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according to the principles of St. Thomas Aquinas

for the use of schools

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Treatise XI. On The Virtue Of Justice And The Opposed Vices

St. Thomas, *S. theol.* 2, 2, q. 57 sqq.; St. Alphonsus, *Theol. mor.* lib. 3, n. 486-961. Dom. Soto, Lugo, Molina, Lessius, Billuart, etc., also published excellent treatises on right and justice. Among modern authors worthy of mention are Waffelaert, *Tract. de iust.* (Bruges 1885); Marres, *De iust.* (Roermond 1889, 2nd ed.); Vermeersch, *De iust.* (Bruges 1901), and very many others, whom it would be long to enumerate.

Order Of Things To Be Said. After the treatise on the virtue of prudence, it is necessary to treat of the virtue of justice, which among the moral virtues stands out under a twofold respect, namely of subject and of object. For justice is subjectated in the nobler part of the soul, namely in the will; but the other moral virtues reside in the lower appetite, as fortitude in the irascible appetite, temperance in the concupiscible appetite. Prudence, however, which resides in the practical intellect, is not a merely moral virtue, but also an intellectual one, as was said above, I, n. 457. By reason of object, justice stands out among the other moral virtues, since they are praised only according to the good of the virtuous man himself; but justice is praised, moreover, according as the virtuous man is well-disposed toward another,[1] and therefore justice is especially necessary for human society. The most noble virtue of justice has several potential parts, whose office is to render what is due to persons joined to us in a special way, for example, to God, parents, etc. From this it follows that the virtue of justice, with its potential parts, comprises almost all things which are commanded in the whole Decalogue, except the sixth and ninth precepts. But since clarity would be little served if almost the whole Decalogue were explained under one single treatise, we divide this Treatise XI into two sections, namely:

1. On right and on the virtue of justice itself.
2. On the potential parts of the virtue of justice.

[1] Cf. *S. theol.* 2, 2, q. 58, a. 12.

Section I. On Right And On The Virtue Of Justice Itself

In this first section we shall treat 1. of right itself, which is the proper object of the virtue of justice, and which it is of much importance to understand rightly; for several false notions of right also harm Catholic Moral Theology and are not only errors in juridical science. 2. The character of the virtue of justice in general must be explained. 3. But since man, from frailty or malice, often wounds the obligations imposed from justice, it is then necessary to treat both of the wounding and of the reparation of justice. 4. Finally, because a great part of the obligations of justice arises from contracts entered into, lastly it is necessary to treat of contracts. Thus the whole treatise concerning the virtue of justice itself is contained in the four following questions:

1. On right itself.
2. On the virtue of justice considered in itself.
3. On the wounding of justice and on the reparation of wounded justice.
4. On contracts.

Question I. On Right Itself

We divide this question into four chapters, namely 1. on the notion of right and its division; 2. on the object of right; 3. on the subject of right; 4. on the modes of acquiring right.

Chapter I. On The Notion And Division Of Right

1. Notion. The name of right is taken in various ways; but among the various acceptions of right the following seem to be more notable for us:

1. **The sentence or decree of the judge.** Whence the judge says the right, when he pronounces a judicial sentence.
2. **Law**, or rather the complex of laws, by which it is determined what is just. In this sense we say: canon law, civil law, to study law, etc. Many authors call right accepted in this sense right taken objectively, and they attribute to it those things which pertain to laws.[2]
3. **That which is just and which is owed to someone** (δίκαιον). In this sense we say: to render to someone his right. This right is also called passive right, and it is the proper object of the virtue of justice, since justice is the constant and perpetual will of rendering to each one his right.
4. **A moral faculty or power of doing, having, demanding, omitting something, etc.**[3] In this sense we say: someone uses his own right, the right of property. Concerning this last acception of right, which is also called active right or right taken subjectively, we shall chiefly treat in this chapter.

The given definition is explained. It is said, first: a moral faculty; therefore right is not a physical faculty, or a physical fact, as several non-Catholics have taught. Hence the following propositions were condemned in the Syllabus of Pius IX:[4] Prop. 59: "Right consists in a material fact, ... and all human facts have the force of right." Prop. 61: "A fortunate injustice of fact brings no detriment to the sanctity of right." Therefore true right arises from natural law alone, or from that positive law which is conformable to natural or divine law; but it is false that civil government can concede some right contrary to natural or divine law. Therefore in the same Syllabus the proposition defended by the Positivists was deservedly condemned (39): "The status of the republic, as being the origin and source of all rights, is endowed with a certain right circumscribed by no limits."[5]

It is said, second: of doing something, etc.; from which words it follows that a right belonging to some man produces in others a strict debt or obligation not to violate that right. Right (*Recht*) and debt (*Pflicht*) are correlatives. But if nevertheless another wounds the right of another and despises his own debt, then he commits a true punishable injustice. Both, namely human right and debt, are ultimately derived from eternal law, since it is the source and principle of all other laws, rights, and duties. Hence it can be said briefly: there is no right without debt; there is no debt without God.

