII, disputation 3, nn. 2, 3, 4, says: "without doubt it must be said that the secular Prince, from the kind and nature of his power, can impose by his laws diriment impediments of marriage upon the faithful subject to him, for a just cause, in the same way in which the Pontiff can, unless the Pontiff had reserved this power to himself. The strongest reason is this. Since royal power is chiefly instituted for guarding the tranquillity and good of the republic, it belongs to it to provide that which is desired for obtaining this end, of which sort is to sanction certain things concerning marriages to be entered, by impeding and invalidating them; for on this chiefly depends the tranquillity and right governance of the republic. And it is confirmed: for if the secular prince can invalidate other civil contracts for the good of the republic, why will he not also be able to invalidate the contract of marriage, when at times the same common good demands it? Nor does it stand in the way of the power of the secular prince that marriage is a Sacrament, because its matter is a civil contract; and for this reason he can therefore invalidate it for a just cause as if it were not a sacrament, rendering the persons incapable of contracting and thus the contract illegitimate and invalid. For if we attend to the bare character of Sacrament, neither could the Pontiff dispose concerning it by dissolving it; and his power arises from the character of the human contract, which is the matter of this Sacrament... Nevertheless the Church can forbid faithful Princes the use of this power and reserve it to herself; when she does this, the laws of the secular Prince impeding or diriment of marriage against that reservation will be invalid, since the temporal power is subject to the spiritual and subordinated to it in order to the spiritual and supernatural end... Hence it is deduced that today it is not within the power of a faithful secular prince to dispose anything concerning the impeding or diriment of marriages of the faithful, since the Pontiff has reserved this power to himself, and indeed deservedly." But he says in n. 7: "I would have this noted, that subjects of infidel princes, as those who inhabit their towns, are bound by their just laws invalidating marriages in all those cases in which they are bound to their other laws. Wherefore, if they contract with that diriment impediment, the marriage will be null. Because the character of Sacrament superadded to marriage does not prevent there being in princes the power of establishing diriment impediments, but only the reservation of the Pontiff, as we have said."

But it is manifest 1. that this doctrine does not cohere with the doctrine of Pius VI. For Pius VI teaches that the character of Sacrament effects that it belongs to the Church alone to establish impediments for Christian marriage, that is, that it prevents this right from belonging to any civil power; therefore princes are prevented from being able to establish impediments for marriages of the faithful, not from the free reservation of the Pontiff, but from the nature of the thing or from the institution of Christ, who made marriage to be a Sacrament. Sanchez teaches the contrary.

Nor 2. does it cohere with canon 12 of Trent. For how do all matrimonial causes of Christians belong to ecclesiastical judges (cf. p. 207), if an infidel prince can make laws concerning impediments of marriage by which his faithful subjects are bound? For causes in which there is question of the marriages of those who are subject to these laws, and whose validity depends on the observance of these laws, belong to the tribunal of the infidel prince; for causes belong to the tribunal of him on whose law they depend.

Nor is the reason adduced by Sanchez valid. For it must be distinguished. It belongs to royal power, instituted for the common good, to provide those things which conduce to this end and at the same time are contained in the natural order, I concede; those things which conduce to this end and which

also conduce to a higher end and are contained in the supernatural order, I deny. For by this very fact, from the nature of the thing, no free reservation intervening, they are withdrawn from the civil power and are subject uniquely to the sacred power. Read what we said in the demonstration of the preceding Thesis. Moreover it is false, as we saw, that the matter of the Sacrament is a civil contract; rather, it is a natural contract. For the rest, when Sanchez establishes that the power of princes is dependent upon the power of the Church, he departs from the doctrine of the modern regalists.

Sanchez cites Bellarmine among the authors favoring his opinion. But Bellarmine, *On Marriage*, c. 32, teaches only this: "that the political prince too can make laws concerning impediments of marriage, but with the ecclesiastical prince approving; for if the latter opposes, that law will be invalid." Namely, the force of the law is from the approval of the Church, as St. Thomas says; and therefore of itself the secular prince can do nothing.

For the rest, observe that these authors and others like them wrote in that age in which the question concerning the essence of the Sacrament of marriage had not yet been clarified, namely whether it was the same as the contract or something superadded; likewise, that those same men did not deny the power of the Church, indeed they asserted for her the right of invalidating the laws of Princes in this matter. But this was for that age a sufficient expression, although still incomplete, of that doctrine which afterward, when the truth had been more fully disclosed, was asserted.

Thesis XXXIV

The power of the Church of constituting impediments for Christian marriage extends not only to Catholics, but of itself also to heretics.

I. By the name of heretics we understand those who, since they have been baptized, either have defected from the Church or, deriving their origin from these, follow their institutions. A twofold status is commonly distinguished in them. The first is of those who, mixed among Catholics or other nations, do not constitute a public religious society which is ruled by its own rites and laws. The second is of those who, from the concession of political authority, constitute a social religious body which has its own rulers and is governed by its own laws and rites. The question is chiefly about these latter: whether they are bound by the matrimonial laws of the Church. But with respect to all, a twofold question can be made: namely, the prior question is of right, whether the power of the Church in constituting impediments of marriage extends itself also to heretics, who therefore by right are her subjects in this matter; the other is a question of fact: namely, whether the Church wishes to bind also heretics, especially those whom we mentioned in the second place, by these her laws. The prior question is proper to theologians; the other rather to canonists, whose proper office is to teach the positive right of the Church, which indeed depends on the will of the Church. The statement of the thesis answers of itself to the prior question.

II. The power of the Church extends to those who are subjects of the Church; but heretics too are subjects of the Church; therefore.

The minor is proved. Someone becomes a subject of the Church through baptism, by which he is admitted into the body of the Church, and, while that baptism perseveres, the subordination of the baptized person to the Church remains; but heretics too are baptized; therefore. Indeed, one becomes a subject of the Church through that by which he is joined to the body of the Church; for by the very fact that he belongs to the body of the Church, he is bound by its laws, which have been made only for the members of this society. Now, through baptism a man is united to the body of the Church; therefore (Matt. XXVIII, 19, 20). Moreover this obligation consequent upon baptism lasts in this life insofar as baptism lasts; but baptism always remains. Nor can rebellion from the Church confer on a subject the right of withdrawing himself from this subordination and subjection; for an unjust act cannot confer a right against that by reason of which it is and remains unjust.

Nor does it matter that heretics are outside the Church; for the authority of the Church extends not only to those who are actually in the Church, but also to those who once were and now ought to be in the Church, although by their own fault they are exiles from it; just as deserter soldiers are still subject to the power of the commander from whose line of battle they have fled. For rebellion can indeed be a reason why the guilty man is subjected to penalty, but not why the social authority is deprived of its right toward him.

And indeed the Church has always asserted for herself the right of exercising her power, and that coercive power, over heretics, as is demonstrated in the Treatise on the Church. Cf. Canon Law, title *On Heretics*; Suarez, *On Laws*, book IV, c. 19.

III. But as for matrimonial laws, it is established that the Church judges that heretics also are bound by them. Pius VII testifies and proves this in the Brief to the Archbishop of Mainz, October 8, 1803: "But what must be said of the opinion of those who boast that heretics are by no means subject to the laws of the Church, and from this perversely infer that they can be joined in a new covenant of marriage if the first shall have been dissolved by the judgment of public authority? Against that opinion cry out the Scriptures, the councils, and finally the whole tradition. Let the Tridentine Synod stand in place of all, which in Session XXIV, chapter 2, distinguishing the non-baptized from the baptized, affirms that the former only are not subject to the judgment and therefore to the laws of the Church, since the Church exercises judgment over no one who has not first entered into her through the gate of baptism. Therefore these baptized persons, sons of the Church although rebels and fugitives, are subject to the laws of the same Church; wherefore the Church has never omitted to exercise her power over them, by the power divinely handed down to her, as is testified by nearly infinite monuments." And indeed, as often as the Church has dispensed in mixed marriages, she always took care that no other canonical impediment stood in the way. Cf. the Declaration of Benedict XIV concerning the marriages of Holland, and many other briefs or responses of subsequent Roman Pontiffs.

Now these things are valid not only for heretics, so to speak, sporadic, but also for heretics gathering into a sect and public society. For there is no right of this social unity, since the individuals are bound to return to the unity of the Church, and congregations of baptized persons besides the true Church are synagogues of Satan, reprobated by God, who willed all the baptized to grow together into one body under one head.

It is clear that the things said thus far are valid also for heretics who enter marriages with Catholics, and conversely; for both are subject to the laws of the Church.

IV. Yet there is a special question with respect to the impediment of clandestinity introduced by the Tridentine chapter *Tametsi*, Session XXIV. The question, however, is not whether, regard being had only to power, the Church could bind heretics also by this impediment, even those whom we reviewed in the second place; for the affirmative response is sufficiently clear from the things said. But it is a question of fact depending on a certain equity: whether heretics united into a public society, using their own laws and ministers, are in reality bound by this law, whether they live in a civil society which is governed by Catholics, or whether they live in a society which is subject to heretics. The reason for doubting is that, since on the one hand the Tridentine Synod wished marriage as a sacrament to be celebrated before the pastor, and on the other hand the Church prohibits the pastor and others from communicating with heretics in sacred things, and it would be hard to think that the Tridentine Synod wished all marriages to be null, not indeed of this or that heretic who lives among Catholics - which evil certainly can be permitted even for their confusion and to avoid scandal among Catholics - but of all those who constitute a not small body and one that will endure for a long time, most of whom are in good faith. It seems consequent that for these the Synod did not wish the presence of the pastor, which they lack, to be required. Indeed, if we believe Pius VII in the letters given to Emperor Napoleon on June 27, 1805, concerning the mixed marriage of his brother Jerome entered in America, composed with such care and diligence: "The Declaration of Benedict XIV for mixed marriages in Holland and in the confederated states of Belgium was not a new law, but only a declaration and explanation of what these marriages are in themselves."

Therefore, with Pius VII himself as author, "the same principle of Benedict XIV must be applied to those marriages which are made between a Catholic and a heretical woman in those regions which are subject to heretics, even when the Tridentine Decree has been published there for Catholics existing there." This indeed is valid for the marriages of heretics who live in that region which is subject to heretics; but the earlier argument has force also for those who constitute a body within a society which is subject to Catholics. Cf. P. Ballerini in the *Moral Work on Marriage*, note to n. 841, 4. Therefore we judge that for heretics of this kind - say the same of schismatics - this impediment of clandestinity is not actually in force. But since the other impediments can be observed also by these heretics, there is no reason why they should not be bound by them.

But, as we have already noted, this question of itself belongs to the canonists; therefore you should consult them.

Thesis XXXV

The power of dispensing in ecclesiastical diriment impediments belongs by proper right to the Roman Pontiff, and to him alone. But although the power of dispensing from time to time in some divine right could belong to him, it does not follow that this power also extends to impediments which are of positive divine right or of natural right. The same Roman Pontiff can revalidate a marriage with a dispensation, as they say, in the root; and it is fitting that account be taken of this dispensation also by the secular Prince with respect to civil effects, although perhaps he is not properly bound to this.

I. Dispensation is the relaxation of a law in some particular case. That is, while the law remains, it happens that this or that person, who of himself would be bound, or even a whole community for some time, is free from the obligation of the law. Therefore dispensation is an act proper to legislative power; for the same authority which makes a law, insofar as it is such, can abrogate it, suspend it, and dispense from it. Hence the power of dispensing belongs both to those to whom it is granted by the legislator and to those who are superior to the legislator with respect to the same power of jurisdiction.

That the Pope can dispense in ecclesiastical diriment impediments is evident. For the law establishing them was constituted by ecclesiastical authority; moreover, in the Roman Pontiff there resides the fullness of this power, by which alone the universal Church can be bound, so that, since the law of impediments has bound the whole Church, it could have borrowed the force of obliging immediately only from the Roman Pontiff (cf. our Treatise on the Roman Pontiff, Thesis XIV); therefore.

Moreover, from the same demonstration it follows that this power belongs by proper right to the Roman Pontiff alone. For only the supreme Ruler of a society claims for himself the right of dispensing in laws which bind the universal society, and which have had the force of obliging which they possess from his authority alone. Of this sort are the laws concerning impediments by which the Church is now ruled. Wherefore unless the Roman Pontiff himself delegates his power - which can be done in many ways, either by perpetual or temporary concession - the other Prelates of the Church can do nothing in this matter.

II. Now, among the diriment impediments which are now in force, the bond is of positive divine right; but of natural right, besides error and fear, which take value away from all contracts, there are, or are judged to be, consanguinity in the direct line at least in the first degree, and in the collateral line more probably at least again in the first degree, and antecedent perpetual impotence for coition. With respect to this last, indeed, we do not sufficiently grasp why Pontius (*On Marriage*, book VII, cc. 55-56) wished marriage to be valid between impotent persons if they contract with the purpose of observing continence, on the ground that, as he himself says, for the essence of marriage there is required only that there be a mutual union of souls in a natural society of life with diversity of sex. But this natural society is a certain and determinate society, distinct from others; and it is distinguished from all others by this, that it has its foundation and reason in the natural mutual power over the body of the other in order to copula. For the definition of marriage returns to this (Theses I and II). If you remove this, you have only some free friendly society, to which I do not know

how you will prove that the necessary properties of marriage belong, namely unity and indissolubility, which nevertheless cannot be absent from true marriage. Therefore, that mutual power being lacking, that society cannot have place; and therefore neither can marriage. But in impotent persons that power cannot be present. Nor did the Pontiffs, when they said that they did not separate those who had contracted with this impediment intervening, teach that a legitimate marriage stood between those same persons, but only that they could live together as brother and sister. But finally Sixtus V ordered them to be separated by the Brief *Cum frequentes*, June 27, 1587. Cf. Ballerini, *Moral Theological Work*, vol. VI, n. 1263. But the earlier Pontiffs were saying that about those who had contracted without any purpose of observing continence, but with the will of coition; yet in that hypothesis Pontius himself, in the cited place, wishes marriage between impotent persons to be invalid. Therefore this opinion of the Pontiffs, if it is taken in the sense in which Pontius wishes, namely that marriage nevertheless consists between those impotent persons, is opposed also to Pontius himself. It would have been better to observe this than to accuse adversaries of ignorance of Latinity. Cf. in the Appendix the things which we note at the Responses of Stephen III, in the year 754.

In the other impediments certainly - and more probably also of themselves in those mentioned above which are not certainly of natural or divine right - the power of dispensing of the Roman Pontiff can be exercised.

III. You will ask whether the Roman Pontiff can dispense in impediments, or at least in some impediment, of natural and divine right. If the impediment is of natural right not only advising but demanding (cf. Thesis XVI, 1), the Pontiff certainly cannot dispense, because to act against that right is always intrinsically evil. But if the matter concerns only positive divine right, an occasion of the question is furnished both by the opinion of several Theologians asserting that the Roman Pontiff can from time to time dispense in divine right (cf. Sanchez, book VIII, disputation 6), and by the practice of the Roman Pontiffs, on which that opinion also rests, of dispensing in certain things which are judged to be of divine right and even of natural right, as in vows, oaths, and ratified marriage. Why, therefore, will the Pontiff not also be able to dispense in some natural or divine impediment?

It is permitted to respond to this question in two ways. First indeed, even allowing that sometimes, in certain cases - for no one has ever dreamed this universally with respect to all things - the Pope can dispense in positive divine right or even in natural right, when the right does not arise except once some free act of man has been posited, it is simply denied that the power of the Pontiff of dispensing extends itself to those impediments of marriage which are of natural or divine right. For with respect to simply natural impediments, some of these, such as error, force, and impotence, are such that, when they exist, it is repugnant for there to be marriage, namely because of the defect of some essential element. Since, therefore, the dispensation of the Pontiff cannot supply this defect, there is no place for dispensation. But with respect to the impediment of consanguinity, the question indeed can be raised whether it is or is not of the right of nature, and whether it is of primary right or only of secondary. But once it is posited that it is of the primary right of nature, then the general rule will hold, namely that rights of this kind do not admit dispensation. Whether that impediment is from the primary right of nature or not, we leave to Jurists or Moral Theologians to dispute. For the rest, since a just cause is required for dispensing validly in the law of a superior, and since it seems that no just cause could ever underlie by reason of which it is better to dispense in this law than to

urge its observance, hence also from this head there can never be any dispensation. Nor indeed have the Pontiffs ever dispensed in this matter. Finally, with respect to the impediment of the bond, which is fundamentally natural, formally divine for men, but for women is formally natural and divine, it is certain that although the Roman Pontiff can dissolve a ratified marriage - which dissolution, however, is not a dispensation (cf. the things said in Thesis XXV, IX) - nevertheless he cannot dissolve a consummated marriage, nor permit polygamy or polyandry. These things are established from Catholic tradition, which we gave in its proper place. Accordingly it is certain that the Pontiff cannot dispense in these impediments of natural or divine right.

IV. The other response would be contained in a criticism of the opinion of those Theologians or Canonists who concede to the Pope the faculty of dispensing in certain divine laws. If that opinion were demonstrated to be false, it would follow that it is also false that the Roman Pontiff can dispense in impediments of this kind. All indeed confess that the Roman Pontiff can in certain cases authentically declare that the divine right here and now does not oblige you; but whether this is only an authentic declaration, or whether it is a true dispensation, that is what comes into question. Wherefore those who defend dispensation ought not be solicitous in establishing those cases in which the Pontifical power of dispensing can be exercised validly, and those in which it cannot; for they respond, as Sanchez well notes, book VIII, cited disputation, that those cases are the very same in which others admit that the Pontiff can authentically declare that the divine right does not oblige here and now. But once these things are posited, there are those who observe that the question, with respect to practice or the practical conclusion, is useless; for whichever opinion you admit, the consequence will always be the same: in those cases the sentence of the Pontiff has force, and anyone can act most safely according to it.

But if the matter is considered speculatively, although the assertion of a power of dispensing in divine right is from time to time difficult, it is likewise not easy to conceive what an authentic declaration distinct from a dispensation is. For it is not only a doctrinal declaration, such as some learned Theologian or Jurist could supply. The difference is clear not only from this, that the declaration of the Pontiff is more certain and removes every scruple, but also because it is judged to be a certain juridical act conferring or establishing a certain right in particular; whence it is called authentic, that is, proceeding from authority, not indeed that of a simple doctor, but of the supreme ruler of the Church. This authority surely effects something which a simple doctor cannot effect. But what does it effect, unless a right conferred on someone of exempting himself from the observance of divine right? But, Sanchez adds, such an authentic declaration is an act of itself proper to the legislator, or to one having equal authority with him. Wherefore those who assert to the Pontiff the power of declaring divine right in certain cases attribute nothing less to him than those who vindicate for him the power of dispensing in divine right.

V. But to us these things are certain. 1. There is no repugnance in Christ having given to His vicar the power, for just causes, of removing some obligation which divine right itself has sanctioned. An example is the obligation of vows and the bond of ratified marriage. For since the vicar of God acts in the name and authority of God, he can certainly, if God wills, loose what God Himself would loose. But what prevents God from willing this? Therefore the remaining question will only be a question of fact: whether God has granted this power to His vicar. This question indeed must be solved from the tradition, use, and practice of the Church, or from a certain and necessary analogy of faith.

2. Likewise there is no repugnance in God having given to His vicar, in those obligations of divine right which, as is said, draw their origin from a free act of man, of which sort are vows and oaths, the power, for just causes, either of renouncing in His name the acquired right, or of removing the obligation radically, or, while the right remains, of dispensing for some time from its obligation. We distinguish two things, as is clear, which we declare by examples. Let there be a professed religious who seeks the faculty of returning to the world and marrying, in order that, offspring having been received, he may consult the good either of an illustrious family or of some kingdom. The Pontiff can conduct himself in a twofold way. Either he dispenses simply, so that as long as the man lives he can remain in the world and lead a conjugal life; or he dispenses with restriction, so that, namely, he can marry and apply himself to procreating children, but, once offspring has been received by which satisfaction can be made to the advantage of the family or kingdom, he is to abstain from seeking the debt, and, when his spouse has died, he is to return to religion and lead the religious life by force of the preceding profession, without that profession being issued again. In this latter hypothesis a true dispensation appears; for while the profession remains, there remains the law obliging to religious chastity, to which law that professed man is of himself subject; but he is exempted from its obligation for a certain time by favor of the Pontiff, again to undergo the force of the law, which has not been removed, but whose efficacy has been suspended. But in the prior hypothesis the law or obligation is really removed in the root, and therefore the matter stands as if God Himself renounced the right which belongs to Him because of the vow emitted. Now we say that there is no repugnance in God having given each power to His vicar; for they in reality do not exceed the condition of a vicar or delegate, and they contribute not a little to the right government of the Church. Nor would he be an inferior who dispenses by proper right in the law of a superior; rather he would be a vicar who, by a power received from him whose place he holds, disposes concerning those things which are proper to him. Thus surely any vicar conducts himself with respect to him whose place he fills. But whether such a power has been given to the Roman Pontiff by Christ must be demonstrated in the same way as the first, n. 1.

3. But although these things stand so, nevertheless the Pontiff cannot dispense in impediments of marriage which are of natural and divine right. The reason is that which we have already adduced (n. III). Nor is it permitted to draw an argument for affirming such a power from the power of dispensing in other cases. For as all Theologians note, this power is certainly not universal, as we are taught by revelation itself, which denies that in many cases the Church can change or suspend divine right. Then, there is not a similar reason as in the preceding cases. For if the discourse concerns impediments from the right of nature, these are established by the right of nature independently of any preceding free consent of man, otherwise than in vows and oaths. If the discourse concerns an impediment of positive divine right, God, who conceded that ratified marriage, which He established as intrinsically indissoluble, be dissolved for just causes by the Roman Pontiff, did not will that it should ever be permitted to Christians, while the known spouse is living, to bring in another.

VI. The revalidation of marriage through healing in the root is the restoration of value to an invalid marriage, and indeed such a restoration that, by a fiction of law, it is drawn back to the beginning of

the same marriage, the law invalidating it having been abrogated. Such a restoration has place when the marriage was invalid by force of ecclesiastical law. But it is made by means of a dispensation in the root, which is the abrogation, in a particular case, of the ecclesiastical law which introduced the impediment, so that all effects are annulled or excluded, not only those which now exist and would afterward have followed, but also those which had already followed before from the law. Cf. Benedict XIV, *On the Synod*, book XIII, c. 21. Wherefore this dispensation in the root differs from a simple dispensation, which produces an effect only for future time, namely causing the marriage to be contracted validly thereafter. But the difficulty is in conceiving the efficacy of a dispensation in the root, which is said to extend also to the past; for no power is given over the past, as the common adage bears, sufficiently evident of itself.

Therefore, in order that we may briefly explain this efficacy, we observe 1. that this adage of common sense is most true, and that therefore it cannot happen that what was done should have been undone, or that it should ever be false that something once existed which in reality it was once true had existed.

Wherefore 2. the efficacy of a dispensation in the root is not situated in this, that it makes a marriage previously contracted to have been contracted validly, and offspring received from it to have arisen legitimately.

3. It remains, therefore, that the real effect of this act of power can have place only in the present and future, but with respect to the past. Namely, a) once the invalidating law has been abrogated, the persevering consent of the spouses, as is supposed, which because of the invalidating law was ineffectual for producing the conjugal bond, by that very fact becomes efficacious and by that very fact makes the marriage; and therefore there is no need of any renewal of consent, nor that the dispensation be manifested to the spouses if they are in good faith.

b) It happens that this marriage, just as it really is, is thereafter held by all as a true marriage, furnished with all rights which belong to a true marriage.

c) It happens besides that this marriage must be juridically regarded by all as legitimately contracted from the beginning, and offspring received before the dispensation as legitimately born. It is not indeed brought about that men must judge that the marriage was legitimately contracted from the beginning; this is false, and there is no power which can compel us to assert what is false. But it is brought about that the marriage must be held as if it were legitimately performed from the beginning, all the effects of the diriment impediment which is abrogated being excluded. Namely, a particular law juridically effects that no one of these effects must any longer in any way be imputed to that marriage, even with respect to the past. You see that the efficacy of a dispensation in the root is really exerted only in the present and future, but that respect is also had to the past, insofar as it is juridically effected that everyone must judge of this marriage no otherwise than if it truly had been legitimate from the beginning. This is said to be done by a certain fiction of law. Cf. the things we gave in Ballerini, *Moral Theological Work*, vol. VI, n. 1420 and following.

With the matter thus declared, it is sufficiently established that it is in the power of the Pontiff to grant dispensations of this kind. For they are not about an impossible thing, but about something altogether possible. Moreover, considered generically, this juridical act by which some law is

abrogated in a particular case and it is brought about that all effects of that law are held as null - this act, I say - does not exceed the power of any supreme authority in a society. But on what conditions this dispensation is to be granted or is customarily granted, the Moral Theologians and those skilled in canon law will teach you.

VII. Since the effects of this dispensation (VI. 3. a, b, c) are distinct from one another, it is asked whether the third effect, for instance the legitimacy of offspring, can be obtained when the marriage has already been dissolved by the death either of one or even of both spouses. Certainly if the Pontiff is unwilling to dispense unless the spouses are still living, that will not be able to be done; but the question now is not about practice, but about the possibility of the thing considered in itself. The reason for denying that this can be seems to be that, since the marriage no longer exists, the subject which is to be revalidated is lacking, and much more, both spouses being dead, the person to whom the favor is granted is lacking. But with respect to persons, if offspring exists, there is one who can enjoy this benefit. But omitting this, I judge the reason adduced to have no force in itself. For, as we noted, the efficacy of this dispensation does not directly touch the invalid past marriage as if it really changed it with respect to the past, but directly touches present and future men, who by force of that dispensation must juridically hold that marriage, previously illegitimately performed, as legitimate from the beginning. But for this nothing is required except that at some time the marriage was contracted, even if illegitimately; and this is true however much both spouses no longer exist. Namely, the marriage previously made, or the spouses who contracted in the past, are that in whose favor the dispensation is made; but the whole force of this dispensation is really exercised upon those present or future.

You will say: if it is so, even with no offspring existing, this dispensation could be granted for a marriage long since past. Indeed I do not resist this, regard being had only to power; but because the act would be wholly useless, there is no reason why we should ever expect it from a prudent Prince.

VIII. Another question remains. Since, as we proved (Thesis XXXII), the secular Prince has no power over Christian marriage, but ought to suppose and receive it as it is made in the Church according to its laws; but, this principle posited, he can decree according to his own judgment concerning only civil effects: it is asked whether, once a dispensation has been made by the Pontiff in the root of a marriage, the Prince is bound to accept it with respect to civil effects, so that he therefore cannot, for example, deny the right of legitimate succession to a son born before the dispensation. Sanchez affirms this (book VIII, disputation 7), whose reason is this. The Prince denying civil effects to offspring because the marriage is null himself supposes that from the law of the Church; wherefore this effect of denied legitimate inheritance rests as upon a foundation on the nullity of the marriage. Moreover, once the invalidating law has been abrogated for this case, that foundation is removed; therefore there is no longer any reason why the Prince should deny the right of succession to the offspring. Sanchez cites several authors for his opinion; yet not all consent to him. Nevertheless Benedict XIV consents in the canonical questions, part I, question 174.

Although there is no doubt that it is exceedingly fitting that the Prince admit this dispensation, both because of the reverence owed to the Roman Pontiff and lest the same offspring be held legitimate in the ecclesiastical forum and illegitimate in the civil forum, which would be a grave inconvenience, there occurs a reason for doubting whether the Prince is truly bound to receive this dispensation with respect to civil effects, or whether this pontifical dispensation removes, apart from the consent of the

Prince, the civil effects arisen from an illegitimate marriage. The reason for doubting is that a dispensation in the root does not make the marriage to have formerly been legitimate, but makes it to be regarded as legitimate even with respect to the past, all the effects of the diriment impediment, whose law is abrogated, having been nullified. Namely, by a fiction of law, the matter is restored to that place as if the marriage had always been true. But this restoration with respect to the past is finally situated in this: that, the law of the impediment having been abrogated, by an abrogation which is made now, absolutely all the effects which that law produced are removed, not indeed simply, because there is no power over the past, but insofar as it is juridically effected that those effects are no longer imputed to that marriage, even with respect to the past. Accordingly, with respect to the past, a dispensation in the root exercises its force insofar as by the authority of the Pontiff all are commanded to impute none of those effects to that marriage and thus to hold it as legitimate. But since, with respect to civil effects, the Prince enjoys independent authority, the command of the Pontiff, insofar as it regards civil effects, does not seem to have force apart from the consent of the same Prince.

You will say that the dispensation of the Pontiff immediately restores value to the marriage, the impeding law having been abrogated, and that from this it is consequent that the effects of the illegitimate marriage are abolished. But that indeed is a formula having a true sense; yet if the matter is looked at in the concrete and account is taken of that which is done and can be done by the Pontiff dispensing, this will finally be found: that the Pontiff abrogates the law of the impediment for the present and future, and, as regards the past, effects, insofar as he commands by authority, that the effects of the illegitimate marriage are not juridically imputed to that marriage. For he cannot change the thing or essence which once was, nor can he effect that those effects once did not exist, for example, that the offspring was not formerly illegitimate. Therefore, since with respect to the past, for instance offspring already begotten, the force of the pontifical dispensation exerts itself by commanding, the question spontaneously offers itself whether this command obliges the independent Prince with respect to civil effects. The Prince indeed receives from the Church that a certain marriage is null, and that the offspring therefore is illegitimate. This posited, by his own right he decrees that offspring which is born from such a marriage is not an heir. Since that condition always truly remains, that the offspring in reality arose from parents not legitimately joined, why will it not be permitted to him to preserve his own law? Surely if you had promised alms to legitimate children to be born, suppose in some poor village, would you believe yourself bound to give it to children indeed illegitimately born, after however a dispensation in the root had been obtained? You would certainly say that the condition established by you - who were surely free, subject to no authority in establishing it - is always lacking. Thus the Prince, decreeing civil effects by his own right, seems able to respond that the condition required by him, with the law of the Church presupposed, is in reality lacking. But is not the foundation of the civil disposition removed by the pontifical dispensation? Namely, it is not removed physically, for it will always be true that the offspring was born in an illegitimate manner; but it is removed juridically. Yet the question returns: whether the authority of the Pontiff establishing this right has force also with respect to civil effects apart from the consent of the Prince.

Wherefore it could seem that a Prince who should wish to deny, for example, the rights of succession to offspring born from an invalid marriage, even if a dispensation should afterward follow, is not to be condemned for violated ecclesiastical authority.

And indeed nothing prevents certain civil effects from being denied by civil right even to a true legitimate marriage for certain reasons. Thus, in order that nobles may be deterred from certain too-disparate marriages, it is permitted to deprive the children born from them of the right of legitimate succession, although the marriage was true. Therefore the fact that by the law of the Church a marriage is true is not a sufficient reason why a prince could not sometimes deny civil effects, if a suitable reason underlies this. But in our hypothesis too a suitable reason underlies it: namely, that the nuptials were illegitimate from the beginning, which civil right may wish to punish with a certain penalty so that access may be closed to them in society.

Nevertheless Theologians and Canonists generally follow the opposite opinion, relying on those arguments which Sanchez also brought forward. And indeed the authority of the Pontiff is the same in establishing an impediment and in dispensing; for the very authority which establishes impediments is that which can dispense, and conversely. But the Prince is subject to the authority of the Pontiff with respect to Christian marriages, so that he ought to hold as true marriages among Christians all and only those which are conformed to the laws made by the Roman See. But subjection owed to this authority demands that you equally revere every act of it, so that therefore, just as you are bound to hold that a marriage to which an impediment established by the Roman See stands opposed is null, so likewise you are bound to hold as legitimate that which the same Roman Pontiff wishes to be judged as such. But what the Pontiff directly commands is that it be judged as a legitimate marriage, from which it follows that the proper effects of a legitimate marriage, whether they are ecclesiastical or civil, cannot by right be denied to it. If the reader wishes to embrace this opinion, that is certainly permitted by us. But a recent writer, and one learned and erudite, Gasparri, *On Marriage*, n. 1152, concedes to our opinion.

Corollary

Putting an end here to the Treatise, we judge it worth the effort to note that here there is available what can be judged opportune and necessary for refuting the errors concerning Christian marriage reproved by the Most Holy Pope Pius IX in the *Syllabus*, under section VIII. These errors indeed are as follows.

1. By no reason can it be maintained that Christ raised marriage to the dignity of a sacrament. Cf. Theses VII, VIII, and IX.

2. The sacrament of marriage is nothing except something accessory to the contract and separable from it, and the sacrament itself consists only in the nuptial blessing alone. Cf. Theses X and XI.

3. By the right of nature the bond of marriage is not indissoluble, and in various cases divorce properly so called can be sanctioned by civil authority. Cf., with respect to the first part, Thesis XVI; with respect to the other part, insofar as it affirms divorce properly so called to be licit, cf. Theses XVII, XVIII, XIX, XXI, XXII, XXIII; insofar as it truly affirms that this can be sanctioned by civil authority, cf. Theses XXXII and XXXIII.

4. The Church does not have the power of introducing impediments diriment of marriage, but that power belongs to the civil authority, by which the existing impediments are to be

removed. Cf. Praenotiones, chapter IV, and Theses XXVIII, XXIX, XXX.

5. In later centuries the Church began to introduce diriment impediments, not by proper right, but using that right which had been borrowed from the civil power. Cf. Thesis XXIX.

6. The Tridentine canons which inflict the censure of anathema on those who dare to deny to the Church the faculty of introducing diriment impediments either are not dogmatic or must be understood of this borrowed power. Cf. Thesis XXVIII, n. V, and Thesis XXX.

7. The Tridentine form under penalty of invalidity does not oblige where the civil law prescribes another form and wills the marriage to be valid when this new form intervenes. Cf. Thesis XXXII.

8. Boniface VIII was the first to assert that a vow of chastity emitted in ordination renders nuptials null. We shall speak in the Appendix to the decrees of Lateran Council III concerning this ἀνιστορησίᾳ καὶ τῶν ἐπινοιῶν συγχύσει, that is, this lack of historical knowledge and confusion of notions.

9. By force of a merely civil contract, marriage of the true name can exist among Christians; and it is false either that the contract of marriage among Christians is always a sacrament or that there is no contract if the sacrament is excluded. Cf. Thesis X.

10. Matrimonial causes and espousals by their own nature pertain to the civil forum. Cf. Thesis XXXII, VI, I say 7.

Appendix: Conspectus of the Decrees and Ecclesiastical Canons in the Matter of Marriage from the First Centuries of the Church Down to the Year 1215

Monitum

When I was writing this treatise on Marriage, it was necessary for me to search out the decrees and canons of the Church concerning this matter, and to prepare for my studies a not inconsiderable collection of them. But when the treatise had been completed, the thought occurred to me that I would do something not unwelcome to readers if I communicated to them the collection of the same decrees and canons, also enlarged and, so far as it could be done for my part, made complete. For through it the very history both of the dogma and of the discipline is almost placed before the eyes and is contained in a few things. But the decrees which are contained concerning this same matter in the divinely inspired books, although they also especially pertain here, nevertheless, because they are both known to all and had been treated at length in the Treatise, and claim for themselves a certain special order, I did not wish to review here, but to set forth only canons proceeding from the Church. Yet while I was considering this, I perceived at the same time that some limits had to be fixed, beyond which this series would not run, lest I should force things not very useful upon unwilling readers and create weariness for them. Therefore I judged that a stop should be made at the ecumenical Council of Innocent III; for thenceforth the Decretals of Gregory IX and the other subsequent collections of canons or decrees will easily teach you what the Church has established concerning marriages. In collecting the canons I kept this before my eyes: that I should pass over none which had any relation with doctrine or discipline concerning Marriage. Wherefore I have also copied canons which exclude bigamists from the priesthood and which interdict the use of marriage to those who have been constituted in sacred order. But when canons of this sort had been enumerated down to a certain age, I judged that thereafter one must abstain from them, unless when the law of the Church invalidating nuptials because of sacred order appeared more manifest. Nor did I judge that one should act in an unlike manner concerning the canons which reprove the nuptials of virgins dedicated to God or of monks.

But because this conspectus pertains to this, that the right of the Church in this matter may be set before the eyes, not only the canons of Councils but especially the decrees of the Roman See had to be recalled by me; for it is the fount and origin of every right in the Church, just as it is the infallible teacher of truth. Surely the decrees of this Holy See are to be received with such pious faith by the children of Mother Church and venerated "that they are admitted by them without any scruple as the rule of the canons," as Alexander II wrote to Philip, King of the Franks. Yet everyone understands that there was no need for us to collect all the responses of the Roman Pontiffs, which frequently are nothing but the application of a law already known.

The canons which are copied almost all pertain to particular Synods. Wherefore it is necessary above all to note that these are fallible, and that individual Synods, according to the diversity of things, persons, and places, could deservedly have made diverse laws in those matters which had not yet been defined by force of supreme authority. Yet since the Spirit who governs the Church is one, you will finally see all things, sweetly and little by little, the Roman See above all putting forward the

norm, recalled to harmony and unity. Besides the canons of provincial synods I have also published the canons of certain diocesan synods, or the decrees of some Bishop, because I judged that they were of value for bringing light to the others. For the same reason I have recited certain Capitularies of the Franks, which represent the mind and practice of that age. I have also, from time to time, appended notes, generally very brief, beneath the canons or decrees, by which I might make their interpretation clearer for students of theology, and might indicate the comparison to be instituted with other things. For I profess that I have written this work, such as it is, not for learned men, but for those young men who give their labor to theology; if it is going to bring them any utility, I shall congratulate myself not a little for the labor spent.

From the Canons of the Apostles, in the First Three Centuries of the Church

Although they were not written by the Apostles, nevertheless it ought to be certain that the Apostles, and especially Peter, left certain rules to the Church, by which it would be taught in what manner this society was to be governed: for example, how Pastors and ministers were to be chosen and instituted, what were the offices and duties of each, what the subordination of inferiors, and by what things, generally, some certain measure would be established for discipline, although in itself mutable. For these things are not handed down in the Scriptures; yet without them a society cannot stand. Now in the canons which are called those of the Apostles there is contained a certain form of ecclesiastical government and ecclesiastical discipline. Therefore there is no reason why we should doubt that they finally proceeded from the Apostles, and especially from Peter, although, because they were not immediately consigned to writing, others afterward, when they were written, were added, which an Apostolic origin did not commend. These two things seem to have been the cause why both Gelasius, or at least Hormisdas, placed among the apocrypha the book which is inscribed *Canons of the Apostles*, which had not been written by the Apostles and contained certain things not to be referred to the Apostles; and why, at the same age, as Dionysius testifies in his letter to Stephen the Bishop, very many did not easily give consent to these canons. But the fact that, these things notwithstanding, Dionysius in his earlier Code of Ecclesiastical Canons - for the other, entitled the code of canons of the universal Church, is nothing but a more exact word-for-word translation from the Greek of the canons of the Greek councils, made by Dionysius at the command of Pope Hormisdas after the other; cf. his letter among the letters of Hormisdas, n. 148, ed. Andrea Thiel - reviewed the ecclesiastical rules of the holy Apostles, sufficiently shows that canons of this sort, attributed to the Apostles, obtained no slight authority in the Church.

Yet the question, among the Latins at least, concerned only the fifty canons which Dionysius copied from Clement; for the canons to which he says that very many do not easily give assent are those which he afterwards copies in the number of 50. Others he either did not recognize or held of no worth, although John Scholasticus of Antioch, who in the year 565 was Bishop of Constantinople, reports 85 Apostolic canons from Clement. That Dionysian collection, made at first by private authority, was afterwards received into use by the Roman Church, which cited canons from it, and among these even the canons of the Apostles. Yet Hadrian I, in his Epitome of Canons, reports only forty-five canons of the Apostles from the Dionysian canons, not omitting those which we produce below. From these things it is evident why we judged that the Canons of the Apostles were not to be omitted in our prospectus.

Canon XIX. He who has married two sisters successively, or the daughter of a brother (another reading: a cousin; Ebediesu adds, or the daughter of a sister), cannot be a cleric.

Whether marriages of this sort are held illicit for all, and because of their special malice those who have contracted them are prohibited from the clergy, or whether such men are kept from it only because of the propriety of the clerical order, just as bigamists are kept away, is not evident of itself from this canon. Yet if you consider other canons either of the same or of a very near age, you will easily understand to what this one tends. Cf. Canon LXI of Elvira below.

Canon XLVIII. If any layman, having cast out his wife, has taken another, or has married one dismissed by another, let him be separated.

This canon is cited by Zacharias in his letter to Pepin (see below), who cites this and other canons from the Dionysian collection.

Now if you notice at what time this canon was established, namely when divorces with dissolution of the bond were permitted by Imperial laws for many causes, you will understand that the sentence of the canon, expressed universally, that is, without any limitation, also and indeed principally regards the case in which a wife, for causes approved by earthly law, for example because of adultery, was cast out or dismissed. Already, that is, the Church uses her own right concerning marriage, with no regard had to civil laws.

Decree of Callistus, Roman Pontiff (A.D. 218-222), from the *Philosophumena*, Book IX, Chapter 12

Since marriages with persons of the lowest rank were prohibited to Roman matrons of a certain more eminent dignity, so that those unions were not reckoned by the law except as concubinage, Callistus, that he might provide for their salvation, conceded that marriages of women of this sort were valid, whomever they had chosen as husband, whether slave or free, although they were not married according to Roman laws. You see here the independent right of the Church putting itself forth.

From the Council of Elvira, in the Province of Baetica, A.D. 305

Note that the canons of this Council are properly penitential or penal.

Canon VIII. Women who, with no preceding cause, have left their husbands and have coupled themselves with others, are not to receive communion even at the end.

We have spoken about the sense of this penal law in the *Treatise on Penance*, Thesis IX. Women who have left their husbands without any cause and have married others are not merely disapproved, as if that were lawful with a cause; but they are struck with a special penalty because the fault is more grave. Cf. the following canon.

Canon IX. A believing woman who has left a believing adulterous husband and marries another is to be prohibited from marrying. If she marries, she is not to receive communion before the one whom she left has first departed from this world, unless perhaps the necessity of illness compels it to be given.

Behold the doctrine concerning the indissolubility of the bond clearly proposed even in the cause of adultery. Directly, indeed, the matter concerns a wife dismissing an adulterous husband; but since it is established that husband and wife are equal in this matter by Christian right (cf. Thesis XIII, I), what the Fathers of Elvira affirm concerning the wife is to be received equally concerning the husband.

Canon X. If she whom a catechumen left has married a husband, she can be admitted to the font of washing. This also is to be observed concerning catechumen women. But if she who is married by him who left an innocent wife is a believer, and she has known that he has a wife whom he left without cause, it pleased the council that communion is not to be given to her even at the end.

Cf. Thesis XVIII, II, c), at the end.

Canon XIII. Virgins who have dedicated themselves to God, if they have betrayed the covenant of virginity and have served the same lust, not understanding what they have lost (another reading: what they have committed), it pleased the council that communion is not to be given to them even at the end. But if, once persuaded, or corrupted by a fall of a weak body (Ferd. Mendosa: But if they have persuaded themselves that they have fallen by weakness of body), women of this sort have done penance for the whole time of their life, so that they abstain from coition, because they seem rather to have fallen, it pleased the council that they ought to receive communion at the end.

We have already warned in its place (Thesis XXIV, VI and VII) that in the first centuries the law establishing that profession of chastity is a diriment impediment of marriage did not at once prevail among all Churches. From this we were gathering that the obliging force of this law is from ecclesiastical right. Wherefore the reader will not marvel if he does not find the canons of the earlier centuries concordant in this matter; for the same thing is to be seen in very many disciplinary laws. Yet the Fathers of Elvira already seem to have admitted that impediment from the beginning of the fourth century. For the condition required, that the fallen virgins who had dedicated themselves to God abstain from coition for the whole time of life, persuades one that no power of uniting themselves to men was recognized in these virgins. Unless perhaps you say that the Fathers speak

only of fornicatory intercourse; yet you would not sufficiently establish this from the fact that they are said to serve lust, for this likewise holds also in those who would attempt forbidden nuptials. Since, therefore, on the contrary the Fathers use no distinction between fornication and nuptials, they seem rather to have judged that any intercourse whatever of these virgins with men was an act of reprehensible lust, destitute of all value.

Canon XIV. Virgins (secular, not yet having experienced copula) who have not kept their virginity, if they have received the same men who violated them and have found them as husbands, because they violated nuptials alone, ought to be reconciled after a year, without penance (Ferd. Mend.: after the penance of one year). Or if they have known other men, because they have committed adultery, it pleased the council that they be admitted to communion after legitimate penance has been performed through the space of five years.

Virgins of this sort are said to have violated nuptials because they came to them not intact but corrupted; and to have violated nuptials alone because they had not vowed virginity.

Canon XV. Because of the abundance of girls, Christian virgins are by no means to be given in marriage to Gentiles, lest an age swelling in its flower be dissolved in adultery of the soul.

The Fathers of Arles, deciding the same thing a little afterward below in Canon XI, held this as an impediment only impeding, not diriment. Nor does this canon of Elvira demand another interpretation.

Canon XVI. Heretics, if they are unwilling to transfer themselves to the Catholic Church, are not to be given Catholic girls. But it also pleased the council not to give them either to Jews or to pagans (Ferd. Mend.: schismatics; another reading: heretics, a useless repetition), because there can be no fellowship of the faithful with the unfaithful. If parents act contrary to the interdict, it pleases the council that they abstain for five years.

Theodosius the Great forbade a Jew to marry a Christian woman, with the penalty of adultery proposed. Cod. Theod., book III, title 7, law 2.

Canon XVII. If any perhaps have joined their daughters to priests of idols, it pleased the council that communion is not to be given to them even at the end.

From these three canons you understand how greatly, already from the first centuries, the Church shrank from nuptials with unbelievers or heretics. Yet no separation is prescribed, but only a certain penance is imposed for the crime.

You also understand the custom of Christians approved by the Church, that daughters entered into nuptials under the care and moderation of parents.

Canon XXXIII. It pleased the council that there be a complete prohibition for bishops, presbyters, and deacons, or all clerics placed in the ministry (that is, a command, but by a prohibiting precept that something not be done, that is, that they abstain, as follows): that they abstain from their wives and not generate children. But whoever shall have done this, let them be expelled from the honor of the clericate.

This is the first canon in which the prescription of ecclesiastical celibacy appears; this indeed is not the same thing as saying that then for the first time a law about this matter was enacted. For the rest,

what we noted at Canon XIII has some place here also. For it is clear that the celibacy of ecclesiastics, which in the first centuries both the Latin and the Greek Church accepted, was not proposed with the same force in all Churches at that age; but from time to time persuasions and exhortations were employed, and from time to time the law was also tempered by a certain exception in the Greek Church, even when ecclesiastical celibacy generally flourished no otherwise than in the Latin Church. This will be evident from the following canons. Cf. concerning this matter the excellent work of F. A. Zaccaria, *On Ecclesiastical Celibacy*.

Consider in this canon of Elvira the words: "by all clerics placed in the ministry," and you will understand that the reason of the universal law afterwards enacted concerning the celibacy of subdeacons had already been formed in antiquity, namely because they serve the altar; this will also appear in the following canons.

Canon LIV. If any parents have broken the faith of espousals, let them abstain from communion for the space of three years. Yet if the same bridegroom or bride have been detected in that grave crime (that is, if they alone, without the parents' consenting), the parents will be excused. But if they have been in the same vice (the parents) and have polluted themselves by consenting (to the children), let the preceding sentence be observed.

Cf. Alex. Syrus. Mazocchi's *Diatribe* on this canon. There exists, published by the same man, the posthumous work of J. M. Muscettula, *On the Espousals and Marriages of Sons under Paternal Power*, etc.

Canon LXI. If anyone, after the death of his wife, has married her sister and she herself is a believer, it pleased the council that he abstain from communion for five years, unless perhaps the necessity of illness has compelled peace to be given more quickly.

Behold the prohibition of a union of this sort first appearing. What the Spanish Fathers here prohibit, the Fathers of Neocaesarea declared null; see below.

Now Roman laws had already forbidden certain marriages because of affinity, but not for this cause. In the year 295 Diocletian and Maximian had enacted a law (Cod. Iust., book V, title 4, law 18): Let no one be permitted to contract marriage with a daughter, granddaughter, or great-granddaughter; likewise with a mother, grandmother, or great-grandmother; and, from the side, with a paternal aunt and maternal aunt, sister, a sister's daughter and granddaughter from her; moreover with a brother's daughter and granddaughter from her; and likewise from among affines, with a stepdaughter, stepmother, daughter-in-law, mother-in-law, and the rest who are prohibited by ancient right, from whom we will that all abstain (cf. *Institutes*, book I, title 10).

Canon LXV. If the wife of any cleric has committed adultery, and her husband knows that she commits adultery and has not immediately cast her out, let him not receive communion even at the end.

Cf. Canon VIII of Neocaesarea below. The wife of a cleric who perseveres in the crime of adultery is to be cast out; for it is especially unbecoming for a cleric to live in the same house with an adulterous woman. The last words, "let him not receive communion even at the end," if regard is had to the grammatical construction, seem to refer to the cleric.

Canon LXVI. If anyone has married his stepdaughter as wife, because it is incest, it pleased the council that communion is not to be given to him even at the end.

If it is called incest, the marriage is declared null from this affinity. That is, the Fathers approve the Roman law cited above and propose it to the faithful by their own authority.

Canon LXVII. It is to be prohibited that any believing woman or catechumen woman have either actors (another reading: long-haired men) or men of the stage (another reading: cinerarii). Whoever has done this is to be kept from communion.

Dr. Hefele, in his *History of Councils* at this canon, prefers the reading *comatos* and *cinerarios*.

Canon LXX. If with the consent of the husband the wife has committed adultery, it pleased the council that communion is not to be given even at the end (F. 31: to them). But if he has left her (F. 31 adds: and they have been separated and have done penance worthily), let him receive communion after ten years (F. 31: let them receive).

The consent of the husband does not prevent the approach of a spouse to another from being adultery. An adulterous wife was to be dismissed, as Hermas had already warned, book II, commandment 4. Cf. the preceding Canon LXV.

Canon LXXXI. Let not women, rather in their own names than in the names of their husbands, dare to write to laymen who are faithful (F. 31: who), or receive letters of peace from anyone written to their own name.

From the Council of Arles, A.D. 314

No mention is made of this canon and the following in the synodal letter to Silvester; yet Sirmond teaches in the preface to volume I of the Councils of Gaul that that letter is mutilated.

Canon X. Concerning those who detect their wives in adultery, and the same are young believers and are prohibited (Petavius suggests that it should be read: are not prohibited, because of the ἀκολουθίαν of the discourse) from marrying, it pleased the council that, so far as can be, counsel be given to them that while their wives are living, though adulterous, they not take others.

The Fathers wish that one act with these young men by counsel and persuasions rather than by threats, so that they may be deterred by a gentler way from that which they are prohibited by Christian law from doing. For the Fathers expressly affirm that it is prohibited. Therefore the canon tends to this: that it teach Priests how they ought to conduct themselves in these circumstances. Petavius indeed (in the notes to Epiphanius, heresy LIX) suggested, beyond the faith of the codices, another reading, that is, "are not prohibited from marrying," and that because of the ἀκολουθίαν of the discourse. Yet it is evident from what has just been said that this arbitrary emendation is not demanded by it. For the rest, if the Caesarean prohibition is understood, which certainly was lacking, by that very fact the intention of the Fathers in this canon, which we have proposed, betrays itself. But if the divine prohibition did not exist, there was no place for counsel.

From a certain Lucensian manuscript Mansi brought forward other canons besides the twenty-two authentic ones of this synod; yet he himself judges that they pertain to another synod of Arles. From these doubtful canons the first corresponds to the eighth legitimate canon, and it has itself thus:

It pleased the council that, so far as can be, it be inhibited to a man that it should be lawful, after dismissing his wife while she lives, to marry another over her. But whoever has done this will be alien from Catholic communion.

Canon XI. Concerning believing girls who are joined to Gentiles, it pleased the council that they be separated from communion for some time.

Cf. Canon XVI of Elvira.

From the Council of Ancyra, A.D. 314

Canon X. Whatever deacons, in the very constitution, testified and said that they ought to marry wives, since they cannot remain thus, if these afterwards marry a wife, let them be in the ministry, because this has been conceded to them by the bishop. But if any, this being passed over in silence, and in ordination having been received so that they would remain thus, afterwards come to marriage, let these cease from the diaconate.

This is a certain tempering applied by these Fathers to the common custom, and it was never commonly received in the Church. The reason may have been a certain special condition of the Churches of Asia Minor and Syria, whose Bishops came together there at that age because of a scarcity of sacred ministers.

Canon XI. Girls betrothed to some men and afterwards carried off by others, it seemed good that they be restored to those to whom they had been betrothed, even if they suffered force.

Cf. Canon XXII of Basil below.

Canon XIX. Whoever, professing virginity, render their profession void, let them fulfill the definition of bigamists (that is, the defined penalty). But we have prohibited virgins who meet with certain men as sisters.

This canon is milder than Canon XIII of Elvira, nor is there speech concerning perpetual abstinence from copula. Dr. Hefele says that here the matter concerns violation of profession by legitimate marriage, but there violation by fornication or lust alone. Yet this, as we noted, is not sufficiently established. Nevertheless it is certain that already from the first centuries this sense reveals itself in the Church: that it is repugnant for professed virgins, dedicated to God, to be joined in marriage.

The virgins who met with certain men as sisters did not indeed intend carnal intercourse; but such living together is prohibited because of danger.

Canon XXIV. A certain man, having a betrothed woman, violated her sister and rendered her pregnant; afterwards he married as wife the one betrothed to him. But she who had been corrupted destroyed herself with a noose. Those who were conscious of it were ordered to be received after ten years of penance, according to the established grades of penance.

Moved by a certain fact, says Balsamon on this canon, the Fathers issued the present canon. In this fact, as the same man notes, many wicked things were committed: fornication, illicit marriage, killing.

From the Council of Neocaesarea, in Cappadocia, 314-324

Canon I. If a presbyter has married a wife, let him be deposed from order. But if he has fornicated or has perpetrated adultery, he ought to be expelled more fully and reduced to penance.

It was never lawful, after sacred orders had been received, to enter marriage.

You see here penance prescribed even for presbyters, but for deposed ones.

Canon II. If a woman has married two brothers, let her be cast out until death. Nevertheless at the end, because of mercy, if she has promised that, when made whole, she will dissolve the bonds of this union, let her obtain the fruit of penance.

Cf. Canon LXI of Elvira. For just as there a man is prohibited from receiving successively two sisters, so here a woman is prohibited from having two brothers by the same agreement. Besides, this marriage is declared void, without whose dissolution pardon is not granted. Cf. Canon XXIII of Basil following. But by imperial law these nuptials were first forbidden only in the year 355 by Constantine and Constans, Augusti (Cod. Theod., book III, title 12, law 2): "Although the ancients believed it lawful, when the nuptials of a brother had been dissolved, to marry the wife of the brother, and lawful also, after the death of a woman or divorce, to contract marriage with the sister of the same woman, let all abstain from nuptials of this sort and not judge that legitimate children can be procreated from this union; for it is fitting that those who shall be born be bastards." Thus again Honorius and Theodosius in the year 415 (ibid., law 4).

Canon III. Concerning those who have fallen into several nuptials successively, the prefixed time for doing penance is indeed manifest; but their conduct and faith abbreviates the time.

The speech is about polygamists who marry after second nuptials. Cf. Canon IV of Basil below.

Canon VII. It is not fitting for presbyters to dine at the nuptials of a bigamist, because, since a bigamist needs penance, who will be the presbyter who, because of a banquet, can offer consent to such nuptials?

That is, this is prohibited by the same reason by which penance was imposed.

Canon VIII. If the wife of a certain layman constituted as such has committed adultery, and is evidently accused, such a man will not be able to come to the ministry of the clergy. But if she has committed adultery after ordination, it is fitting to dismiss her; but if he has lived with her, he will not be able to obtain the ministry committed to him.

The dismissal about which the Fathers speak here is other than that which Leo does not permit in the letter cited below to Rusticus of Narbonne, chapter III. For the Fathers of Neocaesarea speak of separation without dissolution of the bond, as does Canon LXV of Elvira cited above.

From the Council of Nicaea, A.D. 325

Canon VIII. Concerning those who call themselves Cathari ... it is fitting before all things that they profess these things in writing: that they receive and follow the dogmas of the Catholic and Apostolic Church, that is, that they communicate both with bigamists and with those who have fallen in persecution.

That repeated marriage is honorable is a Catholic dogma.

From the Council of Carthage, A.D. 348

Concerning the series, number, and proper canons of the individual Carthaginian or African synods, cf., if you please, the Fathers Ballerini in the third tome of the works of St. Leo, *On the Ancient Collection of Canons*, part II, chapter 3.

Canon III. All said: those who do not wish to marry and choose the better part of chastity ought to avoid not only dwelling together with strangers, but not even to have any access to them. Therefore this the law commands, and your holiness (they address Gratus the bishop) commends it. This also has been established by us in individual councils.

From the Council of Laodicea, in Phrygia, 343-381

Canon I. According to the ecclesiastical canon, it is fitting that to those who have been freely and legitimately joined in second nuptials, and have not made the copula of nuptials secretly, when a little time has passed and they have applied themselves to prayers and fasts, communion be given by pardon.

The Fathers signify that secret nuptials are not approved by them. A light penance is prescribed because of second nuptials, even legitimate but manifest; if they had been less legitimate or even secret, a graver penance would have been imposed.

Canon X. Those who are of the Church ought not indiscriminately to join their sons or daughters in marriage with heretics.

Canon XXXI. One ought not to contract marriage with any heretic, or to give sons or daughters, but rather to receive, if they profess that they will be Christians.

There is not invalidation but prohibition in these two canons. Cf. Canons XV and XVI of Elvira.

Canon LII. Nuptials or birthdays ought not be celebrated in Lent.

This canon was received in the second Council of Braga, or in the Collection of Canons of Martin of Braga after the middle of the sixth century.

From the Council of Gangra, about A.D. 350

Canon I. If anyone reviles nuptials and detests or judges culpable a faithful and religious woman sleeping with her husband, as if she could not enter the kingdom of God, let him be anathema.

Canon IV. If anyone contends concerning a presbyter, γεγαμηκότος, married (that is, one who has taken a wife, certainly before ordination), that when he celebrates the Sacred things one ought not to communicate in his oblation, let him be anathema.

Since the Eustathians, against whom these canons are brought, simply detested nuptials, I do not understand why the interpretation of Baronius is called sophistical by Dr. Hefele at this canon, when Baronius denies that the matter concerns a presbyter who, having a wife, still continues to use her, but says that the matter concerns a presbyter who simply has a wife, even if he does not use her. Even this alone, that the presbyter was married (for the conjugal bond does not cease because of ordination), was a sufficient reason why those who abhorred nuptials would abstain from him. For the rest, the word γεγαμηκός, married, never demanded this, that it signify him who uses conjugal copula. Moreover, this same Gangran decree is repeated by the Convention of Mainz in the year 851 (see below), that is, at that age when Latin presbyters certainly were not marrying. Therefore the Fathers of Mainz interpreted this canon no otherwise than Baronius. Cf. this canon with the following.

Canon IX. If anyone, applying himself to virginity and continence, withdraws from marriage as though it were an abominable thing, and not on account of the beauty and holiness of virginity itself, let him be anathema.

Canon X. If any of those who are virgins on account of the Lord insult those who have married wives ... let him be anathema.

Canon XIV. If any woman leaves her husband and wishes to withdraw, execrating marriage, let her be anathema.

These canons are for the commendation of marriage, as was the preceding one.

From the Council of Valence, in Gaul, 374

Canon I. It has seemed good that after this synod no one ... from among bigamists or husbands of women whose marriage has been interrupted (that is, of widows) can be ordained a cleric. Nor must it be asked whether, initiated in the divine sacraments or Gentiles, they have stained themselves with this necessity of an unhappy lot, since the form of the divine precept is chaste.

Thus also Innocent I wrote in a rescript; see below.

Canon II. But concerning girls who have vowed themselves to God, if they have of their own accord passed over to earthly nuptials, we have decreed that this is to be observed: that penance not be given to them immediately, and when it has been given, unless they have fully satisfied God, as far as reason shall demand, the communion of these same is to be deferred.

You will perhaps understand the cause of the delaying of penance, which these Fathers do not wish to be given immediately, from the decree of Innocent I cited below to Victricius, chapter XII, saying that women of this sort are not to be admitted to penance unless the one to whom they had joined themselves has departed from this world. Hence already among the Gauls the same opinion appears concerning the force of these vows as among Innocent. Cf. ibid.

From the Canons of St. Basil, in the Letters to Amphilochius, A.D. 374-75

Consider that these canons are of themselves penitential or penal. They were indeed handed down by private authority; yet they were in the highest honor among the Greeks. They exhibit, generally, the canon law then in force in the Greek Church concerning those matters about which Basil had been questioned. Wherefore we could not abstain from reviewing these canons.

Canon III. A deacon who has fornicated after the diaconate shall indeed be cast out from the diaconate; but, thrust out into the place of laymen, he will not be kept from communion, since it is an ancient canon that those who have fallen from a grade are punished by this mode of punishment alone.

If you compare this canon with the following Canon XLIV, where no further carnal use is permitted to deaconesses, as consecrated, and therefore not even conjugal use, it will be evident that this was much more forbidden to deacons. Wherefore by the name of fornication Basil understands any carnal use whatever, even conjugal use, which is illicit for deacons.

Canon IV. They defined the same canon for trigamists and polygamists as for digamists, proportion being preserved; for some appoint one year for digamists, but others two, while they often segregate trigamists for three and four years. But they call trigamy no longer marriage, but polygamy, or rather fornication under constraint ... But by custom we have received a segregation of five years in the case of trigamists, not from the canons but from the consequence of those things which had previously been received. But it is necessary not to keep them wholly from the Church, but to admit them among the hearers for two or three years, and afterwards to receive them among the standers, yet not to admit them to the communion of the Good; and thus, after they have shown some fruit of penance, to restore them to the place of communion.

Canon VI. Let the fornication of Τῶν κανονικῶν not be reckoned as marriage, but let their union be wholly torn apart.

The Maurist editors, whom see, contend that the speech is only about women and that canonicae, or sacred virgins, are understood. Cf. Canon XIX of the same Basil.

Canon IX. According to the consequence of the sentence, what was pronounced by the Lord, that it is not lawful to depart from marriage except because of fornication, applies equally to men and women.

Canon XII. The canon has wholly excluded digamists from ministry.

Canon XVIII. Concerning fallen virgins, who have professed to the Lord a chaste life, and afterwards, overcome by the lusts of the flesh, make their covenants void, our fathers, since they accommodated themselves simply and gently to the weakness of those who fall, judged that these could be admitted after a year, judging about them according to the likeness of digamists. But indeed it seems to me, since by the gift of God the Church, progressing, becomes stronger, and now the order of virgins is multiplied, that the matter itself must be carefully considered, as it is manifest to one considering it, and the sentence of Scripture, which can be found from consequence. For widowhood is inferior to virginity; therefore also the offense of widows is far less than that of virgins.

Let us therefore see what was written to Timothy by Paul, 1 Tim. V. 11-12. And so if a widow is subjected to a most grave judgment as one who has made void her faith in Christ, what must we think about a virgin, who is the spouse of Christ and a sacred vessel dedicated to the Lord? It is indeed a great sin even for a maidservant, giving herself to clandestine marriages, to fill the house with debaucheries and by a worse life to do injury to her owner; but it is far more grave for a spouse to become an adulteress and, bringing disgrace to her union with the spouse, to give herself to immodest pleasures. Therefore the widow indeed is condemned as a corrupted maidservant, but the virgin is subjected to the judgment of an adulteress. Therefore, just as we call him who is with another's wife an adulterer, not admitting him to communion before he has ceased from the sin, so certainly we shall also establish concerning him who has a virgin. But we must establish this in advance: that she is called a virgin who has offered herself of her own accord to the Lord, and has renounced nuptials, and has embraced the institute of sanctity. But we admit professions from that time at which age has had the completion of reason ... she who, being more than sixteen or seventeen years old, mistress of her own reasonings, after being examined for a long time and proved, has thereafter persevered and has constantly asked to be admitted, then at last is to be numbered among virgins, and her profession must be held ratified and the violation of it inexorably punished.

You have a clear definition of a professed virgin. Basil proposes his opinion concerning the fornication of these virgins, indicating sufficiently that it had not yet been received into use in the Greek Church. But that by the violation of the covenant, which he calls adultery, Basil also comprehends attempted marriage seems to me at least very probable from the universal formulas which he uses.

Canon XIX. But we do not know a profession of men, except if any have enrolled themselves in the order of monks, who indeed seem tacitly to have undertaken a celibate life. Nevertheless in these also I think that this ought to be placed first, that they themselves be questioned and their clear and manifest profession be received, so that when they have betaken themselves to a lustful and voluptuous life, they may be subjected to the punishment of those who fornicate.

Basil wishes, in this canon and the preceding canon, that profession be entirely free in those who are held by it. Cf. below, Canon XLIX of the fourth Council of Toledo, A.D. 633.

It can be asked what Basil means when he says that the Greeks do not know a profession of men, since he has known male monks and, in Canon LX, wishes that they be held by the same law as professed virgins when they fall. The difference, namely, was in this: that virgins, embracing the state of nuns, made profession before the Bishop and were consecrated by him with a certain sacred rite. This was not used for men, who, by enrolling themselves in the order of monks, seemed by that very fact tacitly to have undertaken a celibate life, as is said here.

Canon XXI. If a man, dwelling with his wife, afterwards not content with marriage, has fallen into fornication, we judge him to be a fornicator and we prolong him further in the imposed penalties; but nevertheless we do not have a canon which subjects him to the crime of adultery (that is, punishing him with the penalty of an adulterer), if the sin has been committed with one free from marriage, because he who has fornicated is not excluded from dwelling with his wife. Wherefore the wife indeed will receive her husband returning from fornication; but the husband will cast the polluted woman out of his house. And indeed the reason of these things is not easy, but custom has thus prevailed.

Cf. from the letter of Innocent I to Exuperius, decree IV.

Canon XXII. Those who have women by abduction, if indeed they have carried off women already betrothed to others, are not to be admitted before they have been taken away from them and restored to the power of those to whom they had been betrothed from the beginning, whether they wish to receive them or desist. But if someone has taken one who is free, it is necessary indeed to take her away and restore her to her own people and permit it to their will ... and if they wish to hand her over to him (that is, to the abductor), it is necessary to establish the marriage; but if they hold her back, by no means to inflict force.

Cf. Canon XI of the Council of Ancyra.

Canon XXIII. But concerning those who marry two sisters, or concerning those women who marry two brothers, a letter has been issued by us, a copy of which we have sent to your piety. But he who has taken his brother's wife is not to be admitted before he has withdrawn from her.

The letter to which he appeals is CLX (another numbering: 197) to Diodorus. There, after the question has been proposed whether it is lawful for a man to marry the sister of his dead wife, which Basil had already prohibited at the beginning of his episcopate, he defends his negative opinion. The first argument of this defense is: "First, what is greatest in things of this sort, we can put forward our custom as having the force of law, because the rules have been handed down to us by holy men. But that custom is of this sort: that if anyone, at some time overcome by the vice of impurity, has fallen into the illicit union of two sisters, neither is that judged a marriage, nor are they at all admitted into the assembly of the Church before they are separated from one another." Cf. Canon II of the Council of Neocaesarea.

Canon XXV. He who keeps as wife one defiled by himself will indeed undergo the penalty of defilement, but it will be lawful for him to have her as wife.

Canon XXXI. She whose husband has departed and does not appear, dwelling together with another before she has been made more certain of his death, commits adultery.

Canon XXXV. In the case of a husband deserted by his wife, the cause of desertion must be considered; and if it has been established that she departed without reason, he indeed is worthy of pardon, but she of a fine. Pardon, however, will be given to him (the husband), so that he may communicate with the Church.

You see that another marriage is by no means permitted while the wife who departed without reason is living.

Canon XXXVI. Wives of soldiers who have married when their husbands did not appear are subject to the same reckoning as those also who, because of the travel of their husbands, did not await their return (Canon XXXI); but nevertheless the matter admits here no little pardon (with respect to imposing penance), because there is a greater suspicion of death.

Canon XXXVIII. Girls who have followed contrary to the judgment of the father commit fornication (cf. the following Canon XL). But when the parents have been reconciled, the matter seems to receive a remedy. Yet they are not immediately restored to communion, but will be punished for three years.

Canon XL. She who, contrary to the judgment of her master, hands herself over to a man has fornicated; but she who afterwards has used free marriage has married. For the covenants of those who are in the power of another have nothing firm.

Since marriage is from the right of nature, the Church did not receive this prescription, nor the preceding and following, with respect to the value of marriage, nor for any case whatever with respect to honesty.

Canon XLII. Marriages without those who have power are fornications. Therefore neither while the father is living, nor while the master is living, are those who come together beyond reproach. In the same way, if those in whose power the arbitration of this matter lies consent to the cohabitation, then the cohabitation receives the firmness of marriage.

Canon XLIV. We do not permit the body of a deaconess, as consecrated, to be any further in carnal use.

Canon XLVIII. She who has been left by her husband, in my opinion indeed, ought to remain. For if the Lord said, "If anyone leaves his wife, except for the cause of fornication, he makes her commit adultery," from the fact that He calls her an adulteress, He has shut off for her union with another. For how could the man indeed be guilty as the cause of adultery, while the woman be without fault, she who has been called an adulteress by the Lord because of union with another?

Cf. Thesis XXI, V.

Canon L. There is no law of trigamy (approving it). Wherefore by law a third marriage is not contracted. Yet we indeed hold such things as pollutions of the Church, but we do not subject them to public condemnations, as being more to be chosen than loose fornication.

Canon LX. She who, having professed virginity, has fallen from her purpose, will complete the time of the sin of adultery in the prescription of continence. The same also applies to those who have professed the monastic life and fall.

Canon LXXV. He who has been polluted with his sister from his father or mother (that is, the daughter of a stepmother or stepfather) is not to be permitted to approach the house of prayer until he has desisted from the wicked and nefarious action. But after he has come to the sense and recognition of the horrid sin, let him weep for three years, etc.

Between you and the daughter of your stepmother there is not affinity of the first kind, but of the other; nevertheless Basil wished this marriage to be null.

Canon LXXVI. The same reasoning also applies to those who take their daughters-in-law.

Nuptials with a daughter-in-law are judged illicit by Basil by reason of affinity. Cf. the law of Diocletian recited at Canon LXI of Elvira.

Canon LXXVII. He who leaves the woman legitimately coupled to him and marries another is subjected, according to the sentence of the Lord, to the judgment of adultery. But it has been established by the canons of our Fathers that they weep for one year, hear for two years, be prostrate for three years, in the seventh stand with the faithful, and thus be held worthy of the oblation, if with tears they have done penance.

Canon LXXVIII. The same form is also to be observed toward those who marry two sisters, even at diverse times.

Cf. Canon XXIII.

Canon LXXIX. But those who are mad for their stepmothers are liable to the same canon as those who are mad for their sisters.

Canon LXXX. The Fathers passed over polygamy in silence (in their penitential canons), as utterly bestial and alien from the race of men. But this seems to us to be a sin greater than fornication. Wherefore it is consonant that they be subjected to the canons, namely, so that after they have wept for one year and been prostrate for three, they may thus be received.

Cf. Canons L and IV from these canons of Basil, and Thesis XII, VI and following.

From the Council of Saragossa, in Spain, A.D. 380

Canon VIII. Virgins who have vowed themselves to God are not to be veiled, except at the approved age of 40 years, which the priest shall have approved.

From the Responses of Timothy, Bishop of Alexandria, A.D. 380-385

From the former series.

Question XI. If someone has called a cleric to join in marriage, but he hears that it is an illicit marriage, as, for instance, either a union with an aunt, or that she who is to be joined in marriage is the sister of a deceased wife, ought the cleric to follow or to make the oblation?

Response. Say in one word: if the cleric has heard that the marriage is illicit and contrary to the laws, the cleric ought not to communicate in the sins of others.

Question XV. If someone's wife is seized by a spirit, so that she even wears iron fetters and manacles (that is, there is need to restrain her in this way), but the husband says: I cannot contain myself and I wish to take another; ought he to take another, or not?

Response. In this matter indeed adultery intervenes, nor do I find what I should answer concerning that matter; nevertheless, according to the spiritual sentence, he ought not.

The response, says Balsamon here, is that he can say nothing; for it is adultery if, the marriage standing, a man takes another woman as wife. But the question was whether the man could dissolve the prior marriage. Timothy responds that, according to the spiritual sentence, he ought not.

From the other series.

Question XXII. Certain men, when they have been received into the clergy, after their wives have died, marry others, some indeed virgins, others widows, and still others even those cast off. Ought they to be received to the liturgy, or not?

Response. The canon does not admit these men, but wholly reproves them.

From the Responses of Theophilus, Bishop of Alexandria, A.D. 385-412

From his commonitory to Ammon (in Balsamon).

Canon IV. Concerning Panuphlus, who has been constituted deacon in Lycus, it is necessary to inquire: and if indeed he has been found, when he was a catechumen, to have taken the daughter of his brother as wife, after baptism having been promoted into the clergy, let him remain in the clergy, if she has died and after baptism he has not had intercourse with her. But if, when he was a believer, he married that same daughter of his brother as wife, let him be alien from the clergy.

Laws invalidating nuptials for Christians do not oblige those who are not baptized.

From the rescript of the same to Agatho the Bishop (ibid.).

Maximus asserted that, ignorant of the laws of the Church, he had been joined in illicit marriage, and because he bears with difficulty that he has acted beyond order, he promised that, since he had sinned against the law unknowingly, he would abstain from the illicit society of life by consent, she also approving this. If, therefore, you find that they do this by consent and do not deceive, because the time is ten years, if you consider that they ought to live with catechumens, now dispose them thus, οὕτω διοίκησον, so establish concerning them ...

Balsamon says that the ten-year time is the time during which both lived in marriage, whence the suspicion to Theophilus whether they had truly been joined for so long in good faith, or rather were deceiving by affirming it. Now Theophilus permits the penance to be imposed to the judgment of the Bishop; but he does not permit them to remain in marriage.

From the Decretal Letter of Siricius, to Himerius of Tarragona, A.D. 384

Decree IV. But concerning conjugal violation you asked whether another can receive in marriage a girl betrothed to someone else. We inhibit by all means that this be done, because that blessing which the priest imposes on the woman about to be married is, among the faithful, in the likeness of a certain sacrilege if it is violated by any transgression.

Espousals also were sanctified by priestly blessing, which the faithful judged it impious to violate. Although these things are said concerning espousals, nevertheless mediately they show the persuasion of the faithful concerning the sanctity also of nuptials, of which espousals are the preparation. Therefore we cited these words. Thesis VII, IV, 6.

Decree IV. You protest that certain monks and nuns, having cast off the purpose of sanctity, have been sunk into such great lasciviousness that first secretly ... they mingled themselves in an illicit and sacrilegious contagion, but afterward from illicit embraces they freely procreated children, which both public laws and ecclesiastical rights condemn. Therefore we command that these immodest and detestable persons are to be eliminated from the company of monasteries and the assemblies of churches, so that, shut away in their own workhouses, lamenting so great a crime with continual lamentation, they may be able to boil it away by the purifying fire of penitence, so that indulgence may be able to come to their aid, at least at death, by the grace of communion, with regard only to mercy.