Note. The assertion of several Positivist jurists cited above, that the republic is the origin and source of all rights, was deservedly proscribed by Pius IX; for this assertion is not only most false,[6] but in reality heretical, because it denies that natural and divine rights precede the very existence of the republic; moreover, it is injurious toward the native dignity of man, because it hands the individual man over into the narrow servitude of the state. Hence St. Thomas[7] says forcefully: "Written [human] law, just as it does not give force to natural right, so neither can it diminish or take away its force, because neither can the will of man change nature."

The three acceptions of right enumerated above under nn. 2, 3, 4 can be coordinated in the following schema:

objective right	laws[8]
subjective right, which is either	
passive right, i.e. that which is owed to someone	active right, i.e. the moral faculty of demanding something, etc.

Corollary. From what has been said it follows that rights do not belong to animals, because they are not endowed with moral faculties. Therefore no one ever commits injustice properly so called against an animal. For this reason theologians are accustomed to say briefly: animals are indeed an object, but not a subject of right.[9]

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[2] Although those things which are predicated of this objective right can also ordinarily be predicated of law, nevertheless objective right and law are not altogether the same. Wherefore St. Thomas says: "Law is not right, properly speaking, but a certain account of right" (*S. theol.* 2, 2, q. 57, a. 1 ad 2; "The law is not the Right, but a norm of Right"). Hence not all laws can properly be called right, but only those which are concerned with passive right; for example, police laws are incongruously called police right; the law of loving oneself or one's neighbor is not right.

[3] In German it is said: authorization (*Befugnis*) (cf. Gopfert, *Moraltheol.* II, § 74).

[4] Denz. n. 1759, 1761.

[5] Denz. n. 1739.

[6] Cf. Cathrein, *Moralphil.* I, § 3, 1.

[7] *S. theol.* 2, 2, q. 60, a. 5 ad 1.

[8] Ground of right, laws of right, norms of right.

[9] Cf. Gopfert, l.c.

2. Divisions Of Right. Among the multiple divisions of subjective right, the following seem to be the more principal:

1. By reason of origin, right is divided into natural, positive-divine, and human. Natural right is the moral faculty, belonging to man from the very principles of human nature, of doing, demanding, etc., something;[10] for example, the right of defending one's own life, the right of possessing goods, etc. Positive-divine right is that faculty which belongs to man by force of a special divine decree; for example, the right of receiving the sacraments, the right of hearing the Gospel. Human right, which again is divided into ecclesiastical and civil, is that which emanates either from ecclesiastical law or from civil law. Thus parishioners have a right that the pastor administer the sacraments to them; citizens of the state, however, have a right that they be protected as to life and goods by the civil government.

Natural rights are either innate[11] or adventitious,[12] according as they arise of themselves from birth itself or from some contingent fact. An innate right is, for example, the right of children to receive suitable support from parents. An adventitious right is, for example, the right which someone acquires by the purchase of some thing. Natural right, and the same holds for positive right, is also divided into abdicable right,[13] for example, the right to some possession, and inabdicable right;[14] for example, a husband cannot abdicate his right over his wife, so that another may licitly live with her maritally.

Finally, natural right is divided into natural right strictly so called and the right of nations, which comprises conclusions necessarily deduced from natural right and therefore observed among all nations. The right of nations, therefore, is as it were a middle between natural right and civil right. Moreover, the right of nations is not always taken in the same sense.[15]

2. By reason of effect, strict right and non-strict right are distinguished. Strict right is that which is so closely connected with man that it cannot be taken away from him without manifest injury. A right of this kind is, for example, the right of legitimate property. For when someone takes away my legitimate property from me, he wounds my strict right and is held to repair the wounded justice. Non-strict, or broad, or imperfect right is that whose wounding does not constitute injustice properly so called, but a certain inconvenience more or less grave. The common poor man has a non-strict right to alms; a man who has deserved well of the republic has a non-strict right to honors, etc. Sometimes strict right is also divided against equitable right, which is then taken as a certain correction of excessively hard positive right, and which attends rather to the mind of the legislator than to the letter of the law. Cf. what was said above, I, n. 231, concerning epikeia.

3. Strict right is subdivided into *ius in re* and *ius ad rem*. This division is very celebrated both in ecclesiastical law and in civil law. *Ius in re*, or real right,[16] is that by which someone enjoys some thing already legitimately existing, at least in some way, in his disposition. But what conditions are necessary in order that some thing be legitimately in the disposition of someone is usually determined by positive laws.[17] This right confers a real action, that is, an action which immediately reaches the thing itself, wherever finally this thing may be found, for example, if someone has a mortgage over some thing.