If you consider that even the use of marriage was illicit for penitents in the state of penance, since perpetual penance is prescribed to these monks, it is easily clear that ecclesiastical rights so prohibit unions of this sort that they do not ever permit, according to the mind of Siricius, the use of these sacrilegious nuptials. This could seem to be equivalent to the invalidation of nuptials of this sort, although we confess that this sentence is not expressly handed down here. Cf. the following decree of Innocent I to Victricius concerning this matter, and Canons VI and XVIII of St. Basil above.

Decree VI. Concerning those ... who, after penance has been done (public penance, that is, because of graver crimes), like dogs and swine returning to their former vomit and wallow, have sought again both the girdle of military service and slippery pleasures and new marriages and forbidden concubitus ... because they now have no refuge of doing penance (cf. what we said in the *Treatise on Penance*, Thesis IX), we have judged that this must be decreed: that within the church they be joined to the faithful only by prayer, etc.

You perceive that public penance done impeded one from afterward licitly contracting marriage. Cf. what we say at response VI of Leo to Rusticus below.

Decree VII. We have learned that very many priests of Christ and Levites, after the long times of their consecration, have procreated offspring both from their own spouses (received before consecration) and also from foul coitus, and have defended their crime by this prescription, that in the Old Testament the faculty of begetting is read to have been attributed to priests and ministers ... The Lord Jesus ... willed the Church, whose bridegroom is beautiful in form, to shine with the splendor of chastity ... All priests and Levites are bound by an indissoluble law that from the day of our ordination we dedicate both our hearts and our bodies to sobriety and modesty ... And because

some ... lament that they have fallen through ignorance, we say that mercy is not to be denied to these on this condition: that, without any increase of honor, they persevere, as long as they have lived, in this office in which they have been detected, if nevertheless after these things they have endeavored to show themselves continent. But those who strive by the excuse of an illicit privilege ... let them know that they have been cast down, by the authority of the Apostolic See, from every ecclesiastical honor which they have used unworthily.

Innocent I again inculcates this decree in the letter to Exuperius. Here Siricius affirms an indissoluble law concerning ecclesiastical celibacy; he does not himself recently establish it, but urges one already existing and prescribes its observance in Spain by the apostolic authority of his See. But since the Pontiff does not permit, not even to those sinning from ignorance, the use of the women whom they had received as spouses (marriage, I say, they intended; for they would not have wished to defend fornication by the authority of the Old Testament), it is evident from the opinion of Siricius that marriage is more than illicit for Priests.

Decree VIII. He reproves bigamists advanced to the diaconate and Priesthood.

Decree XI. Whatever cleric (not yet advanced to the diaconate) has married either a widow or certainly a second spouse, let him soon be stripped of every privilege of ecclesiastical dignity, only lay communion being conceded to him.

From the Synodal Letter of the Same, to the African Bishops, A.D. 386

Decree IV. That a cleric not marry a widow as wife.

Decree V. That he who, as a layman, has married a widow not be admitted to the clergy.

Decree IX. What is worthy and modest and honorable we persuade: that priests and Levites not have intercourse with their wives, because, placed in the ministry, they are occupied with daily necessities.

Why here does Siricius persuade what elsewhere (see above) he commands? Is "we persuade" the same as "we command," with a seasoning of sweetness? Or because in Africa there was no manifest prevarication in this matter, there was no need of a more vehement formula of commanding, but rather of an exhortation that they should remain in the discipline received? Cf. the following Decree IX of Innocent to Victricius.

From the Synodal Letter of the Same, to the Church of Milan, A.D. 390

We indeed, not despising nuptials, receive them, at which we are present with the veil; but virgins, whom nuptials create, devoted to God, we venerate with greater honor. Therefore, the presbyterate having been made, it was established that it is contrary to our doctrine, that is, to the Christian law (the doctrine of Jovinian, equating nuptials with virginity).

From the Synodal Letter of the Same, to the Gauls (cf. P. Coustant, Letters of the Roman Pontiffs)

Decree I. If a virgin already veiled to Christ, who has professed integrity by public testimony and has received from the priest the veil of blessing after prayer has been poured forth, either has secretly committed incest or, wishing to protect the crime, has imposed the name of husband on the adulterer, taking the members of Christ and making them the members of a prostitute, so that she who had been the spouse of Christ would be called the spouse of a man, in a woman of this sort there are as many charges as there are causes of guilt: the purpose of integrity changed, the veil lost, the first faith depraved and rendered void. What sort and how great a satisfaction is needed here? How great the penance of her who has incurred the destruction of the flesh? ...

Decree II. A girl who has not yet been veiled, but had proposed to remain thus, although she has not been veiled in Christ, nevertheless because she has proposed it and has not been veiled in marriage (or: has been veiled?), the nuptials are called furtive (see the difference from the former case: there it is adultery, here only furtive nuptials), from the fact that she has not observed the precept of heavenly marriage, love hurrying on to the blindness of lust. And for these a time of doing penance must be established.

Decree XII. Concerning him who has married the sister of his wife as wife, in the law of the Old Testament it is written that, for raising up seed for a deceased brother, one ought to marry the wife ... But now the Testament does not allow this to be done, where integrity is treated more fully and chastity is praised while Christ teaches.

Cf. Canon II of Neocaesarea and Canon LXI of Elvira.

Decree XIV. Likewise concerning him who has married the wife of his maternal uncle. It is not lawful to marry the daughter of a maternal uncle, because a similar cause, by generating, is separated and purged through the degrees of an extraneous father; but to go back is not right. For he who has presumed to violate the bed of father or mother, this is not called marriage but fornication.

To one looking at them, it is evident that the former words, which exhibit the title of the decree, do not cohere with the decree. The title speaks of the wife of a maternal uncle, the decree of the daughter of a maternal uncle. Peter Coustant suspects that those former words were moved from their own place and wrongly inserted here. By the same right someone could suspect that one little word had fallen out, so that the whole title would have been concerning him who married the daughter of his maternal uncle as wife. But the reason which Siricius brings forward for his decree, although in certain things a little obscure, persuades me that an error has crept into the following words and that it must be read: It is not lawful to marry the wife of a maternal uncle. For the reason finally returns to this: that it is impious to go back, that is, to be joined to progenitors or to those who are in the place of parents, of which sort are a paternal uncle, a maternal uncle, and their wives. And indeed from this head Siricius argues by an analogous reason, namely because it is impious to violate the bed of father or mother. Therefore I do not doubt to read: To marry the wife of a maternal uncle (that is, her who was the wife of a maternal uncle now dead) is not lawful; but let the judgment belong to fair readers.

Marriage of this sort, forbidden because of affinity, does not stand expressly expressed in the law above cited of Diocletian.

From the Council of Carthage, A.D. 390

Canon II. It is fitting that the most holy bishops and priests of God, and also Levites, or those who serve the divine sacraments (by whom subdeacons are comprehended, if they minister to the altar; cf. Canon XXXIII of Elvira and Decree III of Leo to Rusticus below), be continent in all things ... so that what the Apostles taught and antiquity itself observed, we too may keep.

Behold the law of celibacy asserted as ancient and from Apostolic origin.

From the Council of Hippo, A.D. 393

Canon XII. It pleased the council that the sons or daughters of bishops or of any clerics whatever are not joined in marriage to Gentiles or heretics or schismatics.

Canon XVIII. It pleased the council that readers, when they have come to the years of puberty, be compelled either to marry wives or to profess continence.

It is understood that this was established not of itself, but for removing the danger of incontinence, which then was deservedly feared.

From the Council of Carthage, A.D. 398

Canon XIII. The bridegroom and bride, when they are to be blessed by the priest, are to be offered by their parents or paranymphs. When they have received the blessing, they will remain in virginity on that same night, out of reverence for that blessing itself.

Cf. Canon I of Laodicea. Namely, it is supposed that marriage must be contracted publicly in the face of the Church.

Canon CIV. If any widows, however much still placed in lesser years and left by a husband at mature age, have devoted themselves to the Lord and, having cast off lay clothing, have appeared in religious habit under the testimony of the bishop and the Church, but afterwards have passed over to secular nuptials, according to the Apostle they will have condemnation, because they have dared to make void the faith of chastity which they vowed to the Lord. Therefore let such persons remain without the communion of Christians, and let them not even communicate in banquets with Christians. For if adulterous wives are bound by guilt to their husbands, how much more will widows who have changed religious life be marked with the crime of adultery if by lustful pleasure they have corrupted the devotion which, of their own accord and not compelled, they offered to God, and have made a passage to second nuptials? And if they have been seized beforehand by someone with violence rushing in and afterwards by delight of the flesh and of lust have consented to remain in marriage with the abductor or violent man, they will be held liable to the condemnation comprehended above.

If religious widows who pass over to secular nuptials are judged adulteresses, it is evident what these Fathers thought concerning the value of marriage of this sort. Yet this canon, which is said to have been issued with Augustine present, does not sufficiently agree with his opinion. Cf. Thesis XXIX, III.

Is the canon supposititious, or indeed the Synod supposititious, which is variously named? Among some the title is, for example, *Statutes of the Easterners*. But even if it is denied that this Synod was held, still the canons concerning the mode of conferring orders, which are attributed to the same, are received by all. Likewise Canon 76 concerning the penance of the sick, and others. Perhaps this cited canon is more recent than Augustine, pertaining to another Council.

From the Council of Turin, A.D. 401

Canon VIII. The authority of the synod decreed that those who were ordained against the interdict, or who have generated children in the ministry, are not to be permitted to the greater grades of orders.

Nothing is said here about separation from the women with whom, having been placed in the ministry, they mingled, probably because the speech was about a fornicatory union, but not one even in appearance conjugal.

From the Council of Carthage, under Aurelius, A.D. 401

This synod was held under Anastasius, Roman Pontiff.

The date is uncertain, says Pagi at the year 398. Schelstrate assigns the year 400, because in this year no other council appears. But cf. Ballerini in the cited place.

Canon III. It pleased the council that bishops and presbyters and deacons, according to the prior (another reading: proper) statutes, be continent even from their wives. But if they have not done this, let them be removed from ecclesiastical office. But the other clerics are not to be compelled to this, but it ought to be observed according to the custom of each Church.

Since appeal is made to prior statutes, if you compare this canon with that of the preceding year 390, it seems one must say that subdeacons in Africa had not yet generally ministered to the Altar, and therefore they were not comprehended in the universal law of continence.

From the Council of Toledo, A.D. 400

Canon I. It pleased the council that deacons, if they are either whole or chaste, and of a continent life, even if they have wives, be constituted in the ministry; yet in such a way that if any, even before the interdict which was established by the Lusitanian bishops, have lived incontinently with their wives, they are not to be increased with the honor of the presbyterate. But if any one from the presbyters received sons before the interdict, he is not to be permitted (another reading: admitted) from the presbyterate to the episcopate.

Some interpret the interdict of the Lusitanian Bishops as the precept of celibacy; but this precept had already long ago been enacted by the Fathers of Elvira, Canon XXXIII above. I would more gladly understand a certain penal law which established special penalties for criminals of this sort. But because the law already existed prohibiting these unions, hence the Fathers of Toledo subject also those who had been incontinent before that interdict to a penalty by which deacons and presbyters are prohibited from being promoted to a higher grade. You see here the matter dealt with more mildly: incontinent deacons and presbyters are not deposed; yet they are admonished of their duty by this penalty, so that the Church in her synods never ceased from inculcating the law of continence to those constituted in sacred order, yet not always in former times in the same mode or with the same severity. Cf. the things said at the canon cited from Elvira. But the Fathers of Toledo do not permit to these presbyters and deacons, compelled to remain in their own grade, the use of women, concerning which indeed they are silent, but it is not likely that they were ignorant of, or regarded as of no account, the decree of Siricius cited above.

Canon III. A believing reader, if he has received the widow of another as wife, let him be nothing further, but let him always be held as reader, or perhaps as subdeacon.

Canon IV. A subdeacon, after his wife has died, if he has married another, is to be removed from the office in which he had been ordained and held among the doorkeepers or among the readers, in such a way, however, that he not read the Gospel and the Apostle ... (the reading of these at that time belonged to readers). But he who has received a third, which must neither be said nor heard, being kept away for two years, afterwards among the laymen, reconciled by penance, let him communicate.

Canon VII. It pleased the council that if the wives of any clerics whatever have sinned, lest perhaps they have more license for sinning, their husbands receive this power, apart from killing (that is, with killing excepted), of guarding and binding them in their own house, compelling them to salutary fasts, not deadly ones ... But with those wives themselves who have sinned, let them not take food, unless perhaps, after penance has been done, they return to the fear of God.

Cf. Canon LXV of the Council of Elvira and Canon VIII of the Council of Neocaesarea.

Canon XVI. A devoted woman sinning is not to be received into the Church unless she has ceased to sin, and if, ceasing, she has done suitable penance, let her receive communion in ten years ... But she who has received a husband is not to be admitted to penance unless, while that very man is still living, she has begun to live chastely, or after he has died.

Cf. Decree IV of Siricius to Himerius, cf. Canon CIV of the Council of Carthage, A.D. 398, and Decree XII of Innocent I to Victricius. Here, however, the nullity of unions of this sort is declared

sufficiently clearly.

Canon XVII. If someone having a faithful wife also has a concubine, let him not communicate. But he who does not have a wife and has a concubine in place of a wife is not to be repelled from communion, only that he be content with the union of one woman, either wife or concubine, as it shall please him. But living otherwise, let him be cast out until he ceases and returns through penance.

Concubine here is to be taken in the more honorable sense, namely a true wife, although held in a less worthy place. Cf. Canon XV of the Convention of Mainz in the year 851 below, and Thesis XV, IX.

Canon XVIII. If any widow of a bishop or presbyter or deacon has received a husband, let no cleric, no religious woman, take a meal with her; let her never communicate; let the sacrament come to her aid only when she is dying.

Here first appears the prohibition of marriage made for the surviving wife of a bishop, presbyter, or deacon, after their death, that is; the Church later signified more clearly that this marriage is null. Cf. Canons I and II of the Roman Council under Gregory II, A.D. 721.

Canon XIX. If the daughter of a bishop or presbyter or deacon has been devoted to God, and has sinned and married a husband, if her father or mother have received her into affection, let them be held alien from communion ... But the woman is not to be admitted to communion unless, when the husband has died, she has done penance. But if, while he is living, she has withdrawn and has done penance or has sought communion, failing at the last moment of life, let her receive communion.

Two things are prescribed: 1. A woman devoted to God contracting nuptials is not admitted to communion unless either, when the husband has died, she has done penance, or, while he is living, she has separated and again has done penance; cf. the preceding Canon XVI. 2. If this devoted woman is the daughter of a bishop or presbyter or deacon, and they receive her, married, into affection, they are excommunicated, as those who seem to approve so great a crime and to participate in her infamy.

From the Decretal Letter of Innocent I, to Victricius, Bishop of Rouen, A.D. 404

Decree VI. Lest he who has married a second wife become a cleric; because it is written: "the husband of one wife" ... And lest it be judged by some that, if perhaps someone accepted a wife before baptism and, she departing from this world, married another, this has been dismissed in baptism, he errs enough from the rule; because in baptism sins are dismissed, not the number of wives accepted abolished ...

Thus an end was imposed upon the question in which Jerome fought sharply for the opposite opinion (cf. his Letter LXIX to Oceanus), who also asked: "How are all sins drowned in the washing, if one wife (who had been accepted before baptism) floats above?" You have from Innocent the answer to this question.

Decree XI. What is worthy and modest and honorable, the Church altogether ought to hold: that priests and Levites not have intercourse with their wives, because they are occupied with the needs of the daily ministry.

Cf. Canon II of the Council of Carthage, A.D. 390. The Pontiff speaks only of the use of a marriage contracted before. He proposes the law in a gentle mode, but it is sufficiently established that a union of this sort is dishonorable if a Priest or Levite uses a marriage previously entered. Therefore this is altogether illicit; and for that reason it is said that the Church ought to hold this. Cf. Canon IX of Siricius from his letter to the Africans above.

Decree XII. Those who have spiritually married Christ and have merited to be veiled by a priest, if afterwards they have either publicly married or have corrupted themselves secretly, are not to be admitted to doing penance unless the one to whom they had joined themselves has departed from this world. For if this reckoning is kept concerning all, that any woman who, while her husband is living, has married another, is held an adulteress, and the license of doing penance is not conceded to her unless one of them shall have died, how much more must that woman be held to this, who had before joined herself to an immortal spouse and afterwards migrated to human nuptials?

Cf. the decrees of Siricius from Letter 10, Canon XVI of the Council of Toledo, Canon XI of the Council of Valence, Canons VI, XVIII, LX of Basil above.

Here Innocent rather openly betrays his opinion that these nuptials are null. This is clearer from the comparison made with what the following canon establishes concerning a virgin who indeed proposed to preserve virginity, but did not receive the veil. Her, some penance being imposed, he permits to remain in marriage.

Decree XIII. But those who, not yet covered with the sacred veil, nevertheless had promised always to remain in the virginal purpose, although they have not been veiled, if perhaps they have married, penance must be done by them for some time, because their pledge was held by God. For if among men a contract of good faith is accustomed to be dissolved by no reason, how much more ought that promise which the virgin has covenanted with God not be dissolved without vengeance?

You have that a simple vow of chastity is an impediment making nuptials illicit.

From the Decretal Letter of the Same, to Exuperius, Bishop of Toulouse, A.D. 405

Decree IV. And this also was desired to be known: why men communicating with adulterous wives are not suited, when, on the contrary, wives seem to remain in the company of adulterous husbands. Concerning this, the Christian religion condemns adultery in each sex by equal reckoning. But women do not easily accuse their husbands of adultery, and hidden sins do not have punishment; but men have been accustomed more freely to report adulterous wives before priests. And therefore, their crime having been betrayed, communion is denied to women; but, the offense of men lying hidden, hardly anyone is kept away by suspicions. He indeed will be removed if his disgrace is uncovered.

Decree VI. Your love also inquired concerning those who, divorce intervening, have coupled themselves to another marriage. It is manifest that these are adulterers on each side. But those who, even while the wife is living, although the marriage seems to have been dissociated, have hastened to another union, cannot fail to be seen as adulterers, to such an extent that even those persons to whom such men have been joined seem themselves also to have committed adultery, according to that which we read in the Gospel: "He who has dismissed his wife and has married another commits adultery; likewise also he who has married one dismissed commits adultery."

Roman laws, enacted by Emperors who were even Christian, permitted repudiation for certain causes, in such a way that the bond of marriage was dissolved and it was lawful to enter other nuptials while the prior spouse was surviving. Thus Constantine (in Cod. Theod., book III, title 16, law 1), and Theodosius and Valentinian (Cod., book V, title 17, law 8), and Justinian both in the same place and in Novella 117, chapters 8-9. But the Church rejected these laws as opposed to Christian right. Wherefore Innocent says that, divorce intervening, the marriage seems to be dissociated, because Roman right approves the dissolution of the bond; but the same Pontiff denies that the bond has been dissolved, since he affirms that spouses of this sort are adulterers if they are joined to others.

From the Letter of the Same, to Probus

We establish, the Catholic faith supporting it, that that is the marriage which was first founded by divine grace, and that the coming together of the second woman (whom someone had married because his wife was being held captive), the former wife surviving and not cast out by divorce, can in no way be legitimate.

Cf. Decree VI from the letter to Exuperius and Thesis XVIII, VI, at the end.

From the Carthaginian or African Council, A.D. 407

Cf. the Council commonly called African, in which the Canons of the earlier Synods are reported and confirmed. There, from Canon LXII, begin the Canons of the Council held in the year 407, whence our canon is the eighth. Thus in the collection of Councils, tome 3, from page 497 and following, compared with page 101, edition of Labbe and Coleti. But in Dionysius, in the Code of African Canons, this Synod of which we speak begins from Canon XCV. Twelve canons are attributed to this Synod. The Fathers Ballerini agree with all these things, *On the Ancient Collections*, part II, chapter III, section 6, n. 6.

Canon VIII. It pleased the council that, according to evangelical and apostolic discipline, neither a man dismissed from his wife nor a woman dismissed from her husband be joined to another; but let them remain thus or be reconciled to one another. But if they have contemned this, let them be reduced to penance. In which cause an imperial law must be sought to be promulgated.

Cf. Thesis XXX, X.

From the Council of Orange, A.D. 441

Canon XXVIII. In each sex, deserters of professed chastity are to be held prevaricators, and for all these provision is to be made through legitimate penance.

From the Spanish Council, celebrated by the Bishops of Tarragona and Cartagena, and by the Lusitanians and Baeticans, A.D. 445

Canon XVI. If anyone shall have said or believed that marriages of men, which according to the divine law are held lawful, are execrable, let him be anathema.

From the Letter of Leo, to Turibius, Bishop of Astorga, 447

Decree VII. In the seventh place there follows that they condemn nuptials (the Priscillianists) and shudder at the procreation of those born; in which, as almost in all things, they agree with the profanity of the Manichaeans. Therefore, as their morals prove, they detest conjugal copula, because there is not there freedom of baseness, where the modesty both of marriage and of offspring is preserved.

From the Synod of St. Patrick, in Ireland, About A.D. 450

Canon XVIII. A virgin who has vowed to God to remain chaste and afterwards has married a carnal spouse, let her be of excommunication until she is converted; if she has been converted and has dismissed the adulterer, let her do penance, and afterwards let them not dwell in one house nor in one town.

Patrick follows the decrees of the Roman See (of Siricius and Innocent).

Canon XIX. A Christian woman who has received a man in honorable nuptials and afterwards has departed from the first and has joined herself to an adulterer, she who does these things, let her be of excommunication.

Canon XXII. If anyone has handed over his daughter to a man in honorable nuptials, and she has loved another, and he consents to his daughter and has received a dowry, let both be excluded from the Church.

From Another Synod of the Same, in Ireland, in an Uncertain Year

Yet these canons do not seem authentic to the learned. Cf. Dr. Hefele, cited work, tome III, book 12, paragraph 209.

Canon XXV. Let not a brother ascend the bed of a deceased brother, the Lord saying: "They shall be two in one flesh"; therefore the wife of your brother is your sister.

Cf. Canon II of Neocaesarea.

Canon XXVI. Hear the Lord saying: "He who adheres to a harlot is made one body." Likewise: "Let the adulteress be stoned," that is, let her die to this man, so that she cease to grow who does not cease to commit adultery. Likewise: "If a woman was an adulteress, does she return to her former husband?" Likewise, it is not lawful for a man to dismiss his wife except for the cause of fornication; as if He should say: for this cause it is lawful. Hence if he marries another, as after the death of the former (manuscript: or), they do not forbid it.

If you interpret that `velut` as "just as," a faculty, though wrongly, is created for dissolving the bond because of adultery. Perhaps this published reading or the manuscript reading would suffer another interpretation; but the following Canon XXVII too strongly suggests the obvious interpretation of this one also. These canons, namely, depart from the common doctrine of the Church, which Decree VI of Innocent I to Exuperius, Canon IX of the Council of Elvira, and Canon VIII of the African Council above report. But concerning these canons, as we already warned, it is not necessary for us to be solicitous.

Canon XXVI. What the father wills, let the virgin do (the daughter in contracting nuptials), because the head of the woman is the man (not a sufficiently suitable citation); but the will of the virgin must be sought by the father, since God has left man in the hand of his own counsel.

Canon XXVII. By the same reason first vows and first marriages are to be observed, so that first ones are not made void by second ones, unless they have been adulterated.

From the Council of Chalcedon, A.D. 451

Its canons indeed were not received by Leo; nevertheless Dionysius afterwards inserted them into his collection, and the Roman See approved them by use.

Canon XIV. Since in certain provinces it has been conceded to readers and psalmists to marry wives, the holy synod established that it is not lawful for any of these to receive a wife of another sect ... But neither ought one about to be married to be coupled to a heretic or a Jew or a pagan, unless perhaps the person to be coupled to the orthodox person promises to pass over to the orthodox faith. If anyone shall have transgressed this definition of the holy synod, he will be subject to canonical correction.

Cf. Canon XXXI, cited above from the Council of Laodicea. Canon XXXII of the Quinisext Synod in A.D. 692 declared the marriage of an orthodox man with a heretical woman, and conversely, ἄκυρον and to be dissolved; but there is no authority of the same.

Canon XV. If a deaconess, receiving the imposition of hands and remaining for some little time in the ministry, hands herself over to nuptials, doing insult to the grace of God, let one of this sort be anathematized together with him who is coupled to her.

Cf. Canon XLIV of Basil. The rite of imposition of the hand was used in the Greek Church for deaconesses, as its ritual books declare; among the Latins mention of their blessing is still made by the Fathers of the Council of Orleans in A.D. 533, abolishing the same in Canon XVIII.

Canon XVI. It is not lawful for a virgin who has consecrated herself to the Lord God, and likewise for a monk, to contract nuptial rights; but if they have been found perpetrating this, let them be excommunicated. But concerning those who confess, we have decreed that the bishop of the same place have authority to grant them mercy and humanity.

Whether the mercy and humanity of the bishop would be in this, that for certain causes he would permit the marriage, or only that he would impose a milder penance, is not sufficiently clear. The Fathers of Chalcedon seem to have followed Basil (cf. his Canon VI), so that, consequently, just as we have interpreted him, it is lawful also to interpret them.

Canon XXVII. Concerning those who carry off women, even under the name of living together, or those cooperating with or conniving at abductors, the holy synod decreed that, if indeed they are clerics, they fall from their own grade, but if they are laymen, they be excommunicated.

From the Council of Arles, A.D. 443 or 452

Canon II. Someone constituted in the bond of marriage cannot be taken up to the priesthood unless conversion has first been sent before (that is, of the wife, who has professed monastic life, or at least chastity. Cf. the Council of Agde, Canon XVI, cited below).

Canon XXI. Any penitent woman who, after her husband has died, has presumed to marry another, or has lived with a stranger in suspected or forbidden familiarity, let her be kept back with him from the thresholds of the Church. It also pleased the council that this be observed concerning a man placed in penance.

Cf. the things to be said at response XIII of Leo to Rusticus. Yet note that both spouses indeed are punished together, but they are not ordered to be separated. That is, marriage was prohibited to penitents, but it was not invalidated.

Canon XXII. Penance is not to be given to married persons except with the consent of the other.

The reason of this canon must be sought from the preceding one, as Sirmond notes.

Canon XXV. Those who, after the holy profession of religion, apostatize and return to the world and afterwards do not seek the remedies of penance, are not at all to receive communion without penance; we also order that they not be admitted to the office of clericate. And whoever he may be, after penance let him not presume to put on secular habit; but if he shall have presumed, let him be held alien from the Church.

We have recited this canon because it seems sufficiently to disclose the opinion concerning the force of religious profession impeding nuptials. Surely those on whom penance is imposed because of return to the world, and to whom after penance secular habit, and therefore also secular conversation, is interdicted, must be held to have always been prohibited also from the use of conjugal life. Yet nothing is said concerning the invalidation of the act, just as neither in the following Canon LII.

Canon XLVI. Professed widows, if they have furnished connivance, are to be condemned with the abductors.

Cf. the preceding note.

Canon LII. Concerning girls who have vowed themselves to God and have flourished with the splendid beauty of the name, if after twenty-five years of age they have passed over to earthly nuptials, we have decreed that this is to be observed: that they be deprived of communion with those with whom they have bound themselves, so that penance not be denied to them when they request it, but the communion of that penance be deferred for a long time.

From the Council of Angers, A.D. 453

Canon VI. Those who misuse the name of marriage with the wives of others (that is, dismissed by their husbands), while their husbands are surviving, are to be held strangers from communion.

By these words there is also comprehended the case in which the woman has been dismissed because of adultery.

From the Letter of Leo, to Rusticus, Bishop of Narbonne, A.D. 458 or 459

Decree III. The law of continence is the same for ministers of the altar as for bishops and presbyters. When they were laymen or readers, they could lawfully both marry wives and procreate children. But when they arrived at the said grades, what was lawful began not to be lawful for them. Hence, that from a carnal marriage there may become a spiritual marriage, it is necessary that they neither dismiss their wives, and have them as though they did not have them, so that both the charity of marriages may be safe and the works of nuptials may cease.

According to this it is lawful to explain Canon VI of the Apostles, to which some appeal in order to teach that among the Greeks the obligation of celibacy did not exist in antiquity. But if this were proved, it would also be proved that that obligation did not formerly exist for the Latins; for that Apostolic canon does not look more to the Greek Church than to the Latin, although it was written in Greek. Canon VI in Dionysius has it thus: "Let a bishop or presbyter by no means cast away his own wife under the pretext of religion; but if he has rejected her, let him be excommunicated; and if he has persevered, let him be deposed." When you hear that a Bishop also is named, you understand that the speech is about that casting away of a wife which was illicit also for Bishops. Or were Bishops prohibited from denying the debt to a wife asking it, or was the use of marriage ever permitted to them even in the Greek Church? "Certainly you confess that he cannot be a Bishop who begets children in the Episcopate," says Jerome, against Jovinian, book I, n. 34. Therefore the casting away which the Apostolic canon prohibits is that of which Leo speaks, who certainly knew both the old discipline and apostolic traditions. Cf. the cited work of Fr. Ant. Zaccaria, *On Ecclesiastical Celibacy*.

Decree IV. Not every woman joined to a man is the wife of the man, because neither is every son heir of the father. Now the covenants of nuptials are legitimate among freeborn women and among equals, the Lord Himself establishing this very thing much earlier than the beginning of Roman right existed. Therefore a wife is one thing, a concubine another, just as a maidservant is one thing, a free woman another. For this reason also the Apostle, for manifesting the distinction of these persons, places testimony from Genesis, where it is said to Abraham: "Cast out the maidservant," etc. Hence, since the society of nuptials was so constituted from the beginning that, besides the conjunction of the sexes, it had in itself the sacrament of Christ and the Church, there is no doubt that that woman does not pertain to marriage in whom it is taught that there was no nuptial mystery. Therefore if a cleric of any place has given his daughter in marriage to one having a concubine, it is not to be received as if he had given her to a married man, unless perhaps that woman is seen both to have been made freeborn, and legitimately endowed, and honored with public nuptials.

The opinion of Leo in this place, which can seem difficult, depends wholly on the principle to which he himself appeals, namely, that the society of nuptials was so instituted from the beginning by God that it had in itself the sacrament of Christ and the Church. But the society of a man with a concubine does not have this sacrament, that is, it does not represent the union of Christ with the Church. For the union of Christ with the Church is a perpetual union, elevating the Church to participation in the dignity and goods of Christ; on the contrary, the union of a man with a concubine is a dissoluble union, because the man uses the woman for pleasure alone, having her as a maidservant and generally choosing her from his maidservants left in their own condition of

servitude. Such a society surely is not marriage. But historically the union of a man with a maidservant, who had not been made freeborn and legitimately endowed and honored with public nuptials, returned to this, or seemed to Leo to return to this: namely, pure concubinage was presumed. The same was the opinion of Ambrose on Luke VIII, 8, saying, "Where there is an unequal union, there the law of God (enacted, that is, in the institution of marriage, Gen. II, 24, of which he made mention in the preceding number) is not." Cf. Hincmar of Rheims, Letter XXII. Now since the doctrine handed down above was sufficient for Leo for dispatching the singular question proposed to him, he did not wish to turn aside elsewhere and linger in solving questions which could arise, for example, whether the union of a free man with a female slave can ever be a legitimate marriage and sacrament; for the question proposed to him had been about a concubine, not about the marriage of a free man with a female slave or maidservant. Cf. Thesis XV, IX.

Decree V. Women joined to men by paternal judgment are without fault, if the women who were held by the men were not in marriage (if, namely, the men to whom daughters are joined by paternal judgment had indeed had another woman, but not associated by the covenant of marriage), because a married woman is one thing, a concubine another.

Cf. the preceding Decree.

Decree VI. To cast a maidservant from the bed and to receive a wife of certain freeborn status is not a duplication of marriage, but a progress of honorableness.

Cf. the preceding Decree IV.

Decree XIII. One constituted in adolescence, if, urged either by fear of death or danger of captivity, he has done public penance and afterwards, fearing the fall of youthful incontinence, has received the copula of a wife lest he incur the crime of fornication, seems to have done a venial thing, if besides the spouse he has known no other at all. In this, however, we do not constitute a rule, but we judge what is more tolerable. For according to true knowledge, nothing more befits him who has done penance than persevering chastity of both mind and body.

From this someone may not undeservedly gather that at that age those who did public penance in adolescence were not very frequent, a thing which Ambrose also advises should not happen in *On Penance*, book II, nn. 104 and 107, and afterwards the Council of Agde also counseled in A.D. 506, Canon XV.

You see that public penance was an impedient impediment to marriage. It was prefixed by ecclesiastical sanctions, says the Council of Pavia in A.D. 850, see below, that no one publicly penitent may contract up to the time of completed penance. Indeed at an earlier age it was advised that, even when penance had been completed, continence be preserved, as Leo here suggests. Indeed Siricius simply supposes in his letter to Himerius, chapter 6, cited above, that it was prescribed, which precept Leo mercifully softened for adolescents; Nicholas I also followed his example with respect to others; see below.

Decree XIV. The purpose of a monk, undertaken by his own judgment or will, cannot be deserted without sin. For what someone has vowed to God, he ought to render to Him. Hence he who, having left the profession of singularity, has slipped down to military service or nuptials, is to be purged by the satisfaction of public penance, because although (this can deservedly be received: the thing

considered in itself, which could be objected to Leo) military service is innocent and marriage can be honorable, nevertheless to have deserted the better choice is transgression.

Decree XV. Girls who, not compelled by the command of parents but by spontaneous judgment, have taken up the purpose and habit of virginity, if afterwards they choose nuptials, prevaricate, even if consecration has not been added, of whose gift they surely would not be deprived if they remained in their purpose. But it cannot be doubted that a great crime is admitted where both the purpose is deserted and consecration is violated. For if human covenants cannot be trampled with impunity, what will await those who have corrupted the covenants of the divine sacrament (namely, of consecration; for at the end he treats of those who are also consecrated. But sacrament is taken in a broader sense)?

From these two responses it is not sufficiently clear whether Leo judged such nuptials void; but neither did it pertain here to Leo to teach this, since he was treating of imposing penance. Cf. the decree of Innocent concerning this matter.

From the Letter of Leo, to Nicetas, Bishop of Aquileia, A.D. 458

Decree I. Since through the calamity of war ... men were carried off into captivity, and their women ... who thought their own husbands either killed or believed they would never be freed from domination, and, solitude compelling them, passed over to marriage with others, and since now ... some of those who were thought to have perished have returned, your charity deservedly seems to be uncertain what ought to be ordained by us concerning the women who have been joined to other men. But because we know it written that "a woman is joined to a man by God" (Prov. XIX, 14), and again we have recognized the precept, that "what God has joined, let not man separate," it is necessary that we believe the covenants of legitimate nuptials are to be restored, and, the evils which hostility brought in being removed, that to each one that which he legitimately had be reformed; and it must be procured with every zeal that each one receive what is his own.

From the Council of Tours, A.D. 461

Canon II. Although it had been established by our fathers that whatever priest or Levite had been convicted of giving labor to the procreation of children would be kept from the Lord's communion, nevertheless we, applying moderation to this strictness ... have decreed this: that a priest or Levite adhering to conjugal concupiscence (that is, with a spouse previously married) or not ceasing from the procreation of children not ascend to a higher grade, nor presume to offer sacrifice or minister to the people. Let this alone suffice for these, that they not be made alien from communion.

Cf. Canon I of the Council of Toledo, A.D. 400. Such men are reduced to lay communion.

Canon VI. Those who have mingled themselves with sacred virgins by a nefarious union, or have abandoned the purpose of professed religion, let both be held alien from communion, because "if anyone violates the temple of God, God will destroy him," until, coming to their senses from the snare of the devil, by whom they are held captive at his will, they return to the aid of penance.

Cf. Canon XXV of the Council of Arles cited just now.

From the Council of Vannes, about A.D. 465

Canon II. We establish that those who, having left their wives, as is said in the Gospel, except for the cause of fornication, without proof of adultery, have married others, are to be kept from communion.

These Fathers seem not to have been about to punish men of this sort who had married another if the adultery of the wife were proved. But consider that the canon is penal, by which a penalty is established for a crime. But since to marry another after an innocent woman has been dismissed is a special sin, there certainly could have been a reason why this sin would be specially struck, without its being lawful to infer from this that the Fathers would not otherwise disapprove those second nuptials.

Canon IV. Those who, having professed virginity and having obtained blessing through the imposition of hands (see the rite of imposition of the hand in the blessing of a professed virgin, no otherwise than for Greek deaconesses) under attestation of this purpose, have been detected in adultery (that is, their commingling with anyone at all is called adultery, as we have already heard from others), we judge are to be kept from communion with their adulterers.

Cf. Canon VI of the preceding Council of Tours.

From the Letter of Gelasius, to the Bishops of Lucania, A.D. 494

Decree XX. We have learned that certain men rashly associate themselves to sacred virgins, and after the purpose dedicated to God mix incestuous and sacrilegious covenants. It is equitable that these be immediately driven from sacred communion and in no way received except through public and approved penance. Yet the viaticum is not to be denied to those departing from this world, if nevertheless they have repented.

If nuptials of this sort are called incestuous covenants, it is evident from the mind of Gelasius that there is no true marriage. Cf. Decree XII of Innocent I to Victricius above and the following decree of Gelasius. "Virgins who marry after consecration are not so much adulteresses as incestuous," said Jerome against Jovinian, book I, n. 13.

Decree XXI. For concerning widows, who are not to be veiled under any blessing, we have said enough and at length above (Decree XIII). Those (unveiled widows) who by their own will have trampled with a changeable mind upon the chastity of the former marriage which they professed, it will pertain to their peril with what satisfaction they ought to placate God, because according to the Apostle they have made the first faith void. For just as, if perhaps they were not able to contain themselves, according to the Apostle, they were by no means forbidden to marry, so, after deliberation has been held with themselves, they ought to keep the faith of modesty promised to God. But we ought not to cast any snare upon such women, but only to propose the exhortations of eternal reward and the penalties of divine judgment, so that both our conscience may be absolved and their intention may render an account for itself to God.

Consider that Gelasius speaks here about those who are not veiled, and therefore decrees otherwise about them than about the veiled, just as Innocent also does in the cited decree. Namely, nuptials are prohibited to these women, but, once contracted, are not dissolved.

Decree XXII. As it is conceded to secular persons to enter second nuptials, so after them no one is permitted to come to the clerical college. For, this license having been generally conceded to human frailty, the life dedicated to the service of divine things ought to be different.

From the Council of Agde, over Which Caesarius of Arles Presided, A.D. 506

Canon I. It pleased the council concerning bigamists or husbands of women whose marriage has been interrupted that, although the statutes of the fathers have decreed otherwise, those who have been ordained up to this time, compassion having been had, retain only the name of the presbyterate or diaconate; but such deacons are not to presume the office of a presbyter in consecrating and ministering.

Canon IX. It also pleased the council that if married deacons or presbyters wish to return to the bed of their wives, the ordinance of Pope Innocent and the authority of Bishop Siricius be preserved.

Canon XVI. If married young men have consented to be ordained, the will of their wives is also to be sought in such a way that, the room of dwelling being separated, religion having first been undertaken, after they have alike been converted, they may be ordained.

Cf. above the cited Canon II of the second Council of Arles. The husband was converted by reception of orders, the wife by the solemn vow of chastity.

Canon XIX. Nuns, however much their life and morals have been approved, are not to be veiled before the fortieth year of their age.

Cf. the cited canon of the Council of Saragossa.

Canon XXV. Those secular men who, by graver fault, dismiss or even have dismissed conjugal society, and, proposing no probable causes of dissension, therefore dismiss their marriages so that they may presume illicit or other men's unions, if before they have stated the causes of dissension before the bishops of the province, and before their wives are condemned by judgment, they have cast them off, let them be excluded from the communion of the Church and from the holy assembly of the people, because they stain faith and marriages.

The speech is about simple dismissal, that is, separation made without ecclesiastical authority, which certain men were attempting so that they might more conveniently be free for illicit unions even with others. Yet it was not necessary to declare more openly that these things, even when separation had been legitimately made, were not lawful for them. Cf. Canon II of the Council of Vannes above.

Canon LXI. (This canon seems to have been added to the canons of this council from the Council of Epaon, A.D. 517. The Synod of Cologne in A.D. 887 cites this canon from the Synod of Agde and confirms it.) Concerning incestuous unions we reserve absolutely nothing of pardon unless they have healed the adultery by separation. But those incestuous persons whom it is even deadly to designate, and who are to be counted by no name of marriage, we judge to be these. If anyone has polluted by carnal union the widow of his brother, who almost before had been a sister (cf. Canon II of Neocaesarea); if any brother has received the sister of his wife (cf. Canon LXI of Elvira, Decree XII of Siricius in the letter to the Gauls, and Canon XXVIII of Basil); if anyone has married his stepmother (cf. 1 Cor. V, 1, and Canon XXIII of Basil); if anyone has associated himself to a female cousin; if anyone is mixed with the widow or daughter of a maternal uncle (cf. the decree of Siricius in the same place, XIV), or the daughter of a paternal uncle, or with his stepdaughter (cf. Canon LXVI of

Elvira), or he who has polluted by intercourse someone from his own consanguinity, or her whom a blood-relative had, or has married her as wife ... which we prohibit at the present time in such a way that we do not dissolve those things which have been instituted up to now.

Cf. Canon IV of the second Council of Toledo below. Gratian, causa 35, question 3, canon 8, in place of the words, "if any brother has received the sister of his wife," reads: "if any brother has received his own sister as wife," which he seized upon in support of his own opinion; Schmalzg., book IV, title 14, n. 47. You see that no certain norm is handed down here for recognizing the limits of consanguinity and affinity, but that the norm itself, already known from elsewhere, is rather supposed. You see likewise that affinity is extended as far as consanguinity.

Canon LXVII. It is not fitting to mingle marriages with all heretics and either to give sons or daughters, but rather to receive, if nevertheless they profess that they are going to be Christians and Catholics.

Cf. Canon XXXI of Laodicea.

From the Council of Orleans, A.D. 511

Canon II. If an abductor with the abducted woman has fled to the Church, and it has been established that the woman herself suffered violence, let her immediately be freed from the hand of the abductor, and let the abductor, immunity from death or penalties having been conceded, either be subjected to the condition of serving or have the free faculty of redeeming himself. But if it has been established that she who is abducted has a father, and the girl, either about to be abducted or abducted, consented to the abductor, let her be returned excused to the power of the father, and let the abductor be held liable by the father to the satisfaction of the preceding condition.

Canon XIII. If any woman left behind by a presbyter or deacon joins herself to anyone in a double marriage, either, having been chastised, let them be separated, or certainly, if they have persisted in the intention of their crimes, let them be struck by equal excommunication.

Cf. Canon XVIII of the first Council of Toledo, A.D. 400.

Canon XVIII. Let not the surviving brother ascend the bed of the deceased brother, nor let anyone dare to associate himself to the sister of his lost wife. But if they have done this, let them be kept under ecclesiastical strictness.

Cf. Canon LXI of the Council of Agde and Canon II of the Council of Neocaesarea.

Canon XXI. A monk converted in a monastery, or if he has been proved to have received the pallium, if afterwards he has been associated with his wife, let him never obtain the office of an ecclesiastical grade, guilty of so great a prevarication.

From the Decretal Letter of Symmachus, to Caesarius, Bishop of Arles, A.D. 513

Decree IV. We detest abductors of widows or virgins because of the savagery of so great a crime, pursuing more vehemently those who have attempted to associate virgins consecrated to God, whether willing or unwilling, to their own marriage. We prescribe that these, because of the atrocity of so nefarious a crime, be suspended from communion.

Caesarius, most zealous for ecclesiastical discipline, also labored for cultivating the most beautiful flower of virginity in the garden of the Church, and had established a convent of girls, whose confirmation and immunity from the power of the Bishop, with respect to temporal things, that is, he obtained from Hormisdas, successor of Symmachus, in the year 515. Cf. among the letters of Hormisdas in Andrea Thiel, Letter 150, and the testament of the same Caesarius in Baronius, year 508.

But since it is by no means credible that Symmachus judged otherwise in this matter than Innocent, it is evident that silence concerning the nullity of a conjugal contract of this sort, when the matter concerns imposing penance, is in no way equivalent to an affirmation that these contracts are valid. It will help to remember this also in other canons.

Decree V. Nor do we allow widows to pass over to nuptials who have remained in religious purpose by long observance. Likewise we prohibit virgins to marry who have happened to have passed many years of life in monasteries.

From the Council of Girona, in the Province of Tarragona, A.D. 517

Canon VI. It pleased the council that from the pontiff down to the subdeacon, after the office of the honor received, if anyone from those joined in marriage has been ordained, he dwell without his spouse.

The law of celibacy is clearly proposed for all down to the subdeacon. Cf. Canon I of the Council of Toledo, A.D. 400.

From the Council of Epaon, A.D. 517

Canon XXX of this Synod is the same as the Canon LXI of the Council of Agde recited above.

Canon XXXII. The widow of a presbyter or deacon, if she has remarried anyone, is to be driven from the Church so far until she is separated from the illicit union, her husband also being struck with similar severity until correction.

Cf. Canon XIII of the Council of Orleans just cited.

Canon XXXVII. Let not a layman (that is, one with a wife) be ordained a cleric unless religion has first been undertaken.

Cf. Canon XVI of the Council of Agde.

From the Council of Lyons, or Held Elsewhere in Burgundy (cf. Anton. Pagi at the Year of Christ 517), in the Cause of a Certain Stephen, about A.D. 517

Canon I. In the name of the Trinity, gathered again into one, in the cause of Stephen, polluted by the crime of incest and dwelling in the city of Lyons, we decreed that this act of ours, which in condemnation of him or of her (Palladia from Canon VI), whom he illicitly associated to himself, we subscribed with one consent (namely in the preceding Synod of Epaon), we would preserve inviolably (this is Canon XXX of the preceding Synod of Epaon). And it pleased the council that this be kept not only concerning the aforementioned same persons, but in all who, in whatever place or time, shall have been detected in this perversity.

From the Council of Lleida, in Tarraconian Spain, A.D. 524

Canon VI. He who has inflicted the violence of defilement upon a penitent widow (who, that is, has vowed the religious life) or upon a religious virgin, if she herself has been unwilling to be separated from him, let her likewise be segregated from communion and from the fellowship of Christians. But if she who suffered violence has returned to holy religion, let the sentence given persevere in him alone until he publicly does penance.

From the Council of Toledo, A.D. 527 or 531

Canon I. Concerning those whom the will of their parents has bound from the first years of infancy to the office of clericate, we establish that this is to be observed: that as soon as they have been tonsured or handed over to the ministry of readers, they ought to be educated in the house of the Church, under episcopal presence, by one placed over them. But when they have completed the eighteenth year of their age, their will concerning seeking marriage is to be examined by the bishop before the sight of the whole clergy and people. If, with God inspiring, the grace of chastity has pleased them, and they have promised that they will preserve the profession of their chastity without conjugal necessity, these, as seekers of the narrowest life, are to be subjected to the most gentle yoke of the Lord, and first, the proof of their profession having been had, they are to receive the ministry of the subdiaconate from the twentieth year ... Yet they must beware lest at any time, forgetful of their promise, they run either to earthly nuptials or to furtive concubitus. But if perhaps they have done this, let them be condemned as guilty of sacrilege and be held strangers from the Church. But to those whom their own will, at the time of the interrogation, has persuaded to the desire of marrying, we cannot take away the license conceded by the Apostles, in such a way that when, placed in marriage at a more advanced age, they have promised by equal consent that they will renounce the works of the flesh, they may aspire to sacred orders.

Cf. Canon XLIX of the fourth Council of Toledo below, A.D. 633.

Canon IV. Let no one of the faithful desire to be coupled to a blood-relative of his own, so far as he knows the lineaments of affinity by succession of kind, in marriage ... and let him be separated by a so much longer time of excommunication from the body of Christ and the fellowship of brotherhood, as he has been polluted by the contagion of nearer blood.

Here indeed there is not presented a distinct enumeration of the degrees of consanguinity or affinity between which it is not lawful to enter marriage; yet the formula of speaking is so general that of itself it comprehends all degrees of propinquity which are wont to be reckoned among men. Yet that the Spaniards had established some limit below which it would not be lawful to enter marriages is not permitted to be doubted by the series of generations which shortly afterward flourished in Spain, Isidore of Seville, who brings consanguinity down to the sixth generation (see below under Gregory the Great). But by a certain limit, received from the common mode of reckoning, that general formula of the Fathers of Toledo, as also of the Fathers of Agde (cf. above), was putting on a determinate sense. Cf. what we shall say after Gregory the Great.

Likewise observe that this formula: "so far as he knows the lineaments of affinity by succession of kind" can comprehend not only consanguinity, but also affinity properly so called, and that manifoldly.

From the Council of Orleans, A.D. 533

Canon X. Let no one be joined by any coupling to his own stepmother, that is, to the wife of his father. But if anyone has presumed this, let him know that he is to be struck with the punishment of anathema.

Canon XI. Contracted marriages, when infirmity supervenes, are not dissolved by any contrariety of will. But if any of the spouses have done so, let them know that they are to be deprived of communion.

Even if the infirmity is impotence for coition, or brings this about, still, if it is consequent, it does not dissolve the bond.

Canon XIX. It has pleased us that no Christian shall take a Jewish woman as wife in marriage, nor a Jew a Christian woman; because we judge that between persons of this sort there are illicit nuptials. But if, after being admonished, they delay separating themselves from this consortship, they are without doubt to be removed from the grace of communion.

Since separation without any hope of return is prescribed under penalty of excommunication, it is ready to understand that the Fathers wished these nuptials to be held as null; therefore the illicit nuptials here are also invalid. You have the impediment of disparity of cult. But the law is not of the universal Church, but is particular to the Gallican province. Cf. Canon XIV of the Council of Chalcedon, above.

From the Council of Auvergne, A.D. 535

Canon VI. If anyone is joined in conjugal association to Jewish depravity and is mingled in carnal consortship, whether a Christian woman with a Jew or a Jew with a Christian woman, whosoever of these is recognized to have admitted so great an impiety, let him be segregated from the assembly of Christians, without banquet and communion of the Church, to whose enemies he is associated.

Cf. Canon XIX of the preceding Council of Orleans. But the canon just cited perhaps looks to another second Synod of Auvergne, A.D. 549.

Canon XII. If anyone has believed that the widow of his brother, the sister of his wife, his stepdaughter, his female cousin or cousin's daughter, or the widow of his paternal or maternal uncle, is to be violated by the consortship of carnal contagion, and with sacrilegious daring has broken through the authority of the divine law and the rights of nature, and to her to whom he ought to have shown the consolations of charity and pious affection, has attempted to bring force, as an enemy of his own and an assailant of chastity, let him be struck by the sentence of the apostolic constitution. And so long as he is engaged in so great a crime, let him be deprived of the Christian assembly and banquet, and at the same time of the communion of Mother Church.

Cf. Canon LXI of the Council of Agde, above. Here also it is evident that nuptials of this sort were held as null, since they are judged a breaking of the authority of the divine law and of natural right, a sacrilegious daring, a violation of relatives, an assault upon chastity. Moreover, those who are joined in this way are prohibited from coming together perpetually, under penalty of excommunication.

Canon XIII. When presbyters and deacons are advanced to the summit of the sublime dignity, let them renounce entirely the acts of the world, and, chosen for the sacred ministry, let them repudiate carnal consortship, and exchange the cohabitation of the former mingling for the affection of brotherhood; and whoever is a presbyter or deacon, once the blessing has been received by divine gift, is at once made the brother of his wife, from a spouse.

Here presbyters and deacons assumed from among the married are treated more mildly than in Canon XXXVII of the Council of Epaon and Canon XVI of the Council of Agde, above.

From the Epistle of Vigilius, to Caesarius, Bishop of Arles, A.D. 538

A grave penance is imposed on King Theodebert, who had presumed upon an illicit marriage by right with the wife of his brother.

Although perhaps Vigilius was not yet the true Pontiff, nevertheless he is a suitable witness of the law then in force in the Roman Church.

From the Council of Orleans, A.D. 538

Canon VII. Clerics who, when they did not have wives, after the blessing had been received (that is, after ordination), believed that marriages should be chosen, who, willing and without any protest, were ordained at a legitimate age, shall be struck with excommunication together with the women themselves whom they have accepted. But if someone was ordained unwillingly or protesting, let him indeed be deposed from office, but not driven from communion ... But concerning the adulteries of honored clerics this is to be observed: that if anyone has either confessed that he has committed adultery or has been convicted, having been deposed from office, with communion granted, let him be shut up in a monastery for the whole time of his life.

The clerics about whom the discourse is in the first place are not all indiscriminately to be understood, but those who have been constituted in sacred orders; for only to these can marriage be forbidden under penalty of excommunication. But honored clerics are clerics placed in some ecclesiastical dignity. It is not sufficiently clear from the words of this canon whether these Fathers judged the marriage contracted by those clerics to be null.

Canon X. Concerning incestuous unions, let those things which have been established be kept in such a way that for those who either now come to baptism or to whom the statutes of the Fathers have not previously come to notice by priestly preaching, we believe that counsel should be given because of the newness of their conversion and faith, so that contracted unions of this sort up to now not be dissolved; but in future, that which has been forbidden concerning incestuous unions in the earlier canons is to be observed: that is, that no one shall presume to associate to himself under the name of marriage the widow of his father (that is, she who was his stepmother), the daughter of his wife (whom she, namely, had had from another husband, his stepdaughter), the widow of his brother, the sister of his wife, a female cousin or cousin's daughter, the widow of a maternal or paternal uncle. But if any have been associated in this incestuous adultery rather than in marriage, so long as they have not separated themselves, let them be repelled from ecclesiastical communion.

Cf. Canon XII of the Council of Auvergne. You see here also that the bishops were concerned nothing about the civil law, and had regard only to priestly preaching; so that to those who had been ignorant of it, or who were newly converted to the faith, they permitted the marriages already entered to stand, some of which were also prohibited by Roman law.

Canon XVI. Concerning the abductors of consecrated virgins or of those living in the purpose under devotion, we establish that if anyone has presumed to inflict force upon a consecrated or devoted woman, that is, one who has professed religion, let him be repelled from ecclesiastical communion even to his departure, the viaticum alone being reserved to him in the peril of infirmity. But if she who is said to have been abducted has consented to live with her abductor, let her herself also be struck with a similar excommunication. This form also is to be preserved under ecclesiastical discipline concerning penitents and widows remaining in the purpose.

From the Council of Orleans, A.D. 541

Canon XXII. Let no one dare, by command of power, to claim another's daughter (that is, to vindicate her for himself), lest the marriage, which is impiously coupled against the will of the parents, be judged like captivity; but as has been prohibited, let it not be admitted. In those who have perpetrated such things, let the severity of excommunication be imposed according to the measure of the crime.

Cf. Canon VI of the Council of Lleida, above, A.D. 524, and Decrees IV and V of the Epistle of Symmachus to Caesarius, A.D. 513, and Decree XX of Gelasius to the Bishops of Lucania, A.D. 494.

The liberty of private persons against the impotent lust of those who are in high place is defended by the Fathers. A marriage contracted against the will of the parents is called impious.

Canon XXIV. Whatever slaves have fled to the church under the appearance of marriage, so that by this they believe that a marriage can be made, let license by no means be granted to them, nor let such a union be defended by clerics ... concerning which matter we decree that, to their parents or proper masters, as the reason of the persons demands, after faith has been received, they are to be returned acquitted, under the promise of separation. Afterward, however, with liberty conceded by the parents and masters, if they wish to join them by their own will, they may do so.

For the marriage of slaves, the will of parents or masters is required by these Fathers, as we have seen from Basil. Cf. what was said there at Canon XL.

From the Council of Orleans, A.D. 549

Canon XIX. Girls (who, according to the statutes of the monastery in which they have chosen to remain, have accepted the garments of religion), if thereafter, leaving the sacred places, they pass beyond their holy purpose through ambition of the world, or those who in their own houses, girls as much as widows, are converted by a change of garments, if they are coupled in marriage with those persons, let them be deprived of the communion of the Church. Certainly, if they have healed their fault by separation, let them be called back to the grace of communion.

Therefore the profession of religion by women outside monasteries, in their own homes, was still lawful among the Gauls; the fact that the fault of a contracted marriage had to be healed by separation teaches that no such marriage was held to exist.

From the Council of Paris, about A.D. 557

Canon IV. Let no one presume to draw illicit marriages contrary to the commandment of the Lord, that is, let him not dare to associate to himself the widow of his brother, nor his own stepmother, nor the widow of his paternal uncle, nor the sister of his wife; nor let him possess himself of the marriage of his daughter-in-law or maternal aunt. Under like condition we command that one abstain from unions with an aunt, a stepdaughter, and the daughter of a stepdaughter.

Canon V. Let no one obtain the marriages even of sacred virgins either by abduction or by any competitions (competition signifies a certain force, but rather moral, under the appearance of right or by abuse of authority). Similarly, one must abstain from unions with those women who, by change of garment, whether widows or girls, have professed religion, penance, or virginity by public declaration. But if anyone has come against the interdiction and has neglected to hear his priest, let him in the present be held a stranger from the communion of the Catholic Church and be struck with anathema forever.

Cf. Canon XIX of the Council of Orleans just cited.

Canon VI. Let no one presume to abduct a widow or the daughter of another outside the will of the parents, or judge that she is to be sought by the king's favor. But if he has done this, similarly removed from the communion of the Church, let him be punished with the condemnation of anathema.

Cf. Canon XXII of the Council of Orleans, above, A.D. 541.

From the Capitularies of the Franks

Around the year 560, in the Constitution of King Chlothar, it is prescribed, chapter VIII: Let no one dare to associate nuns to himself in marriage. Cf. the Capitularies of the Kings of the Franks, edition of Baluzius, at the year 560.

From the Council of Braga, A.D. 563

Canon XI. If anyone condemns human marriages and shudders at the procreation of those being born, as Manichaeus and Priscillianus said, let him be anathema.

From the Council of Tours, A.D. 567

Canon XII. Let a bishop have his wife as a sister, and in holy conversation let him govern the whole house, both ecclesiastical and his own, so that no suspicion concerning him may arise by any reason ...

Canon XV. If there are any converted in a monastery, or if they have willed to be converted, let them by no means have license thereafter to wander, nor, because they are absent, let any of them lead a wife or have familiarity with strange women. For if, as has been said above, he has led a wife, let him be excommunicated and, even by the help of the judge, separated from the consortship of an ill-associated wife.

The marriages of monks who have been converted in a monastery are judged void.

Canon XX. We, following this, which either the Apostle Paul or Pope Innocent (to Victricius) established, bringing it into our canons, decree that it is to be observed that no one shall presume to abduct or claim or associate to himself as wife a sacred virgin of God, who has changed her garment in honor of Christ; because even the Roman law established that whoever perhaps has abducted a sacred virgin of God or a widow, if afterward it comes to agreement with them about the union, they shall be struck by capital sentence (Law 1, Cod. Theod., concerning abduction or marriage).

Cf. Decree XII of Innocent, above; Canon XVI of the Council of Orleans, A.D. 538. The law to which the Fathers appeal is the law of Constantius, which Iovinianus renewed, increased with capital punishment. In Cod. Theod. L. IX, Tit. XXV, De Raptu, l. 1: If anyone, I do not say shall abduct, but shall even attempt, for the sake of joining marriage, sacred virgins or unwilling women (or widows?), he shall be struck by capital sentence.

Canon XXI. Concerning incestuous unions, however, we judge that the old statutes of the canons are not to be broken ... Therefore it has also pleased us to touch on a few things from the volumes of the books and to insert them in the canons, so that, the reading taken out from other books, it may be recited to the people in one. For thus the Lord has spoken, Lev. XVIII. 7: You shall not uncover the shame of your father and the shame of your mother ... (up to verse 20 inclusively). And likewise the sacred sentence of the laws says (Cod. Theod., concerning incestuous nuptials, law 3), which in this explanation is open to every man, learned as much as unlearned: that whoever shall join to himself in criminal nuptials either the daughter of a sister or brother, or a female cousin of a further degree, or the wife of a brother, let him be subject to this penalty, that he be separated from such consortship. Likewise another law (ibid., law 4): Whatever woman shall have accepted the husband of her sister after the death of the latter, or if anyone of the men, his wife being dead, shall join her sister to himself in other nuptials, let him know that by such consortship he is notable. Then the canons from the first Synod of Orleans, Canon XVIII, Epaon, Canon XXX, and Auvergne, Canon XII, above, are cited. They add: We strengthen in all things that which our fathers established.

From the Council of Macon, A.D. 581

Canon XII. But concerning girls who have vowed themselves to God and from the splendid adornment of age have passed to earthly nuptials, we have decreed that this must be guarded: that if any girl, voluntarily or at the request of her parents, has professed religion or has been consecrated with a blessing, and afterward has presumed to pass to marriage or to the enticements of the world, which is to be judged rather fornication than marriage, until her departure, together with him who has mingled himself with her in a consortship of this sort, she shall be deprived of communion.

Cf. Canon LII of the Council of Arles, A.D. 452.

From the Council of Lyons, A.D. 583

Canon III. Girls who, by the connivance of their parents, have voluntarily dedicated themselves and have chosen enclosure within a monastery of girls, and by levity of mind or vileness of body have withdrawn themselves from the same monastery, outside the incursion of captivity, by their own will, and have chosen the delights of the world rather than religious conversation and the spirit of their vocation: until they return to the monastery from which they went out, let them be segregated from the grace of communion; nevertheless let the viaticum be afforded to them in consideration of mercy.

It is manifest that the return to the monastery prescribed for these girls comprehends separation from a spouse; therefore these fathers wish that the fault of a contracted marriage be healed by separation. Cf. Canon XIX of the Council of Orleans, A.D. 549.

Canon IV. Concerning incestuous unions, it has pleased us that this be kept which the ancient statutes of the canons sanctioned.

From the Council of Macon, A.D. 585

Canon XVI. Whatever woman was the wife of a subdeacon, or exorcist, or acolyte, when he has died, let her not dare to associate herself a second time in marriage. But if she has done this, let her be separated and handed over in a convent of girls of God, and remain there until the departure of her life.

Cf. Canon XXXII of the Council of Epaon, A.D. 517.

Canon XVIII. Incestuous copulation, in which the laws have sanctioned that neither spouse nor right nuptials can be named, the Catholic Church utterly detests and abominates; and it promises to afflict with graver penalties those who, despising the degrees of their birth with lustful ardor, roll about, like foulest swine, in their own filth, which is impiety (or, in the alternate reading: in their own mire or their own filth, which is mud, mire, foulness).

From the Council of Toledo, A.D. 589

Canon X. Widows to whom it has pleased to hold chastity shall not be forced by any force to come to repeated nuptials. But if, before they profess continence, they have chosen to marry, let them marry those whom they have chosen by their own will to have as husbands. Let a like condition also be had concerning virgins, lest they be forced to receive husbands apart from the will of their parents or their own will.

Canon XIV. At the suggestion of the council, our most glorious Lord (King Reccared) ordered this to be inserted in the canons, that it is not lawful for Jews to have Christian wives or concubines.

From the Diocesan Synod of Auxerre, A.D. 590

Canon XXII. It is not lawful for the widow left by a presbyter, nor for the widow left by a deacon, nor by a subdeacon, after his death, to accept a husband.

Cf. Canon XXXII of the Council of Epaon, A.D. 517.

Canon XXVII. It is not lawful that anyone accept his own stepmother as wife.

Canon XXVIII. It is not lawful that anyone accept the daughter of his own wife.

Canon XXIX. It is not lawful that anyone lead the widow of his brother into marriage.

Canon XXX. It is not lawful to accept two sisters, if one has died, the other into marriage.

Cf. Canon II of Neocaesarea.

Canon XXXI. It is not lawful to accept as wife a female cousin, that is, one who is procreated from two brothers or from two sisters, nor may those who are born from them be associated in marriage.

Not only the degree of first cousins, but also the next is excluded from nuptials.

Canon XXXII. It is not lawful that a nephew accept the wife of his maternal uncle.

From the Epistle of St. Gregory the Great, to Augustine, Bishop of the English (Epistles, Book XI, Epistle LXIV), A.D. 601

Question 5. Whether two full brothers ought to accept individual sisters, who are begotten from a stock remote from them.

Response. This may be done in every way. For nothing is found in the sacred utterances which seems to contradict this chapter.

Question 6. To what generation ought the faithful to be coupled in marriage with their own relatives, and whether it is lawful to be coupled in marriage with stepmothers and kinswomen.

Response. A certain earthly law in the Roman republic permitted that the son and daughter, whether of a brother or of a sister, or of two full brothers or two sisters (paternal cousins, first cousins, cousins' daughters) be mingled. But we have learned by experience that offspring cannot grow up from such a marriage. And the sacred law (of Moses) forbids revealing the shame of your kinship. Hence it is necessary that now the third (the children of cousins) or fourth generation of the faithful ought licitly to be joined to one another. Alexander II, in his epistle to the clerics of Naples on computing the degrees of consanguinity, reads: whence it is necessary that now four or five generations be coupled to each other. For the second, which we have mentioned, must abstain entirely from each other. But to be mingled with a stepmother is a grave crime, because it is written also in the law: You shall not reveal the shame of your father. That also signifies that another thing too is implicitly called forth, namely, to the words of the Apostle, 1 Cor. ... With a kinswoman (that is, the wife of a brother) also it is forbidden to be mingled; because through the prior union she has been made the flesh of the brother.

From the Epistle of the Same, to Felix of Messina (Epistles, Book XIV, Epistle 17), A.D. 604

"What I wrote to Augustine, bishop of the English race, to your alumnus, namely, as you remember, concerning the union of consanguinity, you should know that I wrote to him specially, and not generally to others, for the race of the Angles itself, which had recently come to the faith, lest from fear of things more austere it withdraw from the good which it had begun. Whence also every Roman city stood forth as witness for me (perhaps a synod, in which this concession was made by decree, is indicated); nor were these things commanded by me to them in that intention that, after they have been strengthened in faith by a firm root, if they have been found within their own consanguinity, they should not be separated, or that within the line of affinity (consanguinity), that is, down to the seventh generation, they should be joined. But while those neophytes are still existent, it is necessary very often first to teach them to avoid unlawful things and to instruct them by words and examples; and the things which afterward they may have done concerning such matters must reasonably and faithfully be excluded."

The line of consanguinity is said to extend down to the seventh generation; moreover the Angles are to be joined beyond it, since the privilege has first been revoked.

It will be useful to linger here a little, that, if it is right, we may interpret rightly the opinions of Gregory the Great (and cf. what was said in Theology XXIX, n. XIV, concerning these epistles). As regards the epistle to Augustine, Gregory makes mention of a certain earthly law, which is the law in the Code of Justinian, L. V, Tit. IV, l. 19, which either before or after Theodosius the Younger removed the law of Theodosius the Elder forbidding nuptials between cousins. Indeed, Theodosius the Great was the first of the Roman Emperors to forbid nuptials between paternal cousins and first cousins. This law indeed is not extant; nevertheless Ambrose mentions it in the epistle to Paternus, Augustine in The City of God XV.16, Aurelius Victor in the epitome of the History toward the end, and Arcadius and Honorius, sons of the same Theodosius, in the law Manente, Cod. Theod. L. III, Tit. 12, l. 3, by which law they tempered the law of their father as to the penalties. The question is whether afterward the same sons abolished the same law of their father by the law Celebrandis, by which these nuptials are permitted, which law is extant in the Code of Justinian, Book V, Title 4, and is ascribed to the same men, although it is lacking in the Theodosian code. Jacobus Sirmondus, in the diatribe On the Law Celebrandis (Works, Tom. IV), judges it more probable that this law, such as it now stands in the Code of Justinian, did not proceed from Arcadius and Honorius, both for other causes and especially because it is absent from the Theodosian code, and was unknown to Augustine, who, in the cited place, acknowledges the law of Theodosius the Elder alone as in force in his own age; and finally because, on the contrary, Honorius and Arcadius brought a law (Cod. Theod. L. III, Tit. 10, sole law, If nuptials are sought by rescript) by which, while the prohibition of nuptials between cousins remained, they nevertheless granted that the same nuptials could be sought by rescript of the Prince.

But Jacobus Gothofredus, on Cod. Theod. L. III, Tit. 12, l. 3, judges that there is nothing for which that law Celebrandis should be denied to be theirs, to whom it is ascribed in the Code of Justinian. For he observes first generally that, when there were two or more Emperors, even if some law was

founded by one alone, it was nevertheless accustomed to be inscribed and promulgated in the name and authority of all. Therefore he says: 1. the law Si nuptiae, published shortly thereafter, is from Honorius alone in the West. 2. Arcadius, however, first tempered the rigor of the paternal law by the law Manente; then, a few years later, by the law Celebrandis permitted what the Father had forbidden. Why therefore does this law Celebrandis not appear in the Theodosian code? He himself responds by asking: why does the law of Theodosius the Elder not appear there? If these things are received (for cf. Gothofredus himself in the cited place), we understand without great difficulty why Augustine in the West acknowledges the law of Theodosius the Elder as still in force; for Honorius had not abrogated it, but rather had confirmed it, permitting only that such nuptials be sought by rescript of the Prince. Cassiodorus also seems to have acknowledged this law of Honorius alone, who in Book VII of the Variarum, formula 46, asserts that the favor of joining by nuptial copulation with cousins was reserved by the prince to prudent men.

But it is certain that before Gregory the Great, Justinian made that law Celebrandis his own, inserting it into his Code, L. V, Tit. IV, l. 19: The license of celebrating marriages among cousins has been granted by the healthfulness of this law; so that, the authority of the old law being revoked and the incentives of calumnies extinguished, marriage among cousins is held legitimate, whether they were born from two brothers, or from two sisters, or from a brother and sister; and those brought forth from that marriage are to be held legitimate and successors to their parents.

And so it is evident that Gregory the Pontiff has no regard to this secular law for Christians, but rather disapproves it.

Yet the question is more entangled: how far, among Christians in the age of Gregory, did the prohibited degrees of kinship extend? For Gregory, in the epistle to Felix, teaches that marriage is lawful only after the seventh generation. On the other hand, at the same age, Isidore, Etymologies, L. IX, c. 6, n. 29, affirms that "consanguinity has been constituted down to the sixth degree of kind" (which nevertheless, according to the interpretation of Peter Damian, does not conflict with the former; cf. below at the year 1065), "so that, just as the generation and estate of man is finished in the six ages of the world, so the propinquity of kind would be terminated by as many degrees." But the Fathers of Agde and Toledo, above, forbid marriages so long as kinship is known; but as to degrees expressly indicated, it does not appear that any degree beyond the third is expressly prohibited. Cf. Canon LXI of the Council of Agde and XXX of Epaon, the canons of the Synod of Auxerre, A.D. 590, and Canon XIV following of the Council of Paris. Theodore of Canterbury, who flourished after the middle of the following century, increases the difficulty. For among the capitula ascribed to him (cf. Spicilegium Dacherianum, Tom. IX), these are found: Chapter XIII: "In the third propinquity of the flesh, according to the Greeks it is lawful to marry, as it is written in the law (the law of Justinian permitted it also in the second degree, according to the ecclesiastical computation indeed; therefore Theodore does not appeal to this law), in the fifth according to the Romans. Nevertheless in the fourth they do not dissolve the marriage after it has been made" (the same thing was established in the middle of the eighth century by the Fathers of Vermerie and others, whom see below). "In the third propinquity it is not lawful to have the wife of another after his death." Chapter LXXXIV: "In the fifth generation they shall be joined; in the fourth, if they have been found joined, they are not to be separated; in the third, they are to be separated." Moreover Rabanus Maurus in the ninth century, in an epistle to Humbert, mention having been made of the opinion of Isidore and

Gregory, prefers to both and says that there is to be followed the doctrine of Theodore, who, "walking midway between Isidore and Gregory, defined that after the fifth generation marriage already becomes lawful." But from the capitula of Theodore which are now circulated, it is rather evident that he himself thought marriage lawful after the fourth generation.

Rabanus therefore in the ninth century knew no ecclesiastical law which forbade marriages after at least the fifth generation; indeed, not even after the fourth. For in another little work, On the Nuptials of Blood-Relatives, after the cited canons of Gregory II (which see below), he says that these are to be followed, admonishing only "that if anyone has willed to contain himself as far as the fifth or sixth or even seventh generation, he is not to be prohibited, but rather exhorted." Cf. also Decree XXX of the Council of Mainz held by the same Rabanus, A.D. 847, below. Yet in the eighth century Gregory III already, in an epistle to Boniface (which it is wonderful was hidden from Rabanus), testifies that he has decreed that each one observe his own progeny down to the seventh generation; see below. Moreover Zacharias, in the epistle to Theodore of Pavia (see below), making mention of the epistle of Gregory the Great to the Angles, admonishes that that pious Father granted it that he might impose certain light things, not graver ones, upon the rude and those newly coming to Christ. By these words Zacharias openly alludes to the epistle of the same Gregory to Felix, so that there is no reason why, any longer with Peter Coustant (in the Epistles of the Roman Pontiffs, col. 416-17), who did not see the entire epistle of Zacharias to Theodore, we should doubt the authenticity of this epistle of Gregory to Felix. Zacharias moreover adds there that he wishes the people committed to the care of Theodore to observe not what was granted to the recently converted, but what those keep who from their cradles have been nourished in the Catholic Church: namely, that when they have known themselves to be of their own kinship, by all means they abstain. But since he does not declare the degrees more distinctly, Zacharias seems to understand those whom Gregory the Great, to whom Theodore of Pavia had appealed, indicated, namely down to the seventh degree.

What therefore is to be judged? I think that in the Church this was always guarded: that, so long as certain persons had known themselves to be of their own kinship, they should abstain from marriage (which indeterminate manner of speaking Nicholas I also preferred to retain when he wrote to the Bishops of Germany, see below, as if the degrees of kinship were known from elsewhere); yet there was not among all the same way of applying this law. And at Rome indeed and in the nearest churches, in the age of Gregory the Great, and before him and afterward, the law was in force that, since after the seventh generation kinship was judged to cease, marriages were lawful only after the seventh generation. Certainly Modestinus (in Dig. L. 38, Tit. 10, l. 4) had already said: "not easily, so far as our law is concerned, when inquiry is made concerning natural kinship, does anyone exceed the seventh degree, since beyond that degree the nature of things scarcely permits the life of kinsmen to exist." Nevertheless, I judge that a universal law concerning this matter in the Church, forbidding all these marriages, whether introduced from the prescription of the Roman See or from custom imitating the Roman manner, prevailed only rather late, after the middle of the ninth century. For, as we shall see, several provincial councils of the immediately following centuries are ignorant of this law. But in the ninth century, especially as it declined toward its end, that law appears commonly received.

Unless perhaps you wish to say with some that the difference which shows itself among so many canons is only verbal: namely, that some used the ecclesiastical computation in enumerating the

degrees, others the Roman. But we cannot receive this. For 1. if it were so, those who used the Roman computation would have placed the eighth for the fourth ecclesiastical degree; but mention of this degree never occurs. 2. The difference is not only between two limits, inasmuch as some fix the limit, for example, in the fourth degree, others in the seventh, but between several limits; for you will also find those who stop at the third degree. 3. When certain persons in the Church of Naples judged that the computation of degrees should be applied according to the Roman manner, Alexander II (see below in its place) did not respond that up to that time both ways had been used and amounted to the same thing, provided that in the Roman computation the number be doubled; but he utterly rejected that method of computing. 4. When Innocent III in an ecumenical Council (see below) contracted the prohibited degrees to the fourth, because in the more distant degrees the prohibition previously in force could not be generally observed without grave loss, he manifestly signified that the prohibition extending down to the seventh degree differed not only in words but in reality from the prohibition down to the fourth. Otherwise he would have established nothing new, and would have left untouched the same grave loss to which the faithful were liable. Cf. what we shall say at the canon of the Roman Council under Alexander II.