Ius ad rem,[18] or personal right or acquired right, is that which someone has so that some thing not yet possessed may become his. This right gives a personal action,[19] which immediately reaches the person detaining the thing and only mediately the thing itself. Hence if someone has only *ius ad rem*, he cannot occupy that thing, but must first, if this is possible, call into judgment the person who detains the thing and refuses to hand it over; for example, if Peter owes me 1000 francs, I cannot licitly take away an equal value from him, but I must first demand from him the return of the money owed. Thus at least ordinarily. *Ius ad rem* is therefore the way to *ius in re*.[20]

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[10] *S. theol.* 2, 2, q. 57, a. 2. Concerning other acceptions of natural right less customary today, see *Suppl.* q. 65, a. 1 ad 4. That natural right truly exists is denied by some modern jurists, but it was already admitted in the Code of Justinian and manifestly follows from the existence of natural law; cf. above I, 152.

[11] Innate right.

[12] Acquired right.

[13] Alienable right.

[14] Inalienable right.

[15] Cf. St. Thomas, *S. theol.* 1, 2, q. 95, a. 4; 2, 2, q. 57, a. 3; Cathrein, *Moralphil.* I, 8, 6, § 2.

[16] Real right, right in a thing.

[17] Cf., for example, Cod. civ. Germ. § 854 sqq.

[18] Right of claim.

[19] Personal right of action.

[20] Cf. especially Gopfert, *Moraltheol.* II, 51 b; or Tanquerey, *De iustitia* n. 18; or Muller, *Theol. mor.* II, § 93.

3. On dominion.[21] *Ius in re* is also called dominion, which is commonly defined: the legitimate faculty of disposing of some thing as one's own.

It is said, first: legitimate faculty, that is, a faculty granted by right, whether natural or positive. Therefore a man having dominion over some thing can dispose of it only within the limits placed by law. Hence a rich man dissipating his own goods does not indeed sin against commutative justice nor against positive right, but he sins against natural right, committing the sin of prodigality, which indeed is against liberality, which is a potential part of justice.

It is said, second: of disposing of some thing as one's own. Therefore curators and dispensers of things belonging to another do not have dominion over those things, since they do not dispose of their own things but of another's. The exercise of this faculty of disposing is sometimes bound by civil law or statute; for example, children cannot dispose of their own goods.

Divisions Of Dominion. Dominion has received many divisions, of which the principal are the following:

a) Divine dominion and human dominion.

To God there belongs, by the title of creation and conservation, the most perfect dominion, according to that saying: "The earth is the Lord's and the fullness thereof, the world and all who dwell therein."[22] By delegation from God, dominion belongs to man, who therefore cannot use it according to his own will, but according to the will of God delegating. Man is the steward of God. Human dominion is subdivided into:

b) Full dominion and semi-full dominion.

The first is the perfect faculty of disposing both of the thing itself and of its fruits. The other is the faculty of disposing either of the thing or of its fruits. But this semi-full dominion is subdivided a) into radical, or direct, or naked dominion, if someone indeed retains the ownership of the thing, but does not have free disposition either of the thing itself or of its fruits;[23] and b) into indirect or useful dominion, which extends either to the proper use of the thing and its fruits, with the substance of the thing preserved, without the fruits of the thing being able to be alienated, and then it is called use (*Gebrauch*); or it extends to total dominion of the fruits, even with the faculty of alienating them, while nevertheless the substance of the thing itself is preserved, and then there is usufruct (*Niessbrauch*). These two modes of dominion especially have place in contracts of leasing, emphyteusis, etc. Use and usufruct legitimately obtained introduce certain rights and debts both for the owner of the thing and for him who has useful dominion. The civil laws of each region must be attended to.[24] Generally speaking, the usufructuary has full dominion of all fruits which in any way arise from the thing. Treasures perhaps found in that thing are excepted,[25] since they are not properly fruits of the thing. But the usufructuary is held to pay annual taxes, which are considered to be burdens of the fruits; he is held to preserve the thing in the state in which he received it, and therefore he must make small repairs. Greater repairs, however, must be made by the owner himself. Then he is held to administer the thing as a good father of a family.

c) High dominion and low dominion.

The first is that which the supreme legitimate power has of disposing, sometimes from grave cause, of the goods of private persons for the good of the community. The other is the dominion of private persons, to which the definition given above applies. High dominion[26] is not dominion properly so called, since the supreme legitimate power is not a mistress possessing the goods of all subjects, nor can it convert them to its

own advantage. Such high dominion may not licitly be exercised unless a) the true necessity of the community demands it, b) equivalent compensation has been given, and one subject is not burdened more than another. High dominion is exercised not rarely in our days in so-called expropriations for the construction of railroads and other roads.

To low dominion, which sometimes is also called private dominion,[27] there is opposed community of goods. Since in our days Socialism proclaims with a loud voice that private dominion is nothing other than theft, and that community of goods must be established, it is necessary here to say a few things:

On The Origin And Licitness Of Property And Private Dominion

[21] Right of ownership, right of disposal, *droit de propriete.*

[22] Ps. 23:1.

[23] Dominion of this kind, radical dominion, is had, for example, by religious over their goods after simple profession, and generally by all to whom free disposition of their own goods is forbidden by law, as, for example, wards.

[24] Cf. Cod. civ. Germ. § 1030 sqq.; Cod. civ. Gall. art. 578 sqq.

[25] Cod. civ. Germ. § 1040; cf. below n. 46.

[26] Superior