From the Council of Barcelona, A.D. 599

Canon IV. If any virgin, by her own will, having cast aside lay dress and being clothed according to the manner of devoted women, has promised to preserve chastity, or if any persons of either sex, by seeking the blessing of penance, have received it from a priest, and have of their own accord passed to earthly marriages, or women violently taken away have been unwilling to separate themselves from the violator of chastity, let both, expelled from the thresholds of the churches, be separated from the communion of Catholic persons in such a way that no consolation whatever even of conversation be left to them.

Cf. Canon III of the Council of Lyons, A.D. 583.

From the Council of Paris, A.D. 615

Canon XIII. Concerning widows and girls who, in their own houses, whether by their parents or by themselves, have changed their clothing into the habit of religion, and afterward, against the statutes of the Fathers or the precepts of the canons, have believed themselves to be coupled in marriage: let both be held suspended from communion so long as they amend what they have unlawfully perpetrated; or if they have neglected to amend, let them be sequestered forever from ecclesiastical communion or the banquet of all Christians.

Religious profession was still then permitted to virgins and widows in their own house according to the old custom. Cf. the preceding canon.

Thus Sirmondus edited the canon just now recited. But Baluzius (in the Capitularies of the Franks), referring from the same Council an edict of King Chlothar on this matter, thus presents it under n. XVIII: Religious girls and widows or nuns, who have vowed themselves to God, both those who reside in their own houses and those who have been placed in monasteries: let no one either claim them by our precept, or drag them away, or presume in any way to associate them to himself in marriage. And if anyone has elicited a precept concerning this (that is, has obtained it from the king), let it obtain no effect. And if anyone, either by force (that is, violence) or by any order, has presumed to draw them away or to associate them to himself in marriage, let him be struck by capital sentence. And if they have made marriage in the Church and that abducted woman, or she who is to be abducted, seems to consent to this, let them be deported into exile, sequestered from each other, and let their properties be joined to their nearest heirs.

But the sixth Council of Paris, A.D. 829, forbade to women these religious professions in their own houses. But cf. Canon XXIX of the Roman Council under Eugene II, A.D. 826.

Canon XIV. We have judged that incestuous unions are specially to be cut away from the whole Christian people, so that if anyone has believed that the widow of his brother, the sister of his wife, his stepdaughter, a female cousin, a cousin's daughter, or likewise the widow of his paternal and maternal uncle, or one given in the habit of religion, is to be violated by the consortship of marriage, let him be segregated from the grace of communion so long as he ought to abstain by most manifest separation from unlawful unions.

You see that the marriages of religious women are numbered among incestuous unions.

From the Council of Reims, about A.D. 625

Canon VIII. Concerning incestuous unions: if anyone within the degree prescribed by the canons, in incestuous order, has joined himself with those persons with whom he is prohibited by the divine rules, unless they testify to penance by separation, let them be deprived of communion.

Appeal is made to the canons already in force. Namely, those published in the preceding synods of the Gauls were held as the common law of the Church in the Gauls. There is no mention of laws proceeding from civil authority. Rather, the civil law followed the decree of the bishops. For in the Capitular of King Dagobert, who in the year 729 (according to Petavius) began his reign, both in the second for the Alamanni, n. 39, and in the third for the Bavarians, Tit. 6, n. 1, it is decreed: We prohibit incestuous nuptials. And so it is not lawful to have as wife a mother-in-law, daughter-in-law, stepdaughter, stepmother, daughter of a brother, daughter of a sister, brother's wife, wife's sister. Sons of brothers and sons of sisters shall by no presumption be joined among themselves. If anyone has done contrary to these things, let him be separated by the judges of the place and lose all his goods, which the fisc shall acquire.

Canon XXIII. Widows who have sought to be consecrated to the Lord, or girls consecrated to the Lord, let no one, sustained either by royal authority or by power of whatever kind, or by his own rashness, dare to abduct or drag away. But if both have consented, let them be deprived of communion.

From the Council of Toledo, A.D. 633

Canon XLIX. Either paternal devotion or one's own profession makes a monk; whatever of these shall have been bound will hold. Therefore we close to these the way to return to the world, and we forbid every return to the age.

Concerning this custom, which formerly as to clerics the second Council of Toledo, A.D. 527 (see above), did not approve, which nevertheless as to monks afterward obtained in many places, and which the Benedictine rule either had introduced or had strengthened, so that, after boys had been offered to monasteries by their parents, it was impious for them to desert the purpose (the purpose, indeed, of remaining in the monastery and of living the monastic life, although perhaps short of vows), and to return to the world was impious, read Peter Coustant, Epistles of the Roman Pontiffs, at St. Marcellus, section 2. This custom, which this canon of the fourth Council of Toledo confirms, Nicholas I approved less, in the epistle given to all the bishops in the kingdom of Louis, A.D. 867 (cf. his Epistle 117). The same custom at last, little by little, became obsolete, and was rejected by Celestine III, whose decree is extant in the decretals of Gregory IX, L. III, Tit. XXXI, c. 14. Cf. likewise the response XV of Leo to Rusticus, above, and below, Zacharias XXVII from the epistle to Pepin.

Moreover, the same Spanish decree was renewed by the tenth Council of Toledo, A.D. 655, yet with this tempering in Canon VI: that thereafter "parents could have license to hand over their sons to religion no longer than until the tenth (other reading: fourteenth) year of their age." Namely, those who had reached the tenth (other reading: fourteenth) year could be bound by their own will alone.

Canon LII. Certain monks, going out from the monastery, not only return to the world, but also take wives. Therefore these, recalled into the same monastery from which they went out, are to be deputed to penance, and there they are to lament the crimes from which they departed.

Canon LV. Those who have been tonsured by their parents, or of their own accord, their parents having died, have devoted themselves to religion, and afterward have assumed secular habit: these same, being apprehended by the priest, after penance first has been performed, are to be recalled to the worship of religion. But if they cannot return (that is, cannot be recalled, certainly because they do not wish to), truly, as apostates, let them be subjected to the sentence of anathema. This form will be preserved also in widows and sacred virgins and penitent women who have put on the habit of nuns and afterward either changed their garment or passed over to nuptials.

As to the first part of this decree, cf. what was said at Canon XLIX.

Canon LVI. There are two kinds of widows, secular and nuns. Secular widows are those who, still arranging their lay habit, have not put it off; nuns are those who, having already changed secular habit, have appeared under religious dress in the sight of the priest or the Church. These, if they have passed to nuptials, according to the Apostle, will not be without damnation, because, first vowing themselves to God, they afterward cast aside the purpose of chastity.

Among these the tenth Council of Toledo, Canon V, also numbers those who, although they had not received the garment of a nun from a priest or minister, nevertheless either themselves were clothed in it, or consented to be clothed in that habit which by beholders would be believed to be the dress of

religion, and thus, having at some time been clothed before the Church or a priest, or even competent witnesses, they proved it by certain indications or testimonies.

It is evident that religious profession was then lawful for women outside cloisters in Spain, and that even tacit profession had force.

Canon LXIII. Jews who have Christian women in marriage are to be admonished by the bishop of that city, that if they desire to remain with them, they become Christians. But if, after being admonished, they are unwilling, let them be separated; because an unbeliever cannot remain in marriage with her who has already been transferred into the Christian faith. Moreover, the children who exist as born from such persons are to follow the faith and condition of the mother. Similarly also those who have been procreated from unbelieving women and faithful men are to follow the Christian religion, not Jewish superstition.

The discourse concerns Christian women who, from Judaism, were converted to Christ after nuptials. Because of the danger of perversion it is prescribed that, unless the husband is converted, they are to be separated, and thus power is given to the Christian woman to enter other nuptials. Indeed, by reason of the same danger, the preceding canon, which is LXII, had decreed that "there shall be no further communion for Hebrews transferred to the Christian faith with those who still remain in the old rite, lest perchance by participation with them they be subverted." But in the third Lateran Council under Alexander III, Canon XXVI, Christians are excommunicated who presume to dwell with Jews or Saracens, under pretext of feeding or educating children of that people, or for service, or from any other cause.

From the Council of Toledo, A.D. 638

Canon VI. Whoever of men or women has once put on a spontaneously religious habit, or if a man has been given to the choir of the Church, or a woman has been bound to a monastery of girls, let the transgressor in either sex be compelled unwillingly to return to the purpose; so that the man be tonsured, and the girl be restored to the monastery. But if by any patronage the deserters have wished to remain, by priestly sentence let them be held so banished from the company of Christians that not even any speech be common with them. Widows also, just as the universal Synod long ago established (Toledo IV, A.D. 633), deserters of their profession or habit, are condemned by the preceding sentence.

Canon VIII. It is the opinion of the ancient and most holy father Pope Leo (cf. his Decree XIII from the epistle to Rusticus, above), that he who, placed in the age of adolescence, while he fears the chance of death, has come to the remedy of penance, if he was married and perhaps was incontinent (that is, not able to contain himself), lest afterward he incur the fall of adultery, should return to his former marriage, until by maturity of time he can obtain the state of continence. This we judge in equal manner concerning women as concerning men, not indeed as a general and lawful precept (in the manner of a commanding law), but it is clear that it has been granted by us on account of human frailty, under this consideration alone: that if he who is not given to the laws of penance (namely, the other spouse, who is not subject to penance) has departed from this life before their return by consent to continence (perhaps "cohabitation," or something similar; for the certain sense is: before they return again to marital copulation), it is not lawful for the survivor (who did penance) to pass again to wifely embraces. But if the life of the one who did not receive the blessing of a penitent has survived (that is, if that one of the two spouses survives who was not subjected to penance, the other penitent being dead, that survivor), let him marry if he cannot contain himself, and enjoy the consortship of another wife. This, in like manner concerning either sex, we have manifestly decreed.

These Fathers do indeed appeal to Leo's response; nevertheless, they restrict it too much. For to the penitent adolescent himself, after penance, they grant only a return to the wife whom he had previously accepted; but Leo simply grants nuptials to a penitent of this sort.

For he responded to the inquiry "concerning those who after penance take wives or join concubines to themselves." Rather they could have appealed to Canon XXI of the second Council of Arles, A.D. 451, above.

From the Council of Toledo, A.D. 655

Canon X. Whoever from bishop down to subdeacon, being constituted in honor, hereafter shall have procreated sons either from a female slave or from a free woman in a detestable union, those indeed from whom they are proved to have been begotten are to be condemned by canonical censure; but the offspring born of such pollution shall not only nowhere receive the inheritance of the parents, but shall also remain by perpetual right in servitude to that Church from whose priest or minister's disgrace they were born.

Since the offspring is considered as illegitimate, these Fathers seem to have held those nuptials not only illicit but invalid.

From the Council of Nantes, A.D. 658

Although this council is referred by collectors of Councils to the tenth century, it was probably held, according to Sirmondus, in A.D. 658. For the following decree of the same is recited by Benedict the Levite in his collection of capitularies, L. III, n. 382, who wrote before the middle of the ninth century. Moreover, that in this year, 658, a Synod of Nantes was held, we are taught by Flodoard.

Canon XII. If any man's wife has perpetrated adultery, and this has been detected and published by the husband, let him dismiss the wife, if he wishes, because of fornication; but let her do public penance for seven years. But her husband, while she is living, shall by no means accept another. But if he wishes to reconcile the adulteress to himself, he has license, yet in such a way that he do penance together with her, and after the penance has been completed, after seven years, both shall approach communion. A similar form will also be observed in a woman, if her husband has committed adultery.

It seemed to these Fathers less honorable, and therefore to be expiated by penance, if the adulteress were retained. Cf. Canon LXX of Elvira. Meanwhile you discern the perfect indissolubility of marriage.

From the Council of Hertford, in England, under Theodore, Bishop of Canterbury, A.D. 673

Canon X. On Marriages. That it be lawful for no one to have anything except legitimate marriage. Let no one commit incest. Let no one leave his own spouse except as the holy Gospel teaches, for the cause of fornication. But if anyone has cast out his own legitimate spouse joined to him by matrimony, if he rightly wishes to be a Christian, let him be coupled to no other, but let him remain thus or be reconciled to his own wife.

Here you have the Catholic dogma expressly proposed: indeed the dismissal of the wife is permitted in the case of fornication, yet in such a way that he does not accept another. From this you understand how badly, among the capitula ascribed to the same Theodore, this also is reckoned, CXVI: "Whose wife commits fornication, it is lawful to dismiss her and accept another; and it is not lawful for a woman to commit fornication and accept another for money."

From the Council of Toledo, A.D. 681

Canon VIII. It is the precept of the Lord that, except for the cause of fornication, a wife ought not to be dismissed by her husband. And therefore whoever, apart from the fault of the crime aforesaid, has left his wife on whatever occasion, because he has determined to separate those whom God has joined, let him, deprived of ecclesiastical communion and alien from the assembly of all Christians, remain so long as he both returns to the society of the wife left behind and sincerely embraces and cherishes the part of his body by the honorable law of marriage.

From the Council of Toledo, A.D. 683

Canon V. It will be lawful for no one to lead the surviving queen into marriage for himself, or to stain her by sordid contacts. This will not be lawful for future kings; it will not be permitted to any human being. But if anyone has presumed to do any such thing, whether by coupling to himself the surviving queen in marriage after the death of the deceased prince or by contaminating her with adulterous pollution, whether he is king or any human being, whoever has presumed to violate the sentence of this our sanction, let him be excluded from all communion of Christians, and let him be handed over with the devil to be burned by sulphurous fires.

The same decree was confirmed in the third Council of Zaragoza, A.D. 691, Canon V, with a decree added that the same surviving queen should put off secular dress, assume the habit of religion, and immediately be assigned to a convent of virgins.

From the Capitular of Gregory II, Given to Martinianus the Bishop and Gregory the Presbyter, Delegates to Bavaria, A.D. 721

Chapter VI. Thus to those marrying or about to marry give order from apostolic authority, that neither because of continence should the nuptial copulation be judged damnable, nor through the license of marrying should an occasion of fornication be presumed ... And it is not lawful to defraud one another except by consent for a time, that they may have leisure for prayer (perhaps something is lacking), the Apostle saying concerning this very thing: You are bound to a wife; do not seek a release, that is, while a spouse survives, not to wish to pass over to the concubitus of another woman ... Whence neither is that rightly to be counted marriage which has exceeded the number of two; because a yoke is not borne except in two. Let that marriage itself also of one man and one wife be taught as not at all to be presumed in nearness of blood: that is, that no one should dare to couple to himself in marriage or associate in adultery the wife of his father, or of his paternal uncle, or of his brother; or his own sister, or the sister of his father or mother, or the daughter of his sister, or even the daughter of the sister of his father or mother. But if anyone has dared to perpetrate this, let him know that he is liable to the contamination of an incestuous crime ... The integrity of faithful virgins and continent persons is also to be taught as preferable to nuptials themselves.

From the Roman Council of the Same Gregory II, A.D. 721

Canon I. If anyone has led a presbytera (the wife of a presbyter) into marriage, let him be anathema.

Cf. Canon XXII of the Synod of Auxerre, A.D. 590.

Canon II. If anyone has led a deaconess (the wife of a deacon) into marriage, let him be anathema.

Cf. the same place.

Canon III. If anyone has led a female monk, whom we call a handmaid of God, into marriage, let him be anathema.

Canon IV. If anyone has led a spiritual co-mother into marriage, let him be anathema.

A co-mother is the wife of a godfather already known.

Canon V. If anyone has led the wife of his brother into marriage, let him be anathema.

Canon VI. If anyone has led a niece into marriage, let him be anathema.

Canon VII. If anyone has led his stepmother or daughter-in-law into marriage, let him be anathema.

Canon VIII. If anyone has led a female cousin into marriage, let him be anathema.

Canon IX. If anyone has led as wife one from his own kinship, or (her) whom a kinsman had, let him be anathema.

Cf. the following response of the same Gregory II to Boniface. It is clear that it is supposed to be known how far kinship extends; but in general marriage is forbidden between blood-relatives and affines. Yet how many degrees of kinship were reckoned can be learned both from the response of the same Gregory II to Boniface, soon to be cited, and from Isidore and Gregory the Great, above, and also from the following response of Gregory III. Cf. also Canon XI of the Council of Agde.

Canon XI. If anyone has abducted or stolen as wife a virgin whom he has not betrothed to himself (other reading: unless he has betrothed her), or consenting to him, let him be anathema.

Marriage with the abducted woman is permitted to the abductor if betrothal preceded, which Justinian had denied. Cf. what was said at the canons of the Council of Meaux, A.D. 845.

Gelasius the Roman Pontiff indeed (in the Fragment apud Andreas Thiel after his epistles) said: "That law of former princes said that abduction was committed there where a girl, concerning whose nuptials nothing had been done, seems to have been led away." Gregory follows him.

From the Epistle of the Same Gregory II, to Boniface, A.D. 726

Response I. In the first place it was read in what degree of the stock of relatives marriage is coupled. We say that indeed it was fitting that, so long as they recognize themselves as relatives by affinity, they should not approach the society of this copulation. But because tempering, and especially in so barbarous a nation (namely, the Germans), is more pleasing than the strictness of censure, it must be granted that they be joined after the fourth generation.

Therefore the law of the Roman Church extended the prohibited degrees beyond the fourth; for the law is tempered by dispensation when propinquity is enclosed within the fourth generation.

Response II. For as to what you proposed, namely, if a woman, overcome by infirmity, is unwilling to render the debt to her husband, what should her spouse do? It would be good if he remained thus, that he might devote himself to abstinence. But because this belongs to the great, let him who will not be able to contain himself marry rather; yet let him not withdraw the aid of support from her whom infirmity hinders and no detestable fault excludes.

Cf. Canon XXI of the second Council of Orleans, A.D. 533. When we were writing Thesis XIII (which cf.), it seemed probable to us that this was the decree of Gregory to which Celestine III appeals in the chapter Laudabilem, On the Frigid, because among the genuine epistles of Gregory, whether the second or the third, this one decree alone is extant, to which Celestine seemed not undeservedly to have been able to appeal, and we presumed that the Pontiff had appealed to genuine documents. But because already in collections of canons made before Celestine there occurred a canon under the name of Gregory establishing that same thing more precisely which Celestine decreed (in the decree of Gratian, C. XXVII, q. 2, c. 39; Ivo, p. VII, c. 177; Burchard, L. IX, c. 40), which canon certainly can be genuine, and interpreters judge that Celestine had before his eyes this canon, other than ours, we do not wish to contradict the common opinion.

From the Epistle of Gregory III, to Boniface, A.D. 731

Decree V. We have decreed that each one observe his own progeny down to the seventh generation (namely, as to marriages).

This is the first ecclesiastical canon in which it is expressly said that the impediment of consanguinity extends down to the seventh degree. The Fathers of the second Council of Douzy, A.D. 874, attribute this decree, as if taken from the epistle of Gregory the Great to Felix, above, to that same Gregory. But the same Fathers there err not a little in other citations. If you compare this response of Gregory III to Boniface with the response of Gregory II to the same (Response I), the authenticity of each epistle being supposed, you must say one of two things: either that Gregory III abrogated the concession of the former for the Germans, or that he proposed only the general law and narrated what had been decreed in the Synod.

Decree VI. If you are able, teach that it is to be avoided that one whose wife has died ought to be coupled to more than two.

It is counsel concerning the better good, not a precept, that they abstain from third nuptials.

From the Epistle of Zacharias, Roman Pontiff, to Pepin, Mayor of the Palace, the Bishops, Abbots, and Nobles of the Franks, A.D. 747

These responses, at the command of Zacharias himself in Epistle VIII to Boniface, were to be read in the Council of Bishops.

Response VII. Concerning a layman driving away his spouse, from the canon of the Holy Apostles, chapter 48: If any layman, driving away his own wife, has led another, or one dismissed by another, let him be deprived of communion.

Response XII. Concerning those who dismiss wives or husbands, so that they remain thus, from the African Council, chapter 69 (in the Code of Dionysius, among the African Canons, this is the 102nd), it is thus contained: It has pleased us that according to evangelical and apostolic discipline, etc.

Cf. above, Canon VIII from the Council of Carthage, A.D. 407.

Response XX. Concerning veiled virgins, if they have strayed, what is to be done with them, in the book of decrees of blessed Pope Innocent, chapter 19, it is asserted: "those who spiritually marry Christ," etc.

Cf. his Decree XIII from the epistle to Victricius, above.

Response XXI. Likewise concerning non-veiled virgins, if they have strayed, in the same book, chapter 20, it is contained: "But those who have not yet been covered with the sacred veil," etc.

Cf. his Decree XIII in the same place, above.

Response XXII. Concerning those women who have married two brothers, or those men who have accepted two sisters, in the Council of Neocaesarea, Canon II, it is contained, etc. (cf. above). But we, with divine grace supporting us, confirming much more according to the decrees of our predecessor Pontiffs, say that so long as generation has known itself, according to the rite and norm of Christianity and the religion of the Romans, marriages are not to be coupled.

Cf. the decree of Gregory III and the response of Gregory the Great to Felix, above.

He continues in the same place: But let no one, by rash daring, lead as wife a spiritual woman, that is, a co-mother or daughter, which God forbid. For it is a wickedness and pernicious sin ... For it is so grave that no one, by the assertion of the holy Fathers or holy synods, nor even in the imperial laws, is indicated; but fearing the terrible judgment of God, they were silent to give sentence. Cf. Canon IV of the Roman Council of Gregory II.

But although Justinian, in Code L. V, Tit. IV, l. 26, prohibited nuptials with that person whom one received from sacred baptism, nevertheless it is clear that Zacharias chiefly fortifies his response with the authority of the Fathers; and when he affirms that the Fathers never permitted this, it is evident that the law of Justinian looked to confirming the decree of the Church.

Response XXVI. Concerning monks and virgins not keeping their purpose, it is contained in the book of decrees of blessed Pope Siricius, chapter 6: "besides, certain monks and nuns," etc.

Cf. his Decree VI from the epistle to Himerius, above.

Response XXVII. Concerning those women who, not compelled but by their own will, undertook the purpose of virginity, what they commit when they marry, in the book of decrees of blessed Pope Leo, chapter 27 (thus from Dionysius), it is contained: "Girls who, not compelled," etc.

Cf. his Decree XV from the epistle to Rusticus, above.

From the Epistle of the Same, to Theodore, Bishop of Pavia

Response I. You took care to ask us whether it is lawful for a son whose father received another man's daughter from sacred baptism, that is, as spiritual father (perhaps "the spiritual father"), to take in marriage the daughter of the same (namely, other) father, which it is cruel to say, which you disclosed had happened enormously among you (namely, whether the son of him who received some woman from the sacred font could lead this woman as wife). But your fraternity well knows what the Lord commands through Moses, saying: You shall not reveal the shame of your father; for the daughter of your father is your shame. For the shame is said not to be revealed when it is commanded that one abstain from one's own consanguinity. Much more therefore does it befit us, with every occasion or argument set aside, to beware entirely, under excessive detestation, of the daughter of our spiritual father.

Others read thus: "It is not fitting at any time to hand over in marriage to one's own man (perhaps, son) the daughter whom one has received from the sacred font; because in divine knowledge they are found to be full siblings (cf. above, the cited sayings of Zacharias from the Vatican codex). If anyone, mixed in such a crime, has not at all restrained the reins of luxury, he will be abominated by the Catholic Church. But if he has been converted, after separation let him perform penance for seven years. Let this condition be for those aware, together with the author: that is, together with the cooperators and consenters, let him do penance."

Thus also much later Paschal II responded (cf. below at the year 1000-115), but it later seems to have been abrogated by Alexander III. Compare below, in the collection of canons ascribed to him, under the title concerning joining children, etc.

Response II. But concerning the children who are proved to have been born from them: you asked whether it is lawful for them to be coupled in marriage or not. But why should these be prohibited from marriage, or be compelled to do penance for this sort of thing, since they are proved to be without condemnation from this, because neither will the father sustain torments for the son, nor the son for the father?

Response III. But concerning that chapter which you intimated to us, in what generation one ought to be joined from one's own kinship, because others wish to vindicate for themselves this which was directed by St. Gregory to be observed among the nation of the Angles down to the fourth progeny. But that pious Father himself imposed certain light things on the rude and those newly coming to Christ, lest, if he had imposed graver things, they would bear them harshly and, being a harsh race, would utterly cast aside all the things which they had received. But we wish that the people committed to you should observe not as those who newly received Christ ought to observe, but as those who have been nourished from their cradles in the holy Catholic Church: that, when they have indeed known themselves to be of their own kinship, they should by all means abstain; just as the holy Catholic and apostolic Roman Church of God holds and preaches this.

Cf. Siricius, Decree VI, from the epistle to Himerius, above.

The tradition of the Roman Church, to which he appeals, is that certain one which Gregory III, above, and Gregory the Great in the epistle to Felix, above, expressed.

You see by this response of Zacharias that the authenticity of this epistle of Gregory the Great to Felix, about which Coustant doubted, is confirmed.

Another Text of the Same Zacharias

Vatican Codex 1343, 1.169, has these things: "These are sayings of Pope Zacharias concerning the fact that no blood-relative ought to be coupled: since it is not fitting to accept as wife the widow of a cousin or one's own female cousin, nor to hand over in marriage to one's son the daughter whom he lifts from the sacred font (cf. Response I to Theodore); because in divine knowledge he is found to be a full brother (the son of the one receiving is held as the brother of the received girl according to the rules of divine doctrine). For concerning the generation of these we speak thus: that in no way shall one accept as wife one from his own kinship, unless the seventh generation has been completed and passed. In the Acts of the Apostles, in the fourth chapter, we are admonished of this: abstain from fornication and corruption of kinship, on account of which the tradition (read: wrath of God) comes upon the sons of unbelief. Whence blessed Augustine, writing in his epistle to Constantine Augustus concerning this chapter, says: thus it is read in the book of Genesis: in six days the Lord made heaven and earth; on the seventh he rested from every work which he had completed. Thus also through six thousand years this world is enclosed; but on the seventh our Lord is to judge the age by fire.

"Therefore by this mode or septenary number the carnal generations are to be commemorated. But if, beyond this number, wherever they shall have been found, they are joined, let them be separated. But when the seventh progeny has been completed, if they have been joined, they are not to be separated; if it was done through ignorance, penance is to be added to them by the priests. If, however, someone knowing this and having had it known, has badly detracted from this holy and great Nicene Council and the decrees of the holy Fathers, let him be abominated by the holy Catholic Church, and not even at the end is communion to be given to him.

"If anyone has associated to himself in marriage a sister from the sacred font or chrism, let them be divided and do penance for five years. If she has committed fornication with a man, let her do penance for seven years, and let each one go into exile."

It follows: "That it is lawful for no one to accept a wife from his own kinship: in the coupling of the faithful we do not define the number of kinships, but we establish this, that it is lawful for no Christian to accept a wife from his own consanguinity or kinship so long as the generation is remembered and known or is recalled to memory" (from the periodical Der Katholik, July 1882).

It is permissible to doubt whether such sayings really proceeded from Zacharias the Pontiff. For how do the former cohere with the latter? What have the Acts of the Apostles to do with the prohibited degrees of kinships? What is the epistle of Augustine? Did Augustine ever discourse in this way? What do those words mean: "this holy and great Nicene Council," with what follows?

From the Roman Council under the Same Zacharias, A.D. 743

Canon V. That no one shall presume to couple to himself by nefarious marriage a presbytera, deaconess, nun or female monk, or also a spiritual co-mother ... But if those who have been joined in this way, after being admonished, have withdrawn and have been divided from one another, let them be subjected to penance.

Cf. Canons I, II, III, IV of the Roman Council of Gregory II, and of the same Zacharias, the epistle to Theodore, Response I, and from the epistle to Pepin, chapter XXII, above.

Canon VI. That no one shall presume to couple in marriage a female cousin, a niece, a stepmother, a brother's wife, or also one from his own kinship.

The prior degrees being openly indicated, the rest are comprehended under the general formula: "from his own kinship." See the epistle of the same to Theodore.

Canon X. If any Christian has presumed to couple his daughter in marriage to a Jew, unless the Jew has perfectly believed in Christ and been baptized, and if a Christian widow has led a Jew as husband ... let him be anathema.

A penalty is inflicted; but the marriage is not yet said by the Roman See to be invalid.

Canon XV. We have written concerning the degrees of kinships and how any persons ought from now and hereafter to be coupled in legitimate marriage ... Our predecessor of blessed memory, Gregory, the younger Pope of this Apostolic See, on account of some illicit unions which were being made throughout this Italy, or the province of the Lombards, or in other places, having gathered a college of priests and promulgated sentence, bound them with the bond of anathema ... Nor is this to be passed over in silence: that in the parts of Germany it has long been made common, which indeed we find in no way written in the archive of our holy Church, yet we have learned from the very men asserting it from the parts of Germany, that holy Pope Gregory of blessed memory, when by divine grace he enlightened them to the Christian religion, gave them license to be coupled in the fourth generation; but this was when they were rude and to be invited to the faith. Although, as was said, it is by no means written, we do not hesitate to believe it. But, God bestowing, in past years the archbishops and kings of that province sent letters, seeking apostolic precepts: how it is lawful for them to couple marriages, and how they ought to observe. To them, as much as the Lord deigned to give, we directed precepts of admonition.

But he does not signify of what sort these precepts were. This canon, as you see, is historical and not a little obscure.

It is asked who that younger Pope Gregory is. I think it is Gregory II. For to him is attributed the Roman Council enacted in A.D. 721 against illicit marriages, in which the Roman Pontiff Gregory, having begun the preface, among other things says: "Groaning, I say that I hear that some of the Christian people dwelling through the province of Italy sin rashly against the Catholic faith and the statutes of the Fathers, so that they presume to lead as wives women consecrated to God and to associate relatives in marriage." Moreover, the province of Italy is that part which the Lombards were holding, as is clear from history, and Zacharias himself interprets it. But Gregory III seems to have

held no council concerning this matter. Therefore, although afterward by some, under the name of the younger Gregory, Gregory III would be understood, as Gratian is sometimes accustomed to do, nevertheless Zacharias, the immediate successor of this one, called Gregory II the younger Gregory in respect to Gregory the Great, who was the first.

It is asked who that holy Pope Gregory is from whom the Germans asserted that they had received a privilege concerning nuptials.

I say that it is the same Gregory II, now called in another way, perhaps because Zacharias recites the very words of the Germans, by which they named the author of the privilege when they asserted it. Certainly the discourse cannot be about Gregory I, who conceded a privilege not to the Germans but to the Angles, and indeed a broader one. Moreover Zacharias speaks of this privilege conceded to the Germans in such a way that he indicates a certain doubt, although he confesses that he gives faith to those affirming; but concerning the privilege conceded by Gregory to the Angles, to have force only while they were still rude and weak, Zacharias speaks in the epistle to Theodore of Pavia, above, without any signification of doubt, as of a matter known to all.

Nor is there reason why we should think that the Germans extended to themselves, as a privilege granted to them, that which had been done for the Angles; among whom, moreover, at that age it had probably already ceased.

Nor is that Gregory of holy memory Gregory III, who, on the contrary, wrote back to Boniface that down to the seventh generation they should beware of marriage for themselves. Cf. his response above.

But there is indeed extant a response of Gregory II to Boniface, which we recited above in its place, by which a privilege is conceded to the barbarous nations converted by Boniface, restricting the degrees of kinship prohibited for marriage.

The difference is only that, while the Germans said it had been permitted to them to be coupled in the fourth generation, the text of Gregory II says: "after the fourth generation," but the difficulty is not of great moment. For this certainly could have been the reason why Zacharias said that he did not find this privilege in the archive of his Church. Besides, if the very epistle of Gregory II to Boniface which now exists was absent from the Roman archive, which could have happened, either it must be said that a mistake crept into one or the other place, or that the Germans did not report the matter accurately enough, or that in good faith they thought each phrase to have the same value, just as for the Hebrews and the evangelists it was equivalent to say "after three days" and "on the third day."

From the Council of Soissons, whose Decrees Were Published Also with the Consent of Prince Pepin and by the Counsel of the Nobles of the Franks, as Is Said in Chapter X, A.D. 744

Canon IX. We establish that no lay man shall have a woman consecrated to God as wife, nor his own relative, nor, while the husband is living, shall another accept his wife; because a husband ought not to dismiss his wife, except when the cause of fornication has been detected.

From the Council of Leptines, with Boniface and Two Others, Legates of the Apostolic See, Presiding, A.D. 745

Canon III. We prescribe that, according to the decrees of the canons, adulteries and incestuous marriages, which are not legitimate, be prohibited.

Canon V. If anyone has held his stepson or stepdaughter before the bishop for confirmation, let him be separated from his wife and not accept another (from Fulbert of Chartres, Epistle 33).

Canon VI. Let no one receive his own son or daughter from the font of baptism; nor let him lead as wife his goddaughter or the mother, nor her whose son or daughter he has held for confirmation. But where this has been done, let them be separated (from the same).

Canon VII. If a man is not able to render the conjugal debt to a woman betrothed, dowered, and led in public nuptials, according to the Apostle, and this has been made manifest either by the confession of both or by any certain proof, let them be separated; and let the woman, if she cannot contain herself, lawfully marry another man (from Epistle 22 of Hincmar of Reims to Hrodulf).

Cf. Response II of Gregory II in his epistle to Boniface.

From the General Synod in the Province of the Franks, At Which Boniface, Legate of the Apostolic See, Was Present, Which Perhaps Is the Same as the Synod of Leptines (cf. Hefele, Work Cited, at A.D. 745), Said to Have Been Held about A.D. 745

Chapter XIX. Agnates are those who descend through the male sex; cognates those who descend through the female. And therefore paternal uncles and the sons of paternal uncles are both agnates and cognates. But maternal uncles and the sons of maternal uncles are cognates, not agnates.

From the Statutes of St. Boniface, (From the Spicilegium Dacherianum, Tom. IX) after A.D. 751

Statute XXXV. Let each of the presbyters publicly admonish the people to abstain from illicit marriages, and that, according to the command of God, legitimate marriage can by no means be separated on any occasion, except for the cause of fornication, unless with the consent of both, and this on account of the service of God.

The discourse is not about dissolution of the bond, but about separation of the spouses, which, when fornication intervenes, can be done by the innocent party, the other unwilling; but this case being set aside, it is said that it cannot be done except by the consent of both, and indeed on account of the service of God, for example that the man may receive orders, or that both may profess chastity. The mention of this final cause placed in the service of God sufficiently shows that Boniface had before his eyes only separation of spouses, not dissolution of the bond by which power for other nuptials is made.

From the Council of Vermerie, celebrated at the Palace of Vermerie, in the Presence of King Pepin, A.D. 753

Canon I. Those joined in the third degree are to be separated, and after penance has been performed, if they so wish, they have license to join themselves to others. But in the fourth conjunction, if they have been found, we do not separate them, but we impose penance on them. Yet if it has not been done, we grant no faculty of joining in the fourth generation.

Cf. what was said at the epistles of St. Gregory the Great.

Canon II. If anyone remains with his stepdaughter (privigna), he can have neither her mother nor her daughter; neither he nor she will be able to join themselves to others at any time. Yet to his wife, if she so wishes, if she cannot contain herself, if after she knew that her husband was in adultery with her daughter, she has not had carnal commerce with him, unless she abstains by her own will, she can marry another.

When it is said that such a man, being an adulterer, cannot have the mother of his stepdaughter, of whose mother he himself is the husband, that word *have* is to be understood of conjugal copula, or even of cohabitation, which is forbidden on account of the supervening affinity.

In the former part of the canon a penalty is established for him who commits adultery with his stepdaughter: namely, that for the whole time of his life he abstain from marriage, so that for this reason, even after his own wife has died, he cannot lead another. From this penalty indeed the wife is immune; and consequently she is said to be able to marry another, provided, however, that she has not had commerce with her husband after she knew of his adultery. The opposition between that which is denied to the man and that which is conceded to the innocent wife remains intact, if the permission made to the wife is understood of second nuptials after the death of the husband. Cf. canon IX.

You see besides that the crime of incest impedes marriage, which indeed occurs several times in the following canons; but cf. the responses of Nicholas I to the bishops of Germany, A.D. 863.

Canon III. If any presbyter has had his niece as wife, let him dismiss her and lose his grade. If another has accepted her and rejects her from himself, if he cannot contain himself, let him accept another: because it is reprehensible that another man should have the woman left by a priest.

Namely, what had already been established (cf. Canon I of the Roman Council under Gregory II, above), that a legitimate wife left by a deceased presbyter could not be accepted by another, these Fathers wish to have force even in her who had been illegitimately joined to a presbyter; and because of this illegitimate conjunction, namely with a niece (which I think the Fathers suppose took place before ordination), the presbyter is punished with deprivation of his grade.

Canon V. If any woman has plotted the death of her husband with other men, and that husband himself, by defending himself, has killed that man, and can prove this, that man can dismiss that wife, and, if he wishes, let him accept another. But that plotter, subjected to penance, shall remain without hope of marriage.

This power, made to the man while it is denied to the woman, of accepting another, may be interpreted of entering marriage after the other's death, as in Canon II. Cf. Canon IX.

Canon VI. If any freeborn man has accepted a female slave as wife, in place of a freeborn woman, if that woman afterward has been reduced to servitude (recalled into servitude), if he can redeem her from servitude, let him do so; if she cannot be redeemed, if he shall so wish, let it be lawful for him to accept another. Similarly also a freeborn woman, if she accepts a slave as a freeborn man, and afterward for whatever cause he has been reduced to servitude, unless through want, with hunger compelling, he sold himself and she consented and was freed from hunger by the price of her husband, if she wishes, she can dismiss him and, if she cannot contain herself, lead another.

The impediment is that of servile condition. But these Fathers seem to pass beyond the limits. For when a female slave, known as such, is accepted as wife, the marriage is valid and cannot be dissolved. But of this sort seems to be this female slave accepted in place of a freeborn woman, whom the husband ought to redeem when she returns from servitude, if he can. Yet perhaps here it is supposed that the man did not know that the wife accepted was a female slave, so that this canon coheres with XIII following.

Canon VII. If a slave has had his own female slave as concubine, if it so pleases, he can, after dismissing her, accept his peer, a female slave of his lord; but it is better to keep his own female slave.

The discourse is about a slave who has female slaves (concerning slaves among the Germans or Franks, cf. Du Cange, *Lexicon*, at the word *servus*): if he has his own female slave, not as wife but as concubine, he can indeed cast her away; but the Fathers advise that he keep her, of course as wife. If we take concubine as distinguished from wife, all things stand correctly. Cf. Response IV of Leo to Rusticus, above.

Canon VIII. If any slave, after liberty has been received from his lord, has afterward perpetrated adultery with his female slave, if his lord wills, whether he wills or does not will, he shall have her as wife. But if he dismisses her and leads another, let him be compelled entirely to dismiss the later one, and to receive her with whom he previously committed adultery, or, while she is living, to have no other.

Here adultery is taken for fornication, and the congress is presumed to have been marital.

Canon IX. If anyone, under the compulsion of unavoidable necessity, has fled into another duchy or province, or has followed his senior (*suo signore*), to whom he cannot falsify his faith, and his wife, when she is able and can, from love of her parents or of her own affairs, has been unwilling to follow him, she shall remain unmarried at all times, as long as her husband, whom she did not follow, lives. For that man her husband, who under the compulsion of necessity fled into another place, if he does not hope ever to return to his own fatherland, if he cannot abstain, can accept another wife with penance.

Here the very opposition between that which is forbidden to the wife as a penalty and that which is permitted to the man seems to demand that the permission made to the man is that of leading another even while his wife is still living; for the wife is forbidden only to accept another man while the former lives, so that when he is dead she is not forbidden to accept another. But if as much had been permitted to the man, no difference would appear between the woman acting unjustly and the

innocent man, which difference it is sufficiently manifest that the Fathers wished to establish. Namely, these Fathers erred; and a little afterward Pope Stephen corrected their error (cf. his Response V, cited below), and before him Zacharias had already rejected it in the responses given to Pepin and to all the bishops of the Franks (cf. Response XII, above). Namely, these Fathers obeyed in part the custom which the nation of the Franks, although it had received the Christian rites, had not yet fully put off. Indeed, among the civil formulas edited near the end of the preceding century by the monk Marculf, there exists, Book II, chapter 30, a formula of a charter or little document of repudiation, which was carried out before the count, conceived in this manner: Since between that man and his wife that woman there reigns not charity according to God but discord, and on this account they can by no means live together, it pleased the will of each that they ought to separate themselves from consortship, which also they did. For this reason they decreed that these letters, written between themselves in one tenor, should be made and confirmed, so that each one of them, whether he or she should wish to associate himself or herself to the service of God in a monastery or to a matrimonial bond, should have license and ought to have no claim from this on the part of his or her neighbor, etc. That repudiation employed by the Franks was milder than that which the imperial laws of the Greeks permitted; for the formula of Marculf signifies that the consent of each was required. But the Fathers of Vermerie, as a penalty of the wife refusing the duty owed to her husband in that age in which vassals were so bound to their lords and the occasion of running here and there was too frequent, conceded to husbands deserted by their wives that, after repudiating these, they might lead others. This faculty made to men in this hypothesis by the Fathers of Vermerie could perhaps be a reason why someone might suspect that an equal faculty was made in Canons II and V. Yet if the words are accurately weighed, a manifest difference appears: for here only, and not in those canons, the discourse is about a marriage which is entered while the other spouse is living, and which is forbidden to one, but permitted to the other.

Canon X. If a son has slept with his stepmother, the wife of his father, neither she nor he can arrive at marriage. But that man, if he wishes, can have another wife; but it is better to abstain.

Canon XI. If anyone has slept with his stepdaughter, he can stand by a similar sentence; and with the sister of his wife he can stand in a similar way.

Namely, let the sentence of the preceding canon have force also here, so that the stepfather and stepdaughter, the woman and her sister's husband (that is, the husband of her sister), if they have polluted themselves by incestuous copula, always remain without marriage. But the man concerning whom there is discourse in the preceding canon is the husband of the stepmother, to whom perhaps the Fathers thought favor should be shown, but undeservedly, as in Canon IX.

Canon XII. He who has slept with two sisters, and one of them was previously his wife, shall have neither of them; nor shall that adulterous sister, nor that man who committed adultery with her, ever accept others.

Namely, he who has slept with the sister of his wife shall no longer have relations with his wife, or shall be separated from her (cf. Canon II), nor can he accept that sister after the death of the wife; which indeed, even if that disgrace had not intervened, would have been forbidden. Consequently, as a penalty of the sin, nuptials are altogether forbidden to the adulterers even after the wife's death. Namely, incest is an impediment impeding or prohibiting any nuptials.

Canon XIII. He who knows that his wife is a female slave and accepted her voluntarily shall afterward remain with her always.

Namely, disparity of condition does not invalidate the contract, if it is entered freely with knowledge of that condition.

Canon XVII. If any woman has made complaint that her husband has never remained with her, let them go thence to the cross; and if it shall be true, let them be separated, and let her do what she wishes.

The discourse seems to be about a man who had never been with his wife and would not wish to be in the future. Would we have here the dissolution of a ratified marriage, whose faculty the Fathers of Vermerie claimed for themselves? The same was afterward decreed in A.D. 799 in the Synod of Salzburg, Canon 15.

Canon XVIII. He who remains with the female cousin of his wife shall lack his own wife and have no other. That woman whom he had may do what she wishes. The Church does not receive this.

The last words, "The Church does not receive this," were certainly added by some copyist of the canons; and they could have been added also in Canon IX. Insofar as the incestuous man is not permitted to have any other, that returns which we warned in the last place under Canon XII, and which appears in several other canons of this age.

You discern in these canons, on one side, too much indulgence (Canon IX), and, on the other side, that severity which the Church did not judge should be approved, when for certain disgraces nuptials are altogether forbidden for the whole time of life. The Fathers, namely, were dealing with men still rough.

The same severity, establishing such a penalty, appears in other canons of the same Council cited by Regino, Abbot of Prum, in Book II, *On Ecclesiastical Discipline*.

Other canons are attributed to the Council at Vermerie by Gratian, C. XXXV, q. 2 and 3; these pertain rather to the Council of Compiegne to be cited below.

From the Responses of Stephen III, Otherwise II, which, While Dwelling in Francia, He Gave to the Britannic or Britennac Monastery to Various Consultations (Jac. Sirmondus Edited Them from a Laudensian Manuscript), A.D. 754

Response II. If anyone has coupled himself in marriage and it happens to one of them that he cannot render the debt, it is not lawful for them to be separated, nor on account of another infirmity; except if an infirmity of a demon or the spot of leprosy has supervened. But if they are free from these two infirmities, mutually joined, let the one exhibit service to the other.

In this manner also other Pontiffs responded (cf. the response of Lucius III, chapter 4, Title XV, Book IV), not permitting copula or marital embraces between such persons, nor properly commanding them to live together and to abstain from another marriage, but recommending an undivided life as of brother and sister if they themselves should wish.

Stephen does not dissent from these. He does indeed deny that it is lawful for others to separate them, certainly against their will; but he does not deny that the same persons can, if they wish, separate themselves from each other and marry others. For which reason, in the decretals, Book IV, Title XV, chapter 2, there exists a response of the Roman Pontiff on this matter conceived in this manner: Although the Roman Church has not been accustomed to divide those legitimately joined on account of natural frigidity, nor on account of other malefices, nevertheless, if the general custom of the Gallican Church has it that a marriage of this sort is dissolved, we will patiently tolerate it, if, according to that custom, you shall have granted to the same woman the faculty of marrying in the Lord whom she wishes. For just as a boy, who cannot render the debt, is not apt for marriage, so also those who are impotent are by no means reckoned apt for contracting marriages.

Here you have the doctrine of the Roman Church clearly expressed: that the impotent are not apt for contracting marriage, and therefore that among them there cannot exist a conjugal bond. For which reason the society which is permitted to them cannot be conjugal, otherwise than Pontius judged. Cf. the last Thesis, part II.

But the sense of this response of Stephen is perhaps restricted more, namely so that the discourse is not about impotence preceding or accompanying the contract, but about that which afterward really supervened, and therefore the discourse is manifestly about simple separation, which, except in the hypothesis of those infirmities, deservedly is not permitted.

Response III. If anyone in a foreign fatherland has led a female slave into consortship, afterward, having returned into his own, has accepted a freeborn woman, and again it happens that he returns to that fatherland in which he had been before, and that female slave whom he first had has been associated to another man, such a one can accept another, yet not while that freeborn woman whom he had in his own fatherland is living.

Namely, this second union, not the first, was true marriage, on account of the impediment of condition, according to the response of Leo to Rusticus of Narbonne, chapter V, above, which same Stephen cites at the beginning of his responses.

Response IV. Let no one have his spiritual co-mother, either from the sacred font or from confirmation, nor one secretly associated to himself in marriage in neither part. But if they have been joined, let them be separated.

Cf. the decree of the Roman Council under Gregory II and Response XXII of Zacharias to Pepin, above; besides these, Canon XXXI of the second Council of Chalon, A.D. 818, and the response of John VIII, A.D. 879, below.

The response is indeed Stephen's response to the question: if anyone has led as wife a co-mother from baptism or confirmation. But what those words mean, "nor one secretly in neither part," if the reading is true, let the reader inquire.

Response V. If a wife has been repudiated by her husband, whether it is lawful for the husband, while she is living, to lead another, is contained in the epistle of lord Pope Innocent directed to Exsuperius, bishop of Toulouse: "He who, with repudiation intervening," etc.

Cf. this decree above. Compare this response of the Pontiff with the canon of Vermerie edited a little before, so that you may know the true doctrine of the Church.

Response VI. Concerning those who, transgressing promised virginity, have entered marriage, in the epistle of blessed Pope Innocent directed to Victricius, bishop of Rouen, chapter 15, it is contained thus: "But those who have not yet been covered with the sacred veil," etc.

Cf. above.

Response VII. Concerning monks and nuns fleeing from the monastery, in the Council of Chalcedon, chapter 10, it is contained thus: "A virgin who," etc.

Cf. above.

Response VIII. Concerning a woman who, after the death of her husband, had been veiled for some time and afterward accepts a man, in the epistle of Pope Siricius directed to Himerius of Tarragona, chapter 5, it is contained thus: "But concerning those who, after penance performed," etc.

It is a decree by which Siricius establishes what is to be done with those who, after penance has been performed, return to illicit concubitus: namely, that they be deprived of communion alone, except at the moment of death. "Which form," says the same Siricius, "we judge must be observed also concerning women who after penance have bound themselves to such pollutions." Then Stephen proceeds: "Concerning which matter, according to the sentence of this venerable man, we decree that the same woman, who was coupled to such a nefarious marriage, after casting aside the monastic habit, and did not persevere in that which she promised to God, is to be sent without delay into the monastery, so that there in her penance she may finish her life."

Response IX. If a healthy man has led a leprous wife, so that afterward leprosy supervenes upon him, postponing negligence (that is, without delay) such persons are to be separated, lest the children conceived be polluted with the spot of leprosy. For it is right that the clean be joined to the clean.

Separation of bed is enjoined.

Response XVIII. Concerning a woman separated from her husband, if her husband in a foreign province was falsely thought dead, in the epistle of blessed Pope Leo directed to Nicetas, Bishop of Aquileia, it is contained thus: "Since therefore through the calamity of war," etc.

Cf. above.

From the Synod of Verneuil, Before King Pepin, A.D. 755

Canon XV. Let all laymen make public nuptials, noble as well as ignoble.

Cf. Canon XIII of the Council of Carthage, A.D. 398, and the capitulum in the collection of Capitularies of Benedict the Levite, cited at A.D. 845.

From the Synodal Chapters, Given After the Preceding Synod in the City of Metz Under King Pepin

Capitulum I. If a man has committed incest in these causes: with one consecrated to God, or with his co-mother, or with his spiritual stepmother from the font and the confirmation of the Bishop (cf. Zacharias, Response XXII), or with a mother and daughter, or the daughter of a sister, or a niece, or with a female cousin or niece (cf. Canon XXX from the Synod of Auxerre), or with a paternal aunt or maternal aunt: for these crimes let him lose his money, if he has any; and if he is unwilling to amend himself, let no one receive him nor give him food.

From the Council of Compiegne, celebrated in a General Assembly of the People, A.D. 756

Canon I. If they are found joined in the fourth progeny, we do not separate them; but if they are found in the third, let them be separated. And those who pertain to each other, one in the fourth, the other in the third, and are found joined, we separate.

Cf. Canon I of Vermerie and what was said after the epistles of Gregory the Great, and the following canon of the Council of Mainz, A.D. 813.

Canon II. If two persons pertain to each other in the third place, whether man or woman, or one in the third and the other in the fourth, after one has died, it is not lawful for the other to accept his wife; and if they have been found, let them be separated. There is one law concerning men and women.

Namely, the third and fourth degree of affinity from legitimate nuptials impedes and dirimently invalidates marriage, according to the prescription of these Fathers.

Canon III. If a woman without the permission (*commiato, licenza*) of her husband has put a veil on her head, if it has pleased the husband, let him receive her again into marriage.

There is no religious profession of a spouse (understand: after consummated marriage) when the other does not consent.

Canon IV. If anyone has given his free stepdaughter, against her own will and that of her mother and parents, to a freeborn man or a slave or an ecclesiastic, and she has been unwilling to have him and has left him, her parents have power to give her another husband; and if she herself has another whom she afterward accepted, let them not be separated.

Namely, consent ought to be free, and the consent of those who contract suffices.

Canon V. If a free man accepted a woman and hoped that she was freeborn, and afterward finds that she is not freeborn, let him dismiss her, if he wishes, and accept another. Similarly, if a freeborn woman accepted a slave and then knew that he was a slave, let her have him in the meantime while he lives. There is one law for men and women.

The condition of servitude, when it is unknown, is an impediment.

Canon VII. If anyone, after accepting a wife, finds her contaminated by his brother, after dismissing her he accepted another and found this one also contaminated: that wife (this second one) is his legitimate wife, because he himself also was not a virgin at that time. But if afterward he has accepted a third, let him return to the middle one, and let that later woman have power to join herself to another man.

The first woman, contaminated by the brother, cannot be his wife because of affinity. The second is indeed supposed to be contaminated, but not by a blood-relative. But the reason which is brought forward so that this second one be retained has this bearing only: that it satisfies the complaint of the man who was saying that he was deceived when he thought his wife was a virgin; for he himself also was no longer a virgin. Therefore there is no reason why he should blame this defect in the wife.

Canon VIII. If any man has a legitimate woman, and his brother has adulterated her, that brother or that woman who perpetrated the adultery, in the meantime while they live, shall never have marriage. He whose wife she was, if he wishes, has power to accept another.

These words can rightly be taken of the power of accepting another after the death of the former, which power is denied to the adulterers. Cf. the canons of Vermerie II and V.

Canon X. If a father has violated the betrothed of his son, and afterward the son has accepted her, his father shall afterward not have a wife, and that woman shall not have a husband, because he did not say that his father had remained with her. But that son, who did this unknowingly, may accept a legitimate woman.

"May accept a legitimate woman": for he could not lead her whom his father had violated, because of affinity. The father is punished with perpetual prohibition of nuptials; since the same penalty is imposed also on the woman, she is supposed to have been violated willingly, not unwillingly.

Canon XII. If anyone has held his stepson or stepdaughter before the Bishop for confirmation, let him be separated from his wife and not accept another. Similarly, let a woman (who has admitted the same thing) not accept another.

Cf. Response IV of Pope Stephen III.

Canon XIII. If any man has dismissed his woman and has given permission for the sake of religion to serve God within a monastery, or outside a monastery has given license, as we said, to be veiled for God's sake, let the husband of that woman accept a legitimate woman. Similarly, let a woman (who has dismissed her husband for the same cause) do. George, the Roman Bishop, consented.

This George is the bishop legate of the Roman Pontiff Stephen to Pepin. From the consent of this man, who could not have been ignorant of the doctrine of Stephen (cf. his Response V) and of the Roman See, it is lawful to understand the sense of the canon; although it was expressed in more general words, from the circumstances it could have had a more determinate sense: namely, the matter concerned the religious profession of a spouse before the marriage had been consummated.

Canon XIV. If anyone remained in adultery with a mother and daughter, the mother not knowing that he had remained with her daughter, and similarly the daughter not knowing that he was with her mother: afterward, if that man has accepted a woman, let him dismiss her; up to the day of his death let him not have a wife. And let that woman whom he has left accept a man. And let that mother and daughter, with whom he remained in adultery, both not knowing that he had remained with mother and daughter, have husbands. For if this crime comes to their knowledge, let them dismiss their husbands and do penance. And let their later husbands accept women.

Because of the gravity of the crime, the Fathers prohibit any nuptials to disgraceful persons of this sort and invalidate them.

Canon XV. Similarly also concerning two sisters: he who remained in adultery with one and accepted the other in public shall not have a woman up to the day of death. And if those two sisters did not know, let them have husbands. And if it comes to their knowledge, let them observe the above form.

Cf. Canon II of Neocaesarea and what was said at the preceding canon.

Canon XVI. If a leprous man has a healthy woman, if he wishes to give her permission to accept a man, that woman, if she wishes, may accept; and similarly the man.

Unless you understand this of a marriage not yet consummated but only ratified, whose dissolution the Fathers (with the Roman Pontiff also consenting, whose legate was present at the Council) concede, the canon departs from Catholic doctrine. Since therefore the legate of the Roman See does not seem to have permitted so abnormal a decree to be established, it is lawful for us to interpret the canon in the manner which we have said. But notice that it is not added to this canon, as it is to certain others, that George, namely the legate of the Holy See, consented.

Canon XVII. If anyone accepted a woman and had her for some time, and that woman says that he had not remained with her, and that man says that he did so, let the truth stand with the man, because he is the head of the woman.

The man is to be believed before the woman, if proofs are lacking. Something similar is reported in the decretals, Book IV, Title XV, chapter 1.

Canon XVIII. If any persons, because of a *faida* (*feide*, open hostility by which someone declares war on one or several persons; see Du Cange), flee into another fatherland and leave their wives, neither those men nor those women shall accept marriage. George consented.

Cf. Response V of Stephen II.

From the Epistle of Stephen IV, Otherwise III, to Charles and Carloman, Kings, A.D. 770

The Pontiff strives earnestly to persuade them that neither of them should accept as wife the daughter of Desiderius, king of the Lombards. And indeed, by several arguments he endeavors to show how very unbecoming it would be for Franks to be coupled in marriage to Lombards; but he does not pass over the chief reason from the divine law, although he judged that this should be fortified by other arguments, so that he might more easily deter the minds of those Kings from their purpose. Therefore he says:

"For indeed, most just and most benign kings instituted by God, you have already, by the will and counsel of God, been coupled in legitimate marriage by the precept of your father, accepting, as illustrious and most noble kings, from your same fatherland, namely from that most noble nation of the Franks, most beautiful wives; and it is fitting that you be bound to the love of them. And certainly it is not lawful for you, after dismissing them, to lead other wives, or to mingle yourselves by blood-relationship with an alien nation ... Remember this, most excellent sons, that our predecessor of holy memory, Pope Stephen of most excellent memory, implored your father that he should by no means presume to dismiss your lady and mother; and he, as in very truth a most Christian king, obeyed his salutary admonitions."

If you recall the custom of the Franks (cf. what was said at Canon IX of Vermerie), from which Pepin withdrew only when the Roman Pontiff implored him, you will understand why the Roman Pontiff, for dissuading those nuptials already invalid in themselves, from which nevertheless those Kings did not seem to shrink for political reason, dwells especially in this epistle on developing political arguments.

But Charles the Great did not comply with the Pontiff and accepted as wife the daughter of Desiderius, whom nevertheless after a year he repudiated, "it being uncertain for what cause," says Eginhard; because she was unfit, that is, impotent, says the Monk of St. Gall. There are those who think that the marriage had already been entered before the letters of the Pontiff had been received, and, when these were received, was dissolved by Charles; and for that reason, since those letters were not known to all, Eginhard said: "it being uncertain for what cause." In the same epistle the Pontiff adds other things by which he may deter the Franks from accepting wives from the most base nation of the Lombards. But he seems always to speak on the hypothesis that they were already coupled to another spouse. Read Balan, *History of Italy*, Book 13, n. 37 and following. Those who defend the cause of Charles in this marriage with the daughter of Desiderius say that he had not yet been coupled to another wife, but only that, from the counsel of his father, another from the nation of the Franks had already been destined, or even betrothed, to him, as also to his brother; and this indeed does not cohere sufficiently with the quoted words of Stephen. It coheres, however, to speak the truth, with the words of Eginhard, who would not have said that it was uncertain for what cause Charles repudiated the daughter of Desiderius, if he had brought her in over a former wife while she was living. Cf. Baronius and Pagi at A.D. 771.

From the Synod of Dingolfing, in Bavaria, A.D. 769-771

Canon IV. Concerning this: that he established concerning nuns who are in the service of God, that no one should be so bold as to lead one into marriage and matrimony; or if anyone has been so bold, against the decree of the canons, let him make composition just as the canons have decreed.

Canon X. Concerning this: whoever, being a slave, has accepted a noble woman in marriage, and the woman did not know it, he established thus: that she should again be free; let her dismiss the slave and afterward let her not be reduced into servitude, but let her be free.

From the Council of Calchuth, celebrated in England, in the Presence of Legates of the Apostolic See, to Which King Alfwold Also Subscribed, A.D. 787

Canon XV. Unjust and incestuous marriages are forbidden to all, both with handmaids of God or other illicit persons, and with relatives and blood-relatives or alien wives; and he who does such things is altogether pierced by the sword of anathema, unless, having been corrected, he comes to his senses from so nefarious a presumption and, obeying his own bishop, corrects and recalls himself to the norm of equity.

Canon XVI. By decree legitimate inheritance is denied to the children of prostitutes. For by apostolic authority we judge daughters of adulteries and of nuns to be spurious and adulterous. For a virgin who has vowed herself to God and has put on the garment after the likeness of Saint Mary, we do not doubt to call the spouse of Christ ... We commanded by apostolic words that, for the avoidance of fornication, every layman have his own legitimate wife, and every laywoman have her own husband, so that according to the Lord they may have legitimate heirs from thence, and they may become heirs of God and coheirs of Christ. But as it is written in the canon, or in evangelical doctrine and in the decrees of apostolic dogmas, concerning legitimate marriages or the appointed time of marrying or abstaining, we presume to add nothing to these decrees or to take anything away.

Since the vow of virginity is approved at the very beginning of the canon, it is clear that the command which is then added does not have this bearing, that all should marry. But only the admonition of the Apostle is repeated: that 1. the layman who, namely, does not choose the state of virginity or continence by religious profession, but lives in the world; who 2. cannot contain himself and therefore, in order to avoid fornication, from which he ought to flee, wishes 3. to enter marriage; this man should enter a legitimate marriage. This only, those three things having been supposed, is prescribed: namely, the Fathers command nuptials to be legitimate.

From the Aachen Capitular of Charles the Great, A.D. 789

Chapter XLIII. The canon of the African Council concerning the indissolubility of marriage is inculcated.

"It pleased us that according to the evangelical and apostolic doctrine," etc.

The Franks, with their King, in this matter submit themselves entirely to ecclesiastical discipline, which depends upon dogma.

From the Council of Friuli, A.D. 796

Canon X. It pleased us that, when the conjugal bond has been dissolved on account of fornication, it is not lawful for the man, as long as the adulteress lives, to lead another wife, although she is an adulteress; but neither is it lawful for the adulteress, who ought to pay the heaviest penalties or the torment of penance, to accept another man, neither while her husband lives nor when he is dead, whom she did not blush to defraud. For even if in the sacred evangelical pages the Lord is read to have said that a man may dismiss his wife for the sole cause of fornication, nevertheless he is not read to have conceded that, while she is living, he may associate another to himself in marriage; and it is not doubted that he prohibited this in every way. For he says: "Whoever has dismissed his wife, except on account of fornication, and has led another, commits adultery; and he who has led her who was dismissed commits adultery."

There follows a declaration from the little book of blessed Jerome, that those words, "except on account of fornication," pertain only to the license of dismissing the wife, but not of leading another.

You see that two things are established by the Fathers: first, that neither the man nor the adulteress, while the other lives, enters another marriage; second, that the adulteress, not even when the husband is dead, should lead another. Only the first is demonstrated from the doctrine of the Lord; for the other was observed only from ecclesiastical law. Cf. the canons of Vermerie.

Canon XI. It pleased us concerning women of whatever condition, girls namely or widows, who, voluntarily promising the purpose of virginity or continence, have been emancipated to God and, as a sign of continence, have put on a black garment, as if religious, just as the ancient custom was in these regions: although they have not been consecrated by a priest, nevertheless we command them to persevere perpetually in this purpose. But if afterward they have corrupted themselves, either secretly, or have publicly married, after having indeed been coerced by fitting bodily punishments by secular judgment, let them be separated from each other and do penance all the days of their life, and be deprived of the communion of the Body and Blood of Christ, etc.

Cf. Canon LVI of the fourth Council of Toledo, above, at A.D. 633.

From the Council of Arles, A.D. 813

Canon XI. Concerning incestuous conjunctions, just as it was instituted by the most holy Fathers, we reserve absolutely nothing of pardon, unless they have healed the adultery by separation. But those incestuous persons, not to be reckoned by the name of any marriage, whom it is even deadly to designate, we judge to be these: if anyone has violated by carnal conjunction the widow of his brother, who almost before had existed as a sister; if any brother has accepted the full sister of his wife; if anyone has led his stepmother; if anyone associates himself to his female cousin; if anyone is mingled with the widow or daughter of his maternal uncle; or is polluted by concubitus with the daughter of his paternal uncle or with his own stepdaughter; or if there is anything of this sort which is both long to note here and plunges any negligent person into the abyss of destruction.

The canon of the Synod of Agde or of Epaon is again confirmed. Here it is read: "if anyone has accepted the full wife of his brother"; there: "if any brother [has accepted] the full sister of his wife," which reading is to be preferred. Likewise here it is read: "daughter of the father"; there: "daughter of the paternal uncle," which reading perhaps is to be retained also in this canon of Arles. The Fathers of Epaon added: "or if anyone has polluted by concubitus someone from his own consanguinity, or (her) whom a blood-relative had." That the Fathers of Arles, following the institutions of the Fathers, wished to confirm this again is indubitable from those words: "and if there is anything of this sort," etc.

From the Council of Mainz, A.D. 813

Canon LIV. We forbid that anyone hereafter be coupled in marriage in the fourth generation; but where, after the prohibition has been made, it shall have been found, let it be separated.

Cf. Canon I of the Synods of Vermerie and Compiegne. Here that is no longer tolerated which there was permitted.

Canon LV. Let no one receive his own daughter or son from the font of baptism; nor lead as wife a goddaughter or co-mother, nor her whose son or daughter he has led to confirmation. But where this has been done, let it be separated.

Cf. Response IV of Stephen II and the Roman Council under Gregory II.

Canon LVI. If anyone has led a widowed wife, and afterward has fornicated with his stepdaughter, or has married two sisters; or if any woman has married two brothers, or [has been] with a father and son: we command such couplings to be anathematized and disjoined, and never again to be coupled in marriage, but to be placed under great strictness.

By the words "and afterward has fornicated with his stepdaughter," I understand that marriage attempted with her after the death of the wife or of the mother of the same woman is signified. For dissolution is commanded, as if a bond of marriage could not exist between such persons. Moreover, the same was established in the Council of Mainz under Rabanus, A.D. 847; see below; and in the same manner it was answered by Nicholas I to Charles the Archbishop; see below; who indeed was not ignorant that by subsequent incest the bond is not dissolved. You could indeed suspect that perpetual separation alone is commanded; but since here, and by Rabanus, this case is composed together with the case in which someone has married two sisters, etc., and both are subjected to one sanction, while for the others it is certain that there is a diriment impediment, it must be held that also in the former case the discourse is about the nullity of the bond.

You have here also the impeding impediment of incest. Cf. besides Canon XI of the Council of Arles, above.

From the Second Council of Chalon, A.D. 813

Canon XXVIII. Certain men asked us about the affinity of relationships and in which degrees marriages are to be joined. We command them to run to the canons, and that what is contained in them ought to be observed by them in this business, as in the rest.

Appeal is made to the canons, not to the civil laws. In a certain capitulum of Book I of the collection of Benedict the Levite, n. 310: Incestuous nuptials are forbidden, that is, up to the line of affinity, or as long as they could inherit between themselves. Affinity, namely, extends only as far as the capacity of going to an inheritance *ab intestato*. Cf. what we shall bring forward from Peter Damian under the Roman Council of Alexander II.

Canon XXIX. Certainly, the rule which is to be observed in the proper husband, the same, namely, must be observed in the kinship of the wife from the law of nuptials. Therefore, because it is established that those two are in one flesh, a common kinship on both sides must be believed to belong to them.

Namely, the blood-relatives of one spouse are affines of the other.

Canon XXX. It has been told to us that certain persons, by a certain authoritative presumption, break up legitimate marriages of slaves, not attending to that evangelical saying: What God has joined, let man not separate. Whence it seemed good to us that the marriages of slaves are not to be broken up, even if they have different lords, but that, remaining in one marriage, they should serve their lords. And this is to be observed in those cases where there was a lawful conjunction and by the will of the lords.

If the consent of the lords is lacking, these Fathers seem not to judge the marriage of slaves legitimate. So indeed in the capitular of Aito, chapter XXI, which follows here. But in other respects the Fathers wish marriages among slaves to be legitimate and indissoluble.

Canon XXXI. It was also told to us that certain women, some carelessly, some also fraudulently, in order to be separated from their husbands, held their own sons before bishops for confirmation. Whence we judged it fitting that if any woman has held her own son before a bishop for confirmation, through carelessness or through some fraud, on account of her fallacy or on account of the fraud, as long as she lives let her do penance, yet let her not be separated from her husband.

Cf. also the response of John VIII to Anselm the Bishop, A.D. 879, below. Namely, she loses the right of asking, which does not befit a penitent, but not the debt of rendering. Alexander III decreed a little otherwise, chapter *Si vir, De Cognatione Spirituali*.

From the Capitular of Aito, Bishop of Basel, About A.D. 822

Capitulum XXI. Let them know and understand what the crime of incest is, and let each one provide in his own parish that it not happen; and if it has happened, let it be amended as quickly as he has been able. That is, let no one accept for himself from kinship up to the fifth knee (degree, generation). But if it has been done ignorantly, let it not easily be believed, but let it be examined by the judgment of God. And let them not be separated in the fourth knee, but let them persevere in penance all the days of their conjunction. But in the first knee or second, if they have been found, let them know that by perpetrating the crime of fornication they have utterly lost thereafter the rights of matrimony. But in the third, if they have been found polluted by such a crime, let fitting penance follow them, and yet let the rights of matrimony be denied to them, not reciprocally, but with others. But where slaves have been joined who are not of one but of diverse power, unless both lords consent, a copulation of this sort will not be valid.

Namely, those who have been found joined in the fourth degree, this Bishop does not wish to be separated, but to be subjected to continual penance as long as the marriage lasts. Those joined in the third degree he does not separate, but imposes penance, denying them marriages with others after the death of the spouse. But those joined in the second and first degree he separates and takes from them the hope of any other marriage. This Bishop departs from the prescription of the Council of Mainz, Canon LIV, above, and approaches Canon I of the Council of Vermerie. As to the marriages of slaves, he agrees with the second Council of Chalon, Canon XXX, above, and with Basil, Canon XL; cf. in the same place. He also decrees that incest in the first and second degree is an impeding impediment.

From the Roman Synod of Eugene II, A.D. 826

Canon XXIX. Women who have taken a religious habit or veil under pretext of religiousness, when they were able to have husbands, are not thereafter permitted to be associated to men; but, choosing monasteries, let them live regularly, or in houses chastely observe the habit they have taken. But those found base are to be corrected by the providence of the Bishop.

Cf. the Decrees of Innocent I, above.

Canon XXXVI. It is lawful for no one, except for the cause of fornication, to leave a wife who has been taken, and then to couple another; otherwise it is fitting that the transgressor be associated to the former marriage.

Namely, if he has attempted to lead another, existing as a transgressor, let him return to the former wife, from whom he was separated. It proceeds:

But if a husband and wife have consented between themselves to depart for the sake of religious life alone, by no means let it be done without the knowledge of the bishop, so that, by him having provided separately, they may be established in a place. For if the wife is unwilling, or the other of them, even for such a thing (that is, religious life), the marriage is not dissolved.

Namely, separation in this hypothesis is forbidden.

Canon XXXVII. It is lawful for no one to have two wives at one time, or a wife and a concubine ... For just as Christ observes the Church chaste, so the husband ought to guard chaste marriage.

Canon XXXVIII. Let no one dare to couple to himself in marriage a female cousin, a niece, a stepmother, a brother's wife, or even someone from his own cognation, or her whom a cognate had. But if anyone has come together in such a nefarious marriage and has remained in it, let him know that by apostolic authority he is bound by the bond of anathema, and let no priest grant him communion. But if, having been converted and divided from the illicit copulation, he has been so, let him be subjected to worthy penance, as the priest of the place shall have considered.

Cf. the canons of Gregory II in the Roman Council.

From the Constitutions of St. Nicephorus, Bishop of Constantinople, who Died A.D. 828

(Cf. *Spicilegium Solesmense*, Tom. IV, p. 397 and following.)

From the fourth Sylloge of Canons. **Canon XXXIV.** If anyone, having obtained a concubine, does not wish either to dismiss her or to have her blessed and to have her rightly with the sacrament, it is not fitting that those things which are offered by him to the Church be received.

Canon XXXV. If a monk, after putting aside the holy habit, has eaten flesh and led a wife, it is fitting that he be converted; if he is unwilling, that he be subjected to anathema and clothed, unwilling, with monastic garments and shut up in a monastery.

Therefore also among the Greeks there was no such marriage.

From the seventh Sylloge. **Canon I.** If anyone is bound by spiritual affinity, or if anyone baptizes a boy who afterward, having become a man, has a sister, but he who receives the boy, after being made a widower, turns himself hither so that he may lead as wife *(the sister?)* of his godson, he has penance of 5 years.

Canon VIII. One entangled in fourth nuptials is indeed outside the law and is banished from the ecclesiastical boundary; for polygamy and uncleanness are held by the most holy Fathers; nevertheless he will have penance of 7 years.

Cf. what was said in Thesis XII, nn. VI, VII, VIII.

From the Council of Verneuil, A.D. 844

Canon V. Those who are illicitly mingled with nuns and make sacrilegious covenants of nuptials with them, the censure of Pope Innocent commands to be suspended from communion, and not at all to be received unless through public and approved penance; yet certainly the viaticum is not to be denied to those passing from the world, if nevertheless they have repented.

Canon VI. But a girl betrothed by one man and abducted by another, according to the statutes of the Council of Ancyra, is to be returned to him by whom she had been betrothed, even if she has suffered violence from the abductor. But concerning abductors, this seems best to us: that, since they make little of ecclesiastical excommunication, they be terrified by the authority of secular laws.

From the Council of Meaux and Paris, A.D. 845-46

Canon LXIV. Abductors of virgins and widows, who afterward also, with the will of the parents, as if betrothing them under the name of dowry, have led them into marriage, are to be subjected to public penance; and after public penance has been completed, as the Bishop shall have foreseen, lest they fall into worse things, coming together again, let them take care henceforth to be devoted to alms and to whatever other works of religious and salvific conversation, until by consent they are able to abstain from the conjugal work. But sons from a blameworthy conjunction of this sort, procreated even less laudably before marriage, shall in no way be promoted to ecclesiastical dignity; nor shall those generated from such a marriage be applied to ecclesiastical orders, unless perhaps either the greatest utility or necessity of the Church demands them, or an evident prerogative of merits commends them.

Canon LXV. But those who have not yet taken into marriage, with the will of the parents, under the aforesaid name of betrothal or dowry, those whom they had abducted, when this constitution has been promulgated into the ears of all (those, namely, who did that before this constitution was known; see the following canon), are to be separated from their conjunction and subjected to public penance; but the abducted women are to be restored legally to their parents. But after public penance has been completed, if age and incontinence have demanded it, let them be associated in a legitimate marriage pleasing to both parties. For in these things we do not constitute a rule, but, to use the words of great Leo, we judge what is more tolerable. But if one of the married persons has died, the one who did public penance and has survived shall not presume to repeat marriage, unless perhaps the bishop shall have foreseen that some indulgence should be conceded, so that he can remove a graver offense.

Canon LXVI. But whoever hereafter (from notice of this constitution) has presumed to abduct virgins or widows, according to the synodal definition of blessed Gregory, let they themselves and their accomplices be anathematized, and let the abductors remain perpetually without hope of marriage.

Justinian, Code, Book IX, Title XII, prohibited that a marriage should ever stand between the abductor and the abducted woman, whether she had been betrothed before the abduction or otherwise, with the faculty denied to the abducted virgin or widow of demanding her own abductor as husband for herself. The Church did not approve this law under this universality. Cf. Canon XI of Gregory II in the Roman Council, above, which is not well cited by these Fathers; and the canon of Lucius III, *Cum causam*, *De raptoribus*, which agrees with Gregory; and Innocent III, canon *Accedens*, in the same place; then the decree of the Synod of Trent, Session XXIV, chapter VI. These Fathers seem to have wished to walk in a certain middle way.

Canon LXVIII. Concerning those who abduct the betrothed women of others, or accept them with the consent of the parents, let the ancient and synodal sentence be observed (cf. Canon XI of the Council of Ancyra). And even if perhaps such an outcome is known to be found in the Church, that, for the competence of salvation and religion, the Pontiffs ought to treat some matter more humanely ... by no means, so that we may descend to the greatest indulgence, shall the acceptor of another's betrothed woman pass without public penance, and let him legally pay a fine to the betrothed man.

Canon LXIX. He who, while the husband is living, is accused of having adulterated that man's spouse, and, when he has died soon afterward, is known to have taken the same woman, is in every way to be subjected to public penance. Concerning him also, after the aforesaid penance (the preceding canon), if it is expedient, the rule will be observed (namely, that he may be able to accept her as spouse), unless perhaps the same man or the woman is noted to have killed the man who had died, or kinship or any other criminal action impedes. But if this has been proved, let them remain perpetually without any hope of marriage, with penance.

You have a diriment impediment of crime. A marriage of this sort, even when killing had not intervened, Justinian had already absolutely proscribed and had commanded to be null, Novel 134, chapters 10 and 12. The Fathers do not take account of the reason of this law, who absolutely forbid it only when the killing of the man has also followed. Cf. Canon XL of the Council of Tribur below. Notice that Peter Damian (after Burchard, in the *Decree*, Book VII, chapter 14), in his little work *On the Degrees of Kinship*, chapter 4, attributes the following canon to the Council of Meaux, saying: "This Council of Meaux has it: Concerning the affinity of blood, it pleased us that through the degrees of cognation it be observed up to the seventh generation" (the editors wrongly put the end of the canon here). "For also the inheritance of things by legal definitions is sanctioned, to extend the succession of heirs indeed to the seventh degree; for they would not succeed unless it were owed to them from the propagation of cognation." Since in the Collections of Councils there exists no other Synod of Meaux which is said to have established canons besides this one, you would believe that this canon must be adjudged to this one. But the codices do not report it, and Peter was probably deceived by a false inscription; nevertheless the whole canon is found in no other Synod that we know. This canon is ascribed by Gratian, causa XXXV, q. 2, c. 1, to Pope Gregory in the Council of Meaux. Cf. what we shall say under the decree of the Roman Council of Alexander II.

In the Collection of Capitularies of Benedict the Levite, By Order of Otgar, Archbishop of Mainz, A.D. 845, There Exists, Book III, Under n. 179, This Decree in This Manner

It has been sanctioned that public nuptials be made by those who wish to marry ... First the priest in whose parish the nuptials ought to be made must be approached, in the Church before the people. And there that priest himself, together with the people, ought to inquire whether she is his relative or not ... After all things have been proved and nothing has impeded, then, if she is a virgin, with the blessing of the priest, just as it is contained in the sacramentary, and with the counsel of many good men, publicly and not secretly a wife is to be led, so that good sons may be procreated from them, with the Lord having mercy.

Cf. Canon XV of the Synod of Verneuil, A.D. 755. Cf. below what we note at the Epistle of Nicholas I.

From the Decretal Epistle of Leo IV, to the Bishops of Britain, A.D. 847

Decree V. As it has been defined by the Fathers, let no one dare to couple to himself anyone from his own cognation; otherwise let him be anathema. Whence the excellent decrees of blessed Gregory the younger must be retained.

If not before, certainly now the privilege of Gregory the Great in England was abrogated.

Gregory the younger is Gregory II, whose synodal Decrees existed.

From the Capitularies of Benedict the Levite, Book III, Capitulum 463, Has Thus

It has been decreed that a wife be legitimately joined to a man. For otherwise, as we have received from the fathers and find handed down from the holy apostles and their successors, marriage does not become legitimate unless the wife is sought from those who seem to have dominion over that woman herself and by whom she is guarded, and is betrothed by the nearer parents, and endowed by laws (legitimately), and in her own time, priestly, as is the custom, with prayers and oblations, is blessed by the priest, and guarded by bridesmen, as custom teaches, and associated by relatives, and sought at the fitting time, is given by laws and solemnly accepted. And for two or three days let them have leisure for prayers and keep chastity, so that good offspring may be generated and may please the Lord in their acts. For thus they will both please the Lord and generate sons not spurious but legitimate and inheritable.

You see that the Franks always had this especially at heart: that nuptials be made with the consent of parents.

From Book II in the same place, chapter 235. Those who, having dismissed their wives for the cause of fornication, lead others are noted by the sentence of the Lord to be adulterers.

From the Council of Mainz, under Rabanus, A.D. 847

Canon XX. For parricides ... it will not be lawful further to take up the belt of military service and to be coupled to nuptials or marriages, because the sacred canons do not consent to this for them.

An impeding impediment of crime, constituted not now but previously.

Canon XXIX. If anyone has led a widowed wife and afterward has fornicated with his stepdaughter, or has married two sisters, or if any woman has married two brothers or [has been] with a father and son; likewise, if anyone has violated by carnal conjunction the widow of his brother, who almost before had existed as a sister; if anyone has accepted a niece in marriage; if anyone has led his stepmother or his daughter-in-law; if anyone has impudently associated himself to his female cousin, or has been polluted by concubitus with the widow or daughter of his maternal uncle or the daughter of his paternal uncle, or his own stepdaughter (now from the beginning that has been expressed), or has been stained by the touch of a conjunction of this sort: we wish them to be disjoined and never to be coupled to another marriage, but to be placed under great strictness.

Cf. Canon LVI of the Council of Mainz, A.D. 813. Nevertheless the Council of Worms, A.D. 868, Canons XXXIII, XXXVI, XXXVII, after penance had been performed, removed the prohibition of legitimate marriage for incestuous persons of this sort. Cf. also the following Council of Pavia.

Canon XXX. We also forbid that anyone hereafter be coupled in marriage in the fourth generation; but where, after the prohibition has been made, it shall have been found, let it be separated. Certainly the same rule which is to be observed in the husband's kinship must likewise be observed in the wife's kinship from the law of nuptials. Therefore, because it is established that those two are in one flesh, a common kinship on both sides must be believed to belong to them.

Cf. the sentence of Rabanus on this matter, brought forward by us after the epistles of Gregory the Great.

From the Council of Pavia, A.D. 850

Canon IX. Fathers of families are to be admonished by presbyters that they provide nuptials for their daughters at a timely moment and forestall the heat of fervent age by the conjugal law ... At the end let them know this to have been prefixed by ecclesiastical sanctions: that no one doing public penance can contract marriage up to the time of completed penance.

Public penance impeded marriage; but this impediment is here restricted to the very time of penance.

Cf. what was said at Decree VI of Leo to Rusticus.

Canon X. But concerning abductors, following the statutes of the ancient Fathers, we judge that this is to be held: that if they abducted those who, together with the betrothed man, have been initiated by the priestly blessing, even though they have corrupted the same women, nevertheless they are to be drawn away from these men and restored to their proper betrothed men. But those who either are widows or have not yet been betrothed and are abducted without their own will and that of their parents, nevertheless are to be restored to their parents or relatives, and, if they wish, they may marry others; for they can by no means thereafter be legitimate wives to those by whom they were abducted. But although the ancient canons command that the abductors themselves and those furnishing help to them be anathematized, nevertheless we do not deny that, when they are placed at the last moment, if they devoutly ask, the viaticum of sacred communion is to be given for mercy.

Cf., as to the first part, Canon XI of the Council of Ancyra, above. As to the second, the canons of the Council of Meaux cited a little before and the things noted there. The Church did not approve the rigor of the Fathers of Pavia, since it permits marriage if the abducted woman, restored to liberty, consents spontaneously.

Canon XXIV. We decree that it is to be forbidden that hereafter an adult woman be joined to any boy of imperfect age; but when youths have come to suitable age, then they can be coupled in legitimate marriage.

Namely, the impediment of age is extended.

From the Assembly of Mainz, Of Several Bishops, Rabanus Presiding, Under Louis, King of Germany, A.D. 851

Capitulum XII. If anyone has had a concubine who was not legitimately betrothed, and afterward has led a girl duly betrothed, after the concubine has been cast aside, let him have her whom he legitimately betrothed. Concerning this Pope Leo defined thus in his decrees, saying: "There is no doubt that that woman does not pertain to matrimony," etc.

Cf. his Decree IV to Rusticus, above.

Capitulum XV. Concerning him who has a wife: if he has had a concubine, let him not communicate. But as to him who does not have a wife and has a concubine in place of a wife, let him not be driven from communion; only let him be content with the conjunction of one woman, either wife or concubine, as it shall have pleased him. But if he lives otherwise, let him be cast out until he ceases or returns to penance.

It is Canon XVII of the Council of Toledo, A.D. 400 (see above), to be understood in the same manner in which we have interpreted it. Indeed, from the repetition of this canon made in the ninth century, the interpretation handed down of the Spanish canon is confirmed. But it is clear that in this century in Germany, as formerly in Spain, women joined by legitimate marriage were distinguished into wives and concubines.

Capitulum XX. Whoever discerns from a presbyter who had a wife that, when he is ministering, one ought not to receive from the oblation, let him be anathema.

Cf. Canon IV of the Council of Gangra, above, and what we noted there.

From the Council of Toul, At Tusey, A.D. 860

Canon II. Concerning women veiled and consecrated to God, both widows and virgins, if they have secretly committed adultery or have publicly married ... we wish that, enclosed in prisons up to the end of life, they do penance; but the men who have brought violence upon them (that is, have abused them) are themselves also to be constrained to penance by ecclesiastical censure.

From the Epistle of Nicholas I, to Ado, Archbishop of Vienne, A.D. 862

Response I. You ask whether, after a wife has been dismissed whom someone had led after legitimate betrothal, because afterward he imposed an evil name on her, it is lawful for him, without a decree of a general synod, either to accept another against the evangelical authority, or, while she survives, to have a concubine in place of a wife. To these things, supported by apostolic authority, we resist altogether according to the evangelical sanction, and we neither concede the coupling of another wife to those who do such things while the one dismissed survives, nor do we grant license of having a concubine.

Those words, "against the evangelical authority," inserted in the question, are not those of the ones who were asking, but of Nicholas himself, considering the matter in itself.

Response II. Concerning this: if a betrothed woman, with the betrothed man not knowing, is corrupted, and afterward, a dowry having been made, that same betrothed man has lain with the same woman in marital fashion: whether, after no time has been intercepted (other reading: interposed), it is lawful for him to dismiss her as corrupted by another and thus lead another, as if that woman had not been a wife, or to hold a concubine in place of her. We do not consent to this either, that those who are joined by the legitimate covenant of nuptials and are made one body through some space of time should make a divorce. But what before, at the beginning of the conjunction, they voluntarily kept silent by receiving the corrupted woman, afterward, with time intercepted, by enduring it, even if not voluntarily, let them unwillingly preserve; also let them in every way abstain from concubines.

The other part of the response ("but what before they kept silent") is a little obscure. Nicholas seems to suppose that the betrothed man from the beginning, before the marital union had been performed with marital affection (through which espousals then passed into marriage), knew the corruption of the betrothed woman and voluntarily kept silent; yet this seems to be alien to the species of the case. But in reality it is not alien; for nothing contrary to this hypothesis occurs in the statement of the case. Nor ought it to be a wonder that the betrothed man at first, because of affection toward the betrothed woman, considered that defect of small account; but afterward, with affection cooling, objected to the crime of the betrothed woman, and wished from it to seize a cause of dissolving the marriage. Therefore Nicholas wishes to say that it was indeed lawful for the betrothed man before marital congress to dismiss the betrothed woman and refuse her nuptials because of that crime or defect, but once the marriage had been completed, this was no longer lawful.

From the Epistle of the Same Nicholas I, to the Bishops of Germany Who Had Assembled at the Council of Mainz, A.D. 863

Since, as you report, it was proved in your council by truth-speaking witnesses that Abbo had presumed to accept a wife contrary to the sanctions of the holy canons, and had coupled her to himself even in the fourth generation, we sanction and by apostolic promulgation decree that the coupling of this ill-omened marriage be dissolved in every way, because it is shown and known to be of his own consanguinity and cognation. And, with you asking this, we establish that it is lawful for no Christian to accept a wife from his own consanguinity or cognation so long as the generation is remembered, known, or retained in memory. But we rejoice and praise the observance of your diligence, because in this matter you hold that the decrees of our blessed predecessors, Pontiffs Gregory and Zacharias, have been observed up to now in your parishes, as you have brought forward in your letters. For you have said: In what generation are the faithful joined to each other? But we do not define the number of generations in this matter, but, as we reported above, we admonish that it be observed without hesitation.

Cf. what we disputed after the epistles of Gregory the Great. Here also Nicholas abstains from a clear determination of the degrees of consanguinity and affinity, but uses a general formula. A little before, the German Bishops in the Council of Mainz under Rabanus had invalidated marriages only up to the fourth degree, and the same knew, as it is lawful to gather from this epistle of Nicholas, the decrees of Gregory II and Zacharias. Now the German Bishops, perhaps doubtful whether those decrees had been rightly understood, ask Nicholas in what generation marriages are lawful; the Pontiff answers that as long as certain persons know themselves to be of the same cognation, they cannot be coupled in marriage.

Nevertheless, in the collection of Capitularies of Benedict the Levite, prepared at that age, Book III, n. 432, there exists a decree which is also cited in his canons by Isaac of Langres and by Herard, Archbishop of Tours, in his capitula about A.D. 858, having thus: "Let none of the faithful, up to the line of affinity, that is, up to the seventh progeny, lead his blood-relative as wife, or in any way pollute her with the stain of incest." Yet in the same age, as Hincmar of Reims reports, Epistle XXII, a certain noble man named Stephen excused himself from consummating marriage with her whose blood-relative he had previously violated, because, as he said, he had heard that those pertaining to each other from the fourth kind and onward (that is, below it) could not be coupled. For which reason, in the Council of Worms in the year 868, Canon 32, the Fathers were still speaking with Nicholas; see below. Cf. the doctrine of Peter Damian which we give below under the Roman Council of Alexander II. Cf. besides the response of John VIII to Airard below, and at the same time the words of the second Synod of Douzy, A.D. 874, below.

The Pontiff proceeds, passing to other matters. And concerning parricides and fratricides, after suitable penance has been prescribed, he decrees: "Let them not be separated from their wives if they have them; but if they do not have them and have not been able to contain themselves, let them accept legitimate women in marriage, lest they appear to fall into the abyss of fornication."

Cf. what was said at Response VI of Leo to Rusticus. Nicholas permits parricides and fratricides, after penance has been completed, to enter nuptials.

Again: "If anyone has fornicated with two *(sisters?)* or with those persons concerning whom Sacred Scripture forbids, if he has done worthy penance and yet has preferred not to sustain continence, let it be lawful to accept a legitimate wife in marriage. Similarly also let the woman who has fallen by such a crime fulfill this, so that she not be led down to the chaos of fornication."

The Pontiff relaxes the law prohibiting marriage because of the crime of incest, and requires only that worthy penance be done concerning that crime. But cf. his following Response I to Harduic, Archbishop of Besancon.

Likewise: "If anyone has fornicated with a spiritual mother, he is struck, as you know, by blows of anathema. In similar manner we promulgate that he also is to be struck who has perpetrated the crime of fornication with her whom he received from the sacred font of baptism, or with her whom he held before the bishop when she was anointed with sacred chrism; nevertheless, if he has a legitimate wife, let him not dismiss her."

The Pontiff is not dealing with marriage which is attempted with persons of this sort, but with the sin of fornication, which is graver with persons joined by spiritual cognation.

From the Epistle of the Same Nicholas, to Charles, Archbishop of the Church of Mainz, A.D. 863

If a man has led a widow into marriage, having from a former husband a daughter, and afterward has lain with that same daughter, let the conjunction of the marriage be dissolved in all ways, and let that man be subject to the sanctions of penance, so that, etc.

Cf. Canon LVI of the Council of Mainz, A.D. 813, and the things noted there.

From the Epistle of the Same Nicholas, to Rodulph, Archbishop of Bourges, A.D. 864

Response V. Concerning those who hold their stepchildren for confirmation before the bishop, that is, who support over themselves the sons of their wife by a prior husband, while they are chrismated by bishops: if it is done through ignorance, as you assert, although it is a sin, nevertheless it must not be punished to the extent of separation of the marriage.

Response VI. Killers of their own spouses, when you do not add "adulteresses" or something of this sort, what else are they to be held except murderers, and through this to be reduced to penance? To these marriage is entirely denied, except adolescents, concerning whom the twenty-fifth rule of the decretals of blessed Leo (namely, in the Dionysian collection; it is the one which we gave above from the epistle to Rusticus, Decree XIII), rather the indulgence, is to be observed.

The crime of a killed spouse is an impeding impediment from marriage for all except adolescents.

From the Epistle of the Same Nicholas, to Harduic, Archbishop of Besancon, A.D. 865

Response I. Those women who have married two brothers, or those who have accepted two sisters as wives, the Council of Neocaesarea commands to be cast away until death and, at their end, to obtain the remedy of penance, only after the bonds of this conjunction have been dissolved. But these men or these women who after penance have sought new marriages and forbidden concubitus, blessed Pope Siricius separates from the banquet of the Lord's table, and willed that such persons be assisted by the grace of communion with the viaticum alone when they begin to set out to the Lord. In what manner, therefore, can they make use of any marriage, to whom it is lawful neither to repeat forbidden concubitus anew nor again to contract new marriages, since, even when the bonds of a conjunction of this sort have been dissolved, such persons can obtain the remedy of penance only at the end?

The Pontiff adheres to the common law and does not permit in the archiepiscopate of Besancon what he had permitted in the regions of Germany in the epistle to the Bishops of Germany: namely, that penance would not be perpetual, and that, once it was completed, legitimate nuptials could be contracted. Dispensation from the law is, namely, a free act which prudence rules, so that, according to diverse conditions, it grants to one what it denies to another.

Response II. But those who accept wives from their own consanguinity and from their own cognation, or marry, who would not reprehend or accuse them? Since even our holy predecessors, prelates of the Apostolic See, namely Gregory and Zacharias, strike these persons with the sword of anathema and willed that a coupling of this sort, contracted as by the custom of beasts, be entirely dissolved. But now, after the coupling has been dissolved, those separated from each other, if they can, as you ask, pass to a better marriage: no reason is open (to those about to obtain it). Since these persons must be subjected to penance, they ought neither to seek these concubitus forbidden to them nor other new marriages.

He presses the law prohibiting marriage to penitents; nevertheless he adds:

"If anyone from this ill-omened mingling has died after dissolution of the coupling, and the other, who has survived and is still detained in the years of adolescence, if, some danger perhaps pressing, he has done penance and complains that he cannot contain himself, he can be helped by the remedy of marriage. We will that the form of this indulgence be observed also concerning women. In this, however, we do not constitute a rule, but with that eminent column of the Church, blessed Pope Leo, we judge what is more tolerable."

Cf. the preceding response, whose rigor proceeds from this: that that sin was to be expiated by sinners with penance up to death, prescribed by the ancient canon, whose force the Pontiff did not wish to relax; but penitents were not permitted to contract nuptials.

From the Responses of the Same Nicholas, to the Bulgarians, A.D. 866

Response II. Thus ought a man to love him who received him from the sacred font, as a father; indeed, by as much as the spirit is more precious than flesh, because that is a spiritual patronage and adoption according to God, by so much more is a spiritual father to be loved in all things by a spiritual son.

"... Yet there is another gratuitous and holy communion between them, which is not to be called consanguinity, but rather is to be held as spiritual proximity. Whence neither do we judge that there can be any conjugal marriage between them, since indeed neither between those who are sons by nature and those who are sons by adoption do the venerable Roman laws permit marriage to be contracted. Indeed, when the first book of the Institutes was speaking concerning nuptials, among other things it says: 'Between those persons,' etc. ... If, therefore, marriage is not contracted between those whom adoption joins, how much more ought they to cease from carnal cohabitation between themselves whom, through the heavenly sacrament, regeneration of the Holy Spirit binds?"

Nicholas confirms by a certain argument the law already long since enacted by the authority of the Church (cf. the canons of Gregory II); by this argument he does not show whence that law borrows the force of obliging, but he demonstrates the congruence of the same law.

At the same time, however, he indicates that the Caesarean law which establishes the impediment of adoption is approved by the Church, and we rightly suppose that it had long since had force among Christians. But that a law of this sort did not obtain binding force among Christians from the civil power, but from the Church alone, we demonstrate in its place in the treatise, chapter IV; for the present let this observation be enough for us. Nicholas, calling the Roman laws venerable (to which he not rarely appeals in these responses), which are contained in the Justinian law, must be said to attribute no small authority to them. But whence this authority for them in the West, where the Roman empire, now restored, was independent from the Greeks? Certainly the Western peoples, the English, Franks, Germans, and Lombards, were not held by the laws of the Eastern Empire. If you consider the account of civil power alone, those laws were destitute of every force among peoples for whom nothing was common with Justinian and his successors in political rule. Therefore one of two things must be said: either that from the very beginning, when those laws were enacted, by their own force they obliged all Christians, both present and future, both subjects of the Greek empire and those not subjects; or that at some time some supreme power having force in the West approved those laws and procured authority for them among Christians, which supreme power was either that of the Kings of the Franks or that of the Roman Pontiffs. But that first thing is sufficiently absurd; for laws would have had to be enacted by the Greek Emperor for Christians insofar as they are Christians, even if they are not subjects of the Greek empire; but this would have been ridiculous. That other thing is proper and peculiar to the Church. Moreover, the Kings of the Franks, although they permitted Romans to live according to their own laws, nevertheless themselves enacted their own laws, contained in so many capitularies, according to which the *missi dominici* ought to pronounce law. It remains therefore that we say that the Roman laws at some time began to have force and finally obtained full authority in the West, torn away from the Greek Empire, because the Church approved them. And this indeed we judge to have happened in this way. First, in canonical matter,

the Church, retaining or amending those laws insofar as it seemed good to the same, proposed them to Christian peoples, relying on her own authority. But in civil matter, recommending the same laws to societies which were arising, because of the authority in which the Church flourished, she brought it about that first the Frankish Emperors permitted Romans to live according to Roman laws (cf. the Capitular of Lothar given under Eugene II, A.D. 824), and then afterward, Roman wisdom and Roman customs prevailing, the same laws little by little were accepted by all, so far indeed as the morals and customs of diverse nations allowed. Namely, because of the Church's acceptance it came to pass that the Roman laws became venerable; and she, joining together both laws, canon and civil, willed that experts of her own law be thoroughly informed also by knowledge of imperial law. From this you understand why more recent laws, succeeding in civil societies to the ancient law of the Romans, cannot vindicate for themselves that authority which Roman law had borrowed not from the power of the age, but from the Church. For the rest, cf. the cited place.

Response III. According to the law, the consent of those concerning whose conjunctions the matter is being treated suffices. If this consent perhaps has been lacking in the nuptials alone, all other things, even celebrated with coitus itself, are frustrated.

Here you have the amended law of Justinian, who frequently, so that the nuptials of sons of families may be just, requires the consent of those in whose power they are. Institutes, Book I, Title X; Code, Book V, Title IV.

Response XXXIX. Concerning the consanguinity of generations you inquire, that you may clearly know to what women you ought to be joined. But what the laws (Roman laws) sanction here we have already recalled (namely, Response II), and we judge it worth the labor to recall it again summarily. For they say: Therefore it is not lawful for us to lead all women as wives; for we ought to abstain from the nuptials of certain persons. For between those persons who hold the place of parents and children among themselves, nuptials cannot be contracted; as between father and daughter, or grandfather and granddaughter, mother and son, grandmother and grandson, and so on to infinity. Among those persons also who are joined from the transverse degree of cognation, there is a certain similar observance, but not so great (Institutes, Book I, Title on Nuptials). But what the sacred canons and especially the decrees of Zacharias, the supreme prelate, promulgate on this matter, we leave to your bishop to explore for you.

Nicholas needed to cite the sacred canons and the Decrees of the Roman See not only so that in this matter he might protect the authority of the Church, but also lest he suggest to those consulting him a knowledge too defective of the prohibited degrees of consanguinity; for the Roman laws forbidding the nuptials of blood-relatives and affines stop within few degrees.

Response LI. To have two wives at one time neither the very origin of the human condition admits, nor does any law of Christians permit.

From the Epistle of the Same Nicholas, to Salomon, Bishop of Constance, A.D. 867

Your holiness asks of us whether some man can have two co-mothers, one after another. In this he ought to remember that it is written: they shall be two in one flesh. Therefore, since it is established that man and woman are made one flesh through marriage, it remains, namely, that the man is constituted co-father to that woman whose co-mother the wife assumed in marriage appeared to be. And for this reason it is clear that a man cannot be joined in copula to that woman who was co-mother of her with whom the same man had been made one flesh.

The last things are clear: the spiritual cognation contracted by the wife flowed back into the husband.

From the Council of Worms, A.D. 868

Canon XXXII. In the coupling of the faithful we do not define the number of generation, but we establish this: that it is lawful for no Christian to accept a wife from his own consanguinity or cognation, so long as the generation is remembered, known, or retained in memory.

It is an exact canon according to the norm of the response of Nicholas to the Bishops of Germany.

From the Council of Douzy, A.D. 874

The doctrine of Gregory, as to the prohibited degrees, is proposed in his same epistle to Felix, above, and these words are attributed to him.

We decree that each one of those who, faithfully instructed and already planted with a firm root, stand unshaken, observe his own progeny up to the seventh generation, and, as long as they know themselves to be near by affinity, not approach the society of this coupling.

Cf. what was noted at the Decree of Gregory III, A.D. 731.

From the Epistle of John VIII, to Edered, Archbishop of the English, A.D. 877

To those whom you assert to leave their own wives contrary to the precepts of the Lord, we command that neither the man depart from the wife nor the wife from the man, except for the cause of fornication; but if he or she has departed on account of this, to remain unmarried, or to be reconciled mutually to each other. Since the Lord says: what God has joined let man not separate; and therefore, since each cannot desert the former wife joined to him by legitimate matrimony, by no reason is it conceded to him to lead another while the former is living.

From the Epistle of the Same John VIII, to Anselm, Bishop of Limoges, A.D. 879

If a father, beholding his son dying in body, lest he should dismiss a soul perishing by perpetual death, washed him with the water of sacred baptism ... he is praised as having done well. And therefore we judge that he remain joined without penalty, as long as he shall have lived, with his wife already long ago legitimately associated to him, and that on this account he ought by no means to be separated.

From the Epistle of the Same John VIII, to Airard, Archbishop of Auch, and His Suffragans, A.D. 879

Having made mention of an execrable evil, namely, that their parishioners accept a near relative as wife, he says:

This is not lawful for Christians to do, as long as the generation knows itself.

He adds after a few words. This also, together with them (namely, with the Fathers), we likewise command: that no one leave his own wife and, while she is living, presume to associate another to himself; nor is it lawful for him to have two wives at one time, or a wife and a concubine.

Cf. also his Epistle 345 (Migne 6, L. 7, 126), where he says that as nuptials are from God, so divorce is from the devil; and the statute of the same Pontiff in the second Council of Troyes, confirming the same law.

From the Council of Mainz, A.D. 888

Canon XVIII. A certain man named Altmann associated to himself his spiritual co-mother in a wicked marriage; but afterward, having been separated from her by oath, he now again has her associated to himself by an impious coupling. Since we have heard that such a crime has been perpetrated, according to the constitution of blessed Pope Gregory, we strike her with the spiritual sword and bind him with the bond of anathema.

Cf. the Decrees of the Roman Council under Gregory II, above.

From the Council of Tribur, A.D. 895

Canon XXXIX. If one of two persons machinated to divide one flesh into two and to disjoin the nuptial copula, saying that he had not contracted the rights of matrimony according to the law of his own nation, and therefore could be separated, by canonical institution we define, and by the judgment of all us orthodox we establish, that what is imperfect in law be perfected, and that the right of matrimony by no means be dissolved ... If anyone after these things, making little of the institution of this holy council, has led another, of whatever nation he may be, let him be canonically kept off, so that with penance he may be coupled to the former.

Namely, in the question of the value of marriage, civil laws have no force for Christians, but only ecclesiastical laws.

In this council a certain Roman Synod is cited, which is said to have said that a wife held before baptism is not to be dismissed after baptism: in baptism crimes are dissolved, not legitimate marriages. Whence the Fathers of Tribur argue that if he who transmigrates from life into life does not change his wife, how does he change her who does not change life, but passes from nation into nation?

Canon XL. When someone has stained the wife of another by the work of fornication and has promised by oath that, if both survive the legitimate husband, he will lead her, the Fathers establish:

"Such a marriage we anathematize and bar to all Christians. Therefore it is not lawful, nor does it befit the Christian religion, that anyone use her in marriage with whom he was first polluted by adultery."

But in Canon LI they decree the same concerning adulterers, even if a promise of marriage has not preceded. Cf. Canon LXIX of the Council of Meaux, above. The Council of Altheim, A.D. 906, Canon V, established the same a little afterward.

Canon XLIII. If anyone has fornicated with any woman, and without his knowing it, his son, or his brother also ignorant of the same matter, has polluted himself with the same woman, and after he has known that he has been polluted, has confessed and has confirmed by oath that he did not know this: because he repented of this and confessed, after suitable penance has been performed, let him use legitimate marriage (certainly with another) ... But let the woman (who is not supposed to be ignorant of the matter), who had committed so great an outrage, further do penance and remain continent and unmarried.

Cf. Canons XIV and XV of the Council of Compiegne.

Canon XLVII. He who has a spiritual co-father, whose son he received from the washing of the sacred font, and his wife is not a co-mother, let it be lawful for him, after his co-father has died, to lead his widow as wife, if he has no nearness of consanguinity. For what? Can those not be joined whom no carnal proximity, or no spiritual generation in this matter, separates?

Canon XLVIII. If anyone, by chance and by a case of affairs so occurring, has led in marriage the daughter of his spiritual co-mother, with more mature counsel having been observed, let him have her and honorably give work to legitimate marriage.

From the Council of Koblenz, A.D. 922

Canon I. ... The very frequent incest of cognation is to be avoided with the greatest caution, that is: let no Christian presume to couple nuptials within the sixth generation.

Cf. the doctrine of Peter Damian below at the Roman Council of Alexander II.

From the Laws of the Presbyters of Northumbria, in What Year Indeed They Were Published Is Uncertain, But They Are Placed by the Collectors of Councils Toward the End of the Tenth Century

Law LII. Let no one contract marriage in his own cognation, namely within the fourth degree or little knee, nor with his co-sponsor at the sacred font.

The former part rather savors of an earlier age. Compare the law of King Canute below.

Law LIV. If anyone has dismissed his own wife living in legitimate matrimony and has illegitimately led another, let him lack the mercy of God, unless he has amended. But let each one justly hold his own marriage as long as the wife shall have lived, unless perhaps it has happened that by the counsel of the Bishop they are separated, so that afterward they live divided in chastity.

While the wife is living, no other conjunction is permitted, even if she has been dismissed.

From the Roman Council of Gregory V, A.D. 998

Canon I. That King Robert (of the Franks) leave his blood-relative Bertha, whom he led as wife contrary to the laws, and do penance of seven years, according to the prefixed ecclesiastical degrees, has been judged. But if he shall not have done this, let him be anathema. And the same was commanded to be done concerning the same Bertha.

From the Council of Troyes, A.D. 1007

Canon IV. Concerning married priests or concubinaries, unless they have ceased, we command by prescribing that they be moved from the altar and at the same time segregated from the choir. But if even then they have not ceased, let them be kept far from the thresholds of the church, and let them not enjoy even that lay communion. We establish the same also concerning deacons.

Married priests are called concubinaries because the discourse is about marriage which they entered after sacred order had been received, and no marriage of this sort was any longer held valid. For this reason they are commanded to cease, that is, to separate themselves from the concubines. Already here it appears clearly enough that marriages of this sort were held to be null. Cf. Canon X of the Council of Toledo, A.D. 655, and Canon VII of Orleans, A.D. 538, and Canon II of Carthage, A.D. 390.

From the Epistle of Paschal II, to Bonus Senior, Bishop of Reggio, A.D. 1100-15

Chapter I. After a spiritual son or daughter has been received from the font, those who have been born from the co-father or co-mother cannot be joined in matrimony (with that son or daughter), because the laws of the age prohibit those not emancipated from being coupled to adoptive persons.

He says "after"; for those born before were not prohibited. Cf. the decree of Alexander III below.

Chapter II. After the death of the wife, no authority or reason seems to prohibit being coupled in marriage with the co-mother of the wife of the surviving husband. For neither is cognation of spirit compared to cognation of flesh, nor through union of flesh is there a crossing over to union of spirit.

Cf. the reason shown by Canon XLVII of the Council of Tribur, A.D. 895.

Chapter III. Further, as for the spouses of two female cousins, although at diverse times, that the one marry one man after the death of the other: public honesty itself, apart from canonical authority, contradicts it. And your prudence knows that one must abstain from the blood-relatives of the wife just as from the blood-relatives of the husband.

It was the third degree of affinity. Cf. De Iustis, *On Matrimonial Dispensations*, concerning Affinities.

From the Council of Salegunstadt or Mainz, celebrated by Aribo, Archbishop of the See of Mainz, A.D. 1022

Canon III. Concerning legitimate marriages it seemed good thus: that no Christian ought to lead a wife from the Advent of the Lord up to the octave of Epiphany, and from Septuagesima up to the octave of Easter, nor in the fourteen days before the feast of Saint John the Baptist, nor on the aforesaid days of fasts (namely the four times, concerning which in Canon II), or on the nights preceding all solemn days.

Cf. Canon LII of Laodicea and the following decree of Urban II in the Council of Benevento.

From the Council of Bourges, A.D. 1031

Canon XVI. That those who dismiss legitimate wives without fault of fornication not accept others while those wives are living; nor wives other men; but let them be reconciled to each other.

The Bishops seem chiefly to have intended that which they put in the last place, that is, the reconciliation of spouses; for this reason they speak only about those who dismiss spouses without the cause of fornication.

From the Council of Enham, celebrated by the Bishops Together with the Nobles of England, A.D. 1009

Canon VIII. Let it never be permitted that one imbued with the faith of Christ lead a wife within the space (of the sixth man) of his consanguinity, that is, within the fourth degree or little knee; nor the widow of anyone who had been of equal nearness in worldly cognation; nor the niece or near relative of the wife whom he had previously had; nor any holy nun; nor his sponsor from the sacred font; nor let any Christian have a repudiated woman as wife; nor let him take another wife while he has one, but as long as she lives, let her be the only one.

Those words, "of the sixth man," which we have included in parentheses, were copied by the editors of the councils; if you delete them, the sense of the discourse is ready and clear; on the contrary, if you retain them, it is very much hindered and hardly intelligible. Therefore we judge them to be expunged. But another reading of the same Synod is had from another exemplar, in which that eighth canon is presented thus:

We generally forbid illicit marriages to all Christians, but let them be bound to the divine law with fear of God. Therefore let no one defile himself with illicit conjunctions, that is, with cognates or with married persons or with those consecrated to God, or with other illicit persons.

But that canon seems to be the same as the law which exists among both the ecclesiastical and civil laws of Canute, King of the English, published in the year 1032, and therefore to be read in the same manner. For Law VII has thus:

Let no one tinged with the Christian faith contract nuptials within the sixth degree of his own cognation, nor let him lead into matrimony the widow of a cognate with whom he had necessity within the sixth degree; nor further let him join to himself in marriage someone near by consanguinity to her whom he previously had as wife. Let not a Christian lead into matrimony a sponsor at the sacred font, a vestal virgin, or a repudiated woman ... Let him have one wife, as long as she shall have lived, and that one joined by the legitimate covenant of nuptials, and not several.

Therefore, in this age, at least up to the sixth degree, marriages were forbidden in England. Cf. Canon XVII following of the Council of Bourges in Gaul, and what we shall bring forward from Peter Damian at A.D. 1065.

Canon XVII. That no one accept a wife from his own kinship up to the sixth or seventh progeny.

Canon XVIII. That no one accept in marriage the wife of his blood-relative or of some relative, because man and wife legitimately joined are one flesh.

The conjugal copula of two persons is the reason of affinity between one and the blood-relatives of the other. You see, however, that here the discourse is only about that affinity which arises from legitimate copula. Cf. Canon XXIX of the second Council of Chalon, A.D. 813.

From the Council of Compostela, A.D. 1056

Canon VI. That these blood-relatives who are married be separated and fulfill penance, or be expelled from the Church and the Christian fellowship. Thus (that is, in the same manner) we dispose concerning married presbyters and deacons.

From the Roman Council of Nicholas II, A.D. 1059

Canon XI. That no one lead a wife from his own consanguinity up to the seventh generation, or as far as kinship could be known.

This last phrase is not added to extend the series of prohibited degrees beyond the seventh, but to declare the same matter in another way; for kinship generally is not known beyond the seventh degree, that is, an account of it is not usually had among men. Cf. what we shall say at the Roman Council of Alexander II.

From the Council of Tours, with the Apostolic Legate Presiding, A.D. 1060

Canon IX. Whoever has accepted in marriage his own blood-relative, or her whom his blood-relative had previously known, or one whose blood-relative he has carnally accepted in marriage, or hereafter has accepted, or, after he knew, did not immediately dismiss, or, knowing, has not dismissed; or he who abducted the wife of another, or shall have abducted her; or he who, dismissing his own wife without episcopal judgment, has led another, or shall have led her: until he hands himself over to fruitful penance, let him know himself excluded and alienated from the Body and Blood of Our Lord Jesus Christ and from the thresholds of the Church ...

From the Epistle of Alexander II, to the Clerics of Naples: How the Degrees of Consanguinity Are to Be Computed, A.D. 1061-73

He vehemently rebukes those who enumerate the generations proceeding on either side from two brothers in such a way that they declare the sons of the same to be the fourth generation with respect to each other, the grandsons the sixth, the great-grandsons the eighth. And thus they divide one degree of generation, which undoubtedly must be called one, and unskillfully contend to cut apart the progeny to be numbered.

Namely, he rejects the method of computing of Roman civil law, as to nuptials.

From the Epistle of the Same Alexander II, Responding to the Questions of a Certain Bishop, A.D. 1061-73

When one has died, affinity is not destroyed in the survivor, nor can another conjugal copula dissolve the affinity of the former copula. But neither does it please that the offspring of another conjunction pass over to the consortship of that affinity itself, namely the former.

Namely, sons or daughters from a second marriage cannot be coupled to the blood-relatives of the former spouse; for between them the second kind of affinity intervenes. Cf. Decree L of the fourth Lateran Council, below.

From the Epistle of Alexander II, to William of Monasteriolum (from Ivo, Part IX, c. 82)

By the report of many we have learned that you wish to cast away your own wife and to adhere to another, putting forward the occasion of consanguinity. Whence, by apostolic authority, by forbidding we command you that you by no means presume to dismiss this woman whom you now have as wife, or to lead another, until a council of religious bishops has examined that cause itself.

Matrimonial causes pertain to ecclesiastical judges, nor is a marriage rightly entered to be dissolved short of their sentence.

From the Roman Council of Alexander II, A.D. 1065

Canon IX. That no one lead a wife from his own consanguinity up to the seventh generation or as far as kinship could be known. This was first established by Nicholas II.

You often discern these two things joined as if one were the explanation of the other: up to the seventh generation, or as far as kinship or cognation can be known. We have already warned in another place (at A.D. 1059) that the latter phrase does not extend the prohibited degrees beyond the limit established by the former; this may now be declared by the doctrine of St. Peter Damian in the little work written expressly *On the Degrees of Kinship*. For in order to show that up to the seventh degree (to be computed in the ecclesiastical manner) marriages are not lawful (Epistle 1), he first supposes that among blood-relatives marriages are not lawful (concerning which matter there was no question); then he establishes that those are blood-relatives whom the divine and secular laws call blood-relatives, and that those of this sort certainly are those whom the same laws admit into inheritance and cannot repel. "Let those be questioned," he says, "who judge in tribunals, who determine the business of causes, who insist upon scrutinizing the decrees of laws: if nearer relatives are lacking, are agnates up to the seventh degree not admitted either into inheritance or into guardianship? But in the inheritance of one to which you are admitted by right of consanguinity, in what way may you obtain his marriage as if you were a stranger? To what purpose also is so laborious a figure depicted among the sacred canons, so that it is bounded not only above or below, but also on each side by six degrees, if the seventh generation, as they assert, is completed by three persons numbered on this side and four on that side? (These were certain wise men of Ravenna)." Peter's argument returns to this: he who is not a stranger to someone is a blood-relative; he who is called by right to someone's inheritance is not a stranger to him; but he who is distant even in the seventh degree is called: therefore, this one is a blood-relative; therefore.

The same man (chapter 2) declares it in another way, warning that a fitting boundary was prefixed by the holy doctors, namely, that as far as it is possible to find the names of successions, kinship also lasts no less. He says indeed that the figure of human succession is bounded according to the example of the human body by six degrees, above and below and in those who come from the side; nevertheless he adds: although, for the grace of more abundant caution, the seventh generation also has been consequently numbered with these. If you weigh these things, as we warn in passing, you will understand how you may compose the things which above we brought forward from Isidore and Gregory the Great. Gratian, however, explains it in another manner at C. 21, q. 2 and 3, causa XXXV; please consult him. Finally (chapter 4), after reciting the canon of the Council of Meaux, which we described above at A.D. 845, he proceeds thus: According to this edict, therefore, of the synodal sentence, to whom the right of inheritance belongs, there also belongs nearness of stock. For they would not, as it is said, succeed into inheritance unless they pertained to the propagation of cognation.

From the Council of Girona, in Spain, A.D. 1068

Canon III. By excommunicating they sanctioned that incestuous persons be separated in every way; then let them have license of entering a better marriage.

These Fathers removed in their own province the impediment of incest prohibiting marriage. Cf. the Decrees of Nicholas I in this matter.

Canon IV. Let those who have dismissed their wives and accepted others recover their own, if they are alive, and dismiss the foreign women. And unless they have done this, let both the incestuous and these be so excommunicated that none of the Christians says "hail" to them, etc.

Canon VII. From presbyter down to subdeacon, if they have led a wife or retained a concubine, let them go out from the clergy and lose every ecclesiastical benefice, and remain in the Church with the laity. But if they have been disobedient, let them incur the sentence concerning the incestuous.

Namely, no marriage of these men was held valid, just as none of the incestuous. Cf. Canon IV of the Council of Troyes.

From the Council of Rouen, A.D. 1072

Canon XIV. Let nuptials not be made in secret nor after lunch; but let the bridegroom and bride, fasting, be blessed by a fasting priest in the monastery; and before they are coupled, let the progeny of both be diligently inquired into; and if within the seventh generation some consanguinity has been found, and if either of them has been dismissed, let them not be joined. The priest who has done contrary to this shall be deposed.

Cf. the decree from the Collection of Benedict the Levite at A.D. 845.

Canon XVI. It was forbidden that anyone who, while his wife was living, had been accused of adultery, after her death should ever accept her concerning whom he had been accused. For many evils have come from this; for very many for this cause killed their wives.

Cf. Canon XL of the Council of Tribur, A.D. 895.

Canon XVII. No one whose wife has been veiled shall ever accept another while she is living.

Canon XVIII. If the wife of a man who has set out abroad has married another man, until she has certainty of the former man's death, she is excommunicated up to fitting satisfaction.

Cf. Response XVIII of Stephen II at A.D. 754.

From Certain Canons, which Follow Without Title After the Canons of the Council of Rouen, A.D. 1074

Canon VII. Those coupled in marriage and requesting divorce on account of impossibility of coeundum must prove by judgment that they cannot accomplish that work of marriage, nor that by making themselves they have in any way arrived at this impossibility (that is, procured it).

From the Council of London, Lanfranc of Canterbury Presiding, A.D. 1075

Capitulum VI. From the decrees of Gregory the greater and also the younger: that no one accept as wife from his own cognation, or from that of his deceased wife, or one whom a cognate had, until kinship on either side reaches the seventh degree.

From the Council of Girona, with the Legate of the Apostolic See Presiding, A.D. 1078

Canon VIII. Those joined in consanguinity, unless they are separated by worthy satisfaction, shall remain separated from the Church and the Body of Christ.

From the Epistle of Gregory VII, to the Bishops of Asti, Turin, and Acqui, A.D. 1079

It has come to us that Boniface, marquis, brother of Manfred and Anselm, recently killed, is attempting to couple to himself in marriage the betrothed of the same Anselm. No one who knows the sacred canons can doubt how full of disgrace this is, how alien from the laws of the Christian religion.

Civil law had established or advised the impediment of public honesty from espousals. Institutes, Book I, Title X, §9: "It is established that neither is the son's betrothed a daughter-in-law, nor the father's betrothed a stepmother; nevertheless those who have abstained from nuptials of this sort will act more rightly and lawfully." The Church received and amplified this impediment. Therefore Gregory cites the sacred canons. Yet this impediment from espousals a certain Pope Benedict did not acknowledge, whose response is brought forward in the Collection of Canons, which is an Appendix to the Third Lateran Council (see below), if nevertheless that response is authentic.

From the Council of Lillebonne, celebrated by William, King of the English, with the Bishops and Nobles of Normandy, A.D. 1080

Canon II. Concerning those who hold wives from their own kinship and the wives of their relatives, let the bishops execute canonical justice. For the King sustains or protects nothing therefrom; but rather, by helping the bishops, he admonishes that the law of God be firmly held.

Judgment concerning matrimonial causes pertains to the Church. Cf. the response of Alexander II, above.

From the Council of Benevento, Urban II Presiding, A.D. 1091

Canon IV. From the day of Septuagesima up to the octave of Pentecost (other reading: to the octave of Easter), or from the day of the Lord's Advent up to the octave of Epiphany, marriages shall by no means be contracted.

Cf. Canon III of the Council of Salegunstadt, A.D. 1022, and Canon LII of Laodicea.

From the Council of Troia, Urban II Presiding, A.D. 1093

When the matter had been treated concerning certain persons coupled within the line of consanguinity, at last, with all consenting, this capitulum concerning them was promulgated.

Let the bishops whose diocesans they are convene them up to Pentecost by a threefold summons. Then if two or three men have confirmed the consanguinity by oath, or they themselves perhaps have confessed, let the marriages be dissolved. But if neither has happened, let the bishops adjure them by the baptism of Christ, by the faith of Christ, by the judgment of Christ, in true obedience, that they openly make known whether, as fame has it, they recognize themselves as blood-relatives. If they have denied it, they are to be left to themselves, yet in such a way that, if they have something else in conscience, they should know themselves separated from the thresholds of the Church, from the Body and Blood of the Lord, and from the communion of the faithful, and made infamous, until they desist from the crime of incest. If they have segregated themselves by the judgment of the bishops (namely after an incestuous union), if they are young, they are not prohibited from contracting other marriages.

Cf. the responses of Nicholas I as to the last part of this decree.

From the Council of Szabolcs, in Hungary, A.D. 1092

Chapter I. We command bigamous presbyters and deacons, and husbands of widows or repudiated women, to be separated, and, after penance has been completed, to return to their order. And those who are unwilling to dismiss illicit marriages ought to be degraded according to the institutes of the canon. But we command the separated women to be returned to their parents; and because they were not legitimate, if they wish, let it be lawful for them to be married.

Since the women are said not to be legitimate, it is clear that the discourse is about those who were accepted after orders had been received. Therefore, calling them bigamous, the Fathers are dealing with those presbyters and deacons who entered marriage twice and establish that at least the second marriage after ordination is no marriage; but concerning the first they decree something economically in chapter III. Cf. what we shall say under chapter III.

Chapter II. If any presbyter has associated his own female slave to himself in the place of a wife, let her be sold (the female slave), and let her price be transferred to the bishop.

Chapter III. To presbyters who have led first and legitimate marriages, let indulgence be given for a time on account of the bond of peace and the unity of the Holy Spirit (namely, lest the tranquility of the Church be disturbed), until the paternity of the Apostolic Lord gives counsel to us in this matter.

Either the discourse is about a marriage contracted before orders were received, whose use is indulged until the Roman See, having been consulted, gives an answer; or about a marriage contracted after ordination, in which the Fathers indulgently permit presbyters to remain until the Roman See decrees what is to be done. Since this latter is too abnormal, I judge that the canon must be understood in the former way; especially since the propriety of the words suggests this, and nothing occurs contrary to this interpretation. Indeed, the Fathers call such marriages absolutely, without any signification of doubt, legitimate marriages; but marriages contracted after ordination, even if first marriages, they would not have called legitimate without hesitation, since they themselves also doubted whether the use of marriage was lawful for presbyters, as is clear from this very canon. In the first canon, indeed, the nuptials of a presbyter and deacon are called illegitimate both when they are second and when they are with widows or repudiated women, so that consequently that presbyter who after ordination married for the first time with a virgin rejected by no one would not be subject to the sanction of that canon. For this reason it could seem that this is the case which the Fathers touch in Canon III. Nor is it a wonder that those Fathers were less skilled in ecclesiastical law; nevertheless they define nothing, but await the response of the Holy See. Nonetheless, neither is this interpretation necessary; for in the same way it will be lawful to say that the Fathers speak of one sole marriage entered before ordination and afterward continuing: for this case also is not touched in Canon I.

From the Council of Nimes, Over Which Urban II Presided, A.D. 1096

Canon XIII. Let little girls not marry up to twelve years.

From the Council of London Celebrated by Anselm, A.D. 1102

Canon XXII. Faith given between a man and a woman concerning marriage, secretly and without witnesses, if it shall have been denied by either one, is to be held void.

If the matter concerns the faith of espousals, the invalidation seems reasonable; if concerning the faith of a marriage secretly entered, the decree will have force in the external forum, not in the forum of conscience before God, if the denial of either one is false.

Canon XXIV. Let cognates up to the seventh generation not be coupled, nor, if coupled, remain together.

The same Anselm, in an epistle (Book 3, Epistle 158), whether the nuptials of blood-relatives are forbidden and why, gave this reason for this prohibition. Namely, having posited that our law is charity, which, the more widely it is divided and poured out, so much the richer it remains for the one dividing and is increased, he adds: "Christian religion therefore established that, the limits of consanguinity reaching on every side, according to the decrees of the holy Fathers and canons, up to the sixth degree (cf. what we gave from Peter Damian at A.D. 1065), for preserving charity, let one's own natural affection suffice, which even among barbarians is held impious to violate. But where that fails, there at last, lest it withdraw itself from charity to be bound again, the conjugal bond must be adjoined for prolonging the boundaries of our inheritance, which is charity itself."

From the Council of Toulouse, Callistus II Presiding, A.D. 1119

Canon III. Those who, simulating an appearance of religion (the Petrobrusians), condemn the sacrament of the Body and Blood of the Lord, the baptism of children, the priesthood and the other ecclesiastical orders, and the bonds of legitimate nuptials, we expel and condemn as heretics from the Church of God, and we command that they be restrained by external powers.

From the First Lateran Council, Ecumenical, A.D. 1123

Canon V. We prohibit conjunctions of blood-relatives from being made, since both divine laws and the laws of the age prohibit them. For the divine laws, doing this, not only cast out both them and those who proceed from them, but call them accursed; but the laws of the age call such persons infamous and repel them from inheritance. Therefore we, following our Fathers, mark them with infamy and judge that they are infamous.

Canon XXI. We utterly forbid priests, deacons, subdeacons, and monks to have concubines or to contract marriages; we also judge that marriages contracted by persons of this sort are to be disjoined and that the persons ought to be reduced to penance, according to the definition of the sacred canons.

You see that the Fathers of this ecumenical Council appeal to preceding canons, not establish a new matter. Cf. Canon VII of the Council of Girona and the Fourth Council of Troyes, and the places cited there. Certainly the decrees of the Pontiffs of the eleventh century had regard to this, especially those of Gregory VII against concubinary clerics, who were so called because they were unequal to contracting legitimate nuptials. Therefore although in this First Lateran Council, and also more clearly in the Second, a universal law was enacted invalidating these nuptials, nevertheless that law was not simply new. Hence it is clear how ineptly it was said that Boniface VIII was the first to assert that a vow of chastity emitted in ordination renders nuptials null (from the Syllabus of Pius IX, prop. 22). For, 1. long before Boniface the nuptials of bishops, priests, deacons, and subdeacons were null by the constitution of the Church; 2. what seems more probable to Sanchez (Book VII, disp. 27, n. 10), this obligation of continence was and is from a vow, either expressed or tacit, in the very reception of the order, which the Church annexed to the order; 3. but although someone freely receiving an order should not wish actually to emit a vow, nevertheless he would be obliged to continence, and his subsequent nuptials would be null. These things also held good before Boniface. Of what matter, therefore, is Boniface the author? He first authentically declared that "the solemnity of a vow was introduced by the sole constitution of the Church (c. un. de Voto in 6)." With this principle supposed, the same Pontiff, to the question proposed to him, namely what vow ought to be called solemn and efficacious for diriming marriage, answers (ibid.): "that vow alone ought to be called solemn, as regards diriming a marriage after it has been contracted, which shall have been solemnized by reception of sacred order or by an express or tacit profession made to one of the religions approved by the Apostolic See." In this response the law of this impediment diriming the nuptials of those who are bound by such vows is not affirmed for the first time, nor first established; but it is only affirmed that these vows alone are solemn with regard to the effect of diriming a subsequent marriage. But all these things are ineptly confused in that proposition.

From the Council of London, The Legate of the Apostolic See Presiding, A.D. 1125

Canon XVI. We prohibit marriages from being contracted among blood-relatives or those joined by affinity up to the seventh generation; but if any such persons shall have been joined, let them be separated.

From the Second Lateran Council, Ecumenical, A.D. 1139

Canon VII. We establish that bishops, priests, deacons, subdeacons, regular canons, monks, and professed conversi, who, transgressing their holy purpose, have presumed to unite wives to themselves, be separated. For we judge that a coupling of this sort, which is known to have been contracted against the ecclesiastical rule, is not marriage. Let those also, separated from one another, perform worthy penance for such great excesses.

Canon VIII. We decree that the same also be observed concerning religious women, if, which may it not be, they have attempted to marry.

Cf. Canon XXI of the First Lateran Council. The same two aforesaid canons were renewed in the Council of Rheims, A.D. 1148, by Eugene III, Canon XVII.

Canon XVII. We entirely prohibit conjunctions of blood-relatives from being made. For this kind of incest, which now, almost by the goad of the enemy of the human race, has been turned into usage, the statutes of the holy Fathers and the most holy Church of God detest. The laws also of the age pronounce those born from such cohabitation infamous and repel them from inheritance.

Cf. the preceding canon of the Lateran Synod. The same canon had been established in the Council of Clermont, A.D. 1130, and in that of Rheims by the same Innocent, perhaps also in the Council of Auvergne, which the same Pontiff held in the preceding year.

Moreover the authority of secular laws, both here and in the First Lateran Council, is brought forward for persuasion, not as a source of law, which depends on the statutes of the Fathers and of the Church.

Canon XXIII. Those, moreover, who, simulating an appearance of religiosity, condemn the sacrament of the Body and Blood of the Lord, the baptism of children, the priesthood and the other ecclesiastical orders, and the legitimate bonds of nuptials, we expel and condemn as heretics from the Church of God, and we command that they be restrained by external powers.

Cf. Canon III of the Council of Toulouse under Callistus II.

From the Council of Cashel, in Ireland, the Apostolic Legate Presiding, A.D. 1172

Canon I. It was established that all the faithful constituted throughout Ireland, repudiating the cohabitation of relatives and affines, contract and observe legitimate marriages.

From the Council of Avranches, in Normandy, Legates of the Apostolic See Presiding, A.D. 1172

Canon X. Let a man not pass over to religion while his wife remains in the world, or conversely, unless both have passed beyond the time for being available to the works of the flesh.

The consent of both does not suffice, but the time also of advanced age is required. Frequent proneness to works of the flesh suggested this tempering to the Fathers.

From the Council of London, A.D. 1175

Canon XVIII. Let no faithful person, of whatever condition he may be, make nuptials secretly, but, having received the blessing from a priest, let him marry publicly in the Lord.

Canon XIX. Where there is not consent of both, there is not a marriage. Therefore those who give girls to boys in cradles do nothing, unless each of the children consents after they have come to the time of discretion. Therefore by the authority of this decree we forbid that henceforth any persons be joined, of whom either both or one has not arrived at the age established by the laws, unless perhaps sometimes, an urgent necessity intervening, such a conjunction is tolerated for the good of peace.

From the Decree of Lucius III, Issued in the Council of Verona, A.D. 1184

All those who, concerning the Sacrament of the Body and Blood of our Lord Jesus Christ, or concerning baptism or the remission of sins, or concerning marriage, or concerning the remaining ecclesiastical sacraments, do not fear to think or teach otherwise than the most holy Roman Church preaches and observes ... we bind with the bond of perpetual anathema.

Cf. Canon XXIII of the Second Lateran Council.

From the Collection of Decrees, Of the Supreme Pontiffs, the Greatest Part of Which Is Ascribed to Alexander III; Which Collection Therefore Is Usually Subjoined, after the Manner of an Appendix, to the Third Lateran Council

It is a collection of an unknown author, made, as Mansi probably judges, in the age of Innocent III (cf. Mansi in Baluzius's Miscellanies, Tom. III, p. 367), which already in the year 1212 was in use. Cf. Hefele, op. cit., sec. 646. We shall bring forward only certain principal chapters.

From the Title On the Married and the Betrothed

Chapter I. (Alexander III to the Archbishop of Salerno). After legitimate consent concerning the present, it is licit for one, even if the other resists, to choose a monastery, as certain saints called from nuptials have done, provided that carnal commixture has not intervened between them. And for the other remaining, if when warned he shall not wish to observe continence, it seems licit that he can pass to second vows. For since they had not been made one flesh, one can pass to the Lord and the other remain in the world.

Chapter VI. (The same, to the Archbishops of Strigonia and Cologne). A married man desiring to be converted in a monastery is prohibited from being received, unless his wife likewise is converted. For since after the copulation of marriage one body has been made on both sides, it is incongruous that one part be converted and the other part remain in the world.

From the Title On Betrothals and Marriage

Chapter I. (The same, to the Abbot of Saint Alban). It is held from the canons that no one be united in marriage to the one whom he had previously polluted by adultery, and especially to that one to whom he had given faith while his wife was living, or who plotted for the death of the wife.

Chapter III. (The same, to the Bishop of Vigilia). If someone has betrothed a girl below the twelfth year, before both have arrived at years apt for marriage, they cannot withdraw from the nuptial pact and fly to another marriage.

Chapter IV. (The same, ibid.). No blood-relative of another can ever unite in marriage the other's betrothed, if she is near marriageable age.

Chapter VIII. (The same, in a letter to the Bishop of Salerno). If legitimate consent ... intervenes concerning the present in such wise that one receives the other as his own by mutual consent in expressed words, each saying: I receive you as mine, and I you as mine, whether there is an oath or not, it is not licit for the woman to marry another; and if she shall have married and carnal copula shall have followed, she ought to be separated from him and compelled by ecclesiastical constraint to return to the first, although others think otherwise, and at another time it was also judged otherwise by certain of our predecessors.

Cf. Thesis XVIII, V.

From the Title On Joining Children Born before or after Spiritual Co-parenthood

Chapter I. (The same, ibid.). It seems more tolerable to us that sons or daughters, even those born after compaternity, can be coupled together, except for that person through whom the compaternity is contracted.

Cf. c. Utrum 1, On Spiritual Cognation in the Decretals.

From the Title On Betrothals, Second

Chapter IV. (The same, to the Bishop of Lucca). Just as a simple vow impedes a marriage to be contracted, but does not dirime one contracted, so the reception of the habit, without profession and renunciation of one's property, impedes lest one be contracted, but by no means dissolves one consummated.

Chapter VIII. (Ascribed to Hadrian IV, to Eberhard of Salzburg). According to the word of the Apostle, in Christ Jesus neither a free man nor a slave is to be removed from the ecclesiastical sacraments. Thus also among slaves marriages ought in no way to be prohibited; and if they shall have been contracted against the will and contradiction of their lords, by no reason are they on account of this to be dissolved by ecclesiastical law; nevertheless the due and customary services are not on this account any less to be rendered to their proper lords.

Cf. Canon XXX of the Second Council of Chalon, A.D. 813.

It is permitted to add the following from the Decretals, Book IV, Title 11, c. 2, of the same Alexander III to the Archbishop of Salerno.

If a man or woman, knowingly or ignorantly, shall have received his or her own child from the sacred font, and because you wished to consult us whether on account of this they ought to be separated from one another and coupled to others, we respond to your consultation in this manner: although it has generally been instituted that they ought to be separated, nevertheless certain persons, judging more humanely and more rightly, have established otherwise. Therefore it seems to us that, whether they have done this from ignorance or from malice, they are not to be separated from one another, nor ought either to subtract the debt from the other, unless they can be induced to observe continence; because if this was done from ignorance, ignorance seems to excuse them; if from malice, their fraud or deceit ought not to support them.

Malice, namely, consists in this, that a spouse knowingly receives his own child from the sacred font to this end, that he may be separated from the other spouse. The Pontiff does not wish this fraud to support the same one; accordingly he denies that they are to be separated.

From the Synodal Constitutions of Odo, Bishop of Paris, A.D. 1198

Decree I. Let matrimony be celebrated with honor and reverence, and neither with laughter and jest, nor be contemned even if second and third (nuptials) are made. Before it is made, always on three Sundays or three feast days equally distant, as though by three edicts, let the priest inquire of the people, under penalty of excommunication, concerning the legitimacy of the bridegroom and the bride who ought to be joined. And before faith has been given concerning contracting matrimony and before these three edicts, let no one dare in any way to celebrate marriages.

Decree II. Let them firmly prohibit, by excommunication, sorceries from being done among the laity; let sorcerers also and those concealing consanguinity and the other impediments of marriage - vow, order, consanguinity, affinity, disparity of worship, compaternity, which excludes from marriage only four persons: the co-father, the co-mother, the godchild, and his spiritual brother and sister, namely the son and daughter of the sponsor - be publicly announced as excommunicated.

From the Council in Dalmatia, Legates of the Apostolic See Presiding, A.D. 1199

Canon VI. The most holy Roman Church, which is the mother and teacher of all churches, has decreed that no Christian presume to contract marriage up to the seventh degree of consanguinity ... Therefore by the present decree we establish, etc.

Canon X. We excommunicate all those who have dismissed their own wives, or henceforth shall dismiss them, without the judgment of the Church, until they return to them.

From the Council of London or Westminster, A.D. 1200

Canon XI. Let a man not contract with any blood-relative formerly of his wife; similarly neither let a wife contract with any blood-relative formerly of her husband. And let one received in baptism not contract with the daughter, born before or after, of the one baptizing or receiving. Nor let any marriage be contracted without a triple public denunciation in the Church, nor if the persons are unknown. But neither let any persons be coupled in marriage except publicly in the face of the Church and in the presence of a priest; and if it shall have been done otherwise, let them not be admitted anywhere in the Church except by special authority of the Bishop.

You see that the presence alone of the priest is required; nothing is said of his special action; but clandestine marriages indeed are prohibited, yet they are not invalidated.

From the Constitutions of William, Bishop of Paris, A.D. 1208

Decree XIII. Let priests frequently denounce in the churches that those who contract clandestine marriages, and those who assist in making them, are excommunicated.

Decree XIV. Let priests enjoin upon their parishioners that when matrimony is to be contracted between any persons, those who ought to contract confess, out of reverence for the sacrament, their sins to their priests before they offer faith concerning contracting, or at least before they contract by words concerning the present. But let priests then be solicitous in inquiring especially concerning the impediments of marriage.

From the Fourth Lateran Council under Innocent III, A.D. 1215

Decree L. Since the prohibitions concerning marriage not at all to be contracted in the second and third genus of affinity, and concerning offspring received from second nuptials not to be coupled to the cognation of the prior husband, both frequently introduce difficulty and sometimes give birth to peril of souls, so that when the prohibition ceases the effect may cease, by the approval of the sacred council revoking the constitutions issued on this matter, by the present constitution we decree that those contracting thus henceforth be coupled freely.

Peter of Blois, in a letter given about A.D. 1180, On the Genera of Affinity, said: "There are found canons from the understanding of which scholastic industry has explained a triple genus of affinity and, in them, the distinction of diverse degrees. But according to the judgment of my conscience, this new invention and magisterial tradition does not prejudice marriage, for which the divine law prescribes certain limits." Perhaps, as Guscanvillaeus notes, Blois thought that the canons by which marriages among affines in the second and third genus were prohibited had indeed prohibited them from being made, but had not invalidated those contracted. Papinian also judged that marriages are prohibited on account of affinity exceeding the first genus (Digest, Book XXIII, Title 2, n. 15), saying: "that the former wife of a stepson ought not to be joined in marriage to the stepfather, nor ought the stepmother of him who was the husband of a stepdaughter to enter into marriage." Namely, the daughter-in-law of the wife was in the place of a daughter-in-law to the husband, and the son-in-law of the husband was in the place of a son-in-law to the wife.

Gratian, in his Concordia of Discordant Canons, cause XXXV, questions 2 and 3, had brought forward certain canons on this matter ascribed to the ancient Roman Pontiffs, whose in fact they are not. For the third canon, attributed by Gratian to Pope Fabian, is, as the correctors admonish, of Theodore of Canterbury, in whose Penitential it stands as chapter XI. But Theodore speaks of an entirely different matter; and that is what we brought forward from him under the responses of Gregory the Great. Another canon, the twelfth in the same place, ascribed by Gratian to Pope Julius, is of the same Theodore in the same place, if we believe the correctors, although in Petit's edition it does not occur in expressed words. Yet one must remember that in the Penitential which is said to be of Theodore, certain things are handed down which are both repugnant to the doctrine of the Church and opposed to Theodore's own canons. Cf. c. X of the Council of Herudford under Theodore himself, celebrated A.D. 673, s. c.

For the rest, above we recited certain decrees both of Alexander II and of Paschal II, indeed also of Basil, in which mention is made of an impediment of the second or third genus of affinity then in force. Since it had been established in antiquity that, as far as kindred recognizes itself, nuptials were not lawful, and since affines in the second and third genus were accustomed to call themselves relatives, a custom was easily introduced that marriages should be interdicted among these also, although not according to the same degrees in each genus.

Innocent III removed the impediment from the second and third genus of affinity.

The prohibition also of conjugal copula shall henceforth not exceed the fourth degree of consanguinity and affinity, since in the further degrees a prohibition of this kind cannot now be

generally observed without grave detriment.

Decree LI. We utterly inhibit clandestine marriages, also forbidding that any priest presume to be present at such; wherefore, extending generally to other places the special custom of certain places (cf. Constitutions of Odo, cited above), we establish that, when marriages are to be contracted, they be publicly proposed in the churches by the priests, a suitable term having been fixed beforehand so that within it whoever wishes and is able may oppose a legitimate impediment. And let the priests themselves nonetheless investigate whether any impediment stands in the way. But when a probable conjecture shall have appeared against the copula to be contracted, the contract is expressly interdicted, until, by manifest documents, it shall be established what ought to be done concerning it.

Not a simple doubt or conjecture, but a probable conjecture, that is, probable arguments, prohibit a marriage to be contracted before the Church gives sentence concerning it.

But if anyone shall have presumed to enter upon clandestine or interdicted marriages of this sort in a prohibited degree, even ignorantly, offspring received from such a conjunction shall be judged altogether illegitimate, to have no help from the ignorance of the parents ... In like manner the offspring shall be judged illegitimate if both parents, knowing a legitimate impediment, shall have presumed to contract in the sight of the Church, notwithstanding every interdiction.

Preface - Page VII

Index (as printed)

Chapter I

On the Essence of Matrimony Considered in Itself

Thesis I. Setting aside for a little while the account of sacrament, the notion of matrimony in itself comes back to this: that it is the union of a man and a woman, situated in the mutual moral power over the body of the other for carnal copula and for the undivided society of life. - Page 1

Thesis II. There are several goods of Matrimony, intrinsic to it, each of which also separately can be an end on account of which it is contracted, although some one among them is the primary end. - Page 9

Thesis III. It is not repugnant to the essence of the matrimonial contract that a pact be added to it of preserving perpetual continence; and it can be that in this way the most blessed Mother of God and St. Joseph entered marriage. - Page 17

Thesis IV. Although the use of matrimony is good, nevertheless the state of virginity and celibacy excels it. - Page 28

Thesis V. Although according to the law of nature there is marriage, and it has at times deservedly been commanded by God to some, nevertheless there is not from the law of nature any obligation properly so called laid upon individuals or upon the community of procuring offspring. - Page 33

Thesis VI. Fornication, whether vague, or of one man with one woman, and this either transitory or constant, is prohibited by the law of nature; but even if there is added to it a pact of nourishing and educating offspring, the condition of the thing is not substantially changed. - Page 40

Parergon. At what time the nuptials were celebrated between the Blessed Virgin and St. Joseph. - Page 44

Chapter II

On Matrimony as Sacrament

Thesis VII. In the Word of God handed down there is contained the Catholic doctrine that Christian Matrimony is truly and properly a Sacrament. - Page 54

Thesis VIII. By the written Word of God also it is shown that Christian matrimony, by reason of its state, has sanctifying grace joined to it; and that, when it is made, it is also the cause of this grace, is at least strongly persuaded from the words alone of the Scriptures, with the analogy of faith applied. - Page 66

Thesis IX. The arguments which are brought forward against the doctrine asserted in the two preceding theses are empty. - Page 75

Thesis X. In the marriage of Christians, the contract, that is, the marital union, and the sacrament are bound together by an indivisible nexus; these are not two things, but two necessary aspects or formalities of the same thing. Wherefore among Christians the conjunction of a man and a woman, if it is not a sacrament, is not marriage either; and if it is marriage, it is also a sacrament. - Page 78

Thesis XI. The ministers of the sacrament are the contracting parties themselves of matrimony, whose contract, insofar as it is the mutual handing over of power, can be regarded as the proximate matter, and insofar as it is the mutual acceptance of the same, as the form of the sacrament. Moreover, the contract is *sacrament only*; the grace which is conferred is *the thing of the sacrament only*; the bond which remains is *thing and sacrament at once*. - Page 87

Appendix. - Page 102

Chapter III

On the Properties of Matrimony

I. On Unity

Thesis XII. Simultaneous polyandry is illicit by the law of nature and invalid. Successive polyandry and polygamy are licit and honorable in themselves. - Page 104

Thesis XIII. Simultaneous polygamy is illicit by divine law and invalid for Christians. - Page 114

Thesis XIV. Polygamy compared with natural law is not opposed to its first precepts, by which the things that are essential are commanded, but it is opposed to those by which the things that are congruent are urged. - Page 120

Thesis XV. Finally, with regard had to the primitive divine institution, by it certainly a norm and exemplar of monogamy was furnished and its congruity signified; indeed, it also seems that there a law of the same was enacted there for all future marriages, although afterward God dispensed from that law for some time. - Page 125

II. On Indissolubility

Thesis XVI. Having distinguished intrinsic and extrinsic indissolubility, we first establish that intrinsic dissolubility permitted simply to the judgment of the spouses for any cause whatever is repugnant to the law of nature, but that a certain determinate intrinsic dissolubility is indeed repugnant to the secondary rights of nature, but not to the primary. - Page 136

Thesis XVII. By Catholic tradition it is established that Christian matrimony, not only consummated but even ratified only, is intrinsically indissoluble also in the case of adultery. - Page 150

Thesis XVIII. The things which are brought forward by adversaries with great apparatus do not diminish the force of the demonstrated Catholic Tradition. - Page 159

Thesis XIX. The same truth is demonstrated by the authority of the Apostle. - Page 179

Thesis XX. In order that we may prepare for ourselves the way to the interpretation of the doctrine handed down by Christ in the Gospels, after stating the variety of certain readings, we lay down first that in the words of Christ in Matthew V. 32 and XIX, and in the parallels of Mark and Luke, there is contained not a counsel but a law that will be valid perpetually, the old covenant having been abrogated; consequently, in these places Christ acted not as interpreter of the Mosaic law but as legislator of the new covenant. We lay down secondly that it is not rightly demanded that the interpretation of the testimonies of Mark and Luke on this matter be required according to the norm of Matthew's words on the ground that the more obscure are to be explained by the clearer, the fewer by the more numerous. - Page 182

Thesis XXI. From the words of Mark and Luke, and from the words of Matthew V. 31, 32 and XIX. 3 ff., we certainly gather the doctrine of Christ concerning the indissolubility of the conjugal bond even in the case of adultery. - Page 187

Thesis XXII. By the very law of the primitive institution, any marriage whatever is generally intrinsically indissoluble. - Page 200

Thesis XXIII. Reason also, well considered, shows how well matrimony is furnished with such indissolubility. - Page 204

Thesis XXIV. As regards extrinsic dissolubility or indissolubility, we teach first that Christian matrimony ratified and consummated cannot be dissolved even extrinsically. - Page 213

Thesis XXV. Ratified matrimony is dissolved extrinsically by religious profession, and then can be dissolved by the authority of the Roman Pontiff. - Page 217

Thesis XXVI. We teach besides that the matrimony of infidels, even consummated, can be dissolved extrinsically when, with one party converted to the faith, the other refuses to cohabit, or not without injury to the Creator or spiritual harm of the faithful party; and then that it can be dissolved extrinsically by the authority of the Roman Pontiff. - Page 229

Thesis XXVII. The Pauline privilege does not pertain only to those who follow the Catholic faith, but to all who have professed the Christian faith by reception of baptism. - Page 240

Scholion. - Page 242

Chapter IV

On the Power of Establishing Impediments of Christian Matrimony and of Dispensing in Them

Preliminary Notes. - Page 245

Thesis XXVIII. In Canon 4 of Trent ("If anyone shall have said that the Church could not constitute impediments diriming marriage, or erred in constituting them, let him be anathema"), by the name of Church are signified not kings and princes of the age, but the sacred principate; and that canon is dogmatic. - Page 250

Thesis XXIX. It is historically established that the Church by its own judgment has established impediments diriming the marriage of Christians. - Page 253

Thesis XXX. To the Church belongs the power of constituting impediments diriming marriage, and this belongs to her by proper right. - Page 272

Thesis XXXI. Although the secular Prince has the right of making laws concerning the conditions and civil effects of matrimony, nevertheless it does not follow that he has the right of making laws concerning Christian matrimony itself. - Page 282

Thesis XXXII. The Church alone can place impediments diriming Christian matrimony; that is, the civil power has no right innate to itself of establishing diriment impediments which affect the bond itself of Christian matrimony. - Page 284

Thesis XXXIII. The arguments which adversaries heap together against the asserted truth, whether from the natures of things, or from history, or from the authority of doctors, are altogether weak. - Page 297

Thesis XXXIV. The power of the Church of constituting impediments for Christian marriage extends not only to Catholics, but in itself also to heretics. - Page 311

Thesis XXXV. The power of dispensing in ecclesiastical diriment impediments belongs to the Roman Pontiff, and to him alone, by proper right. But although the power of dispensing at times in some divine law could belong to him, nevertheless it is not consequent that this power also extends itself to impediments which are of positive divine law or of natural law. The same Roman Pontiff can revalidate matrimony with a dispensation, as they say, in the root; and it is fitting that regard be had to this dispensation also by the secular Prince as to civil effects, although perhaps he is not properly bound to it. - Page 314

Appendix. Conspectus of ecclesiastical decrees and canons in matrimonial matter. - Page 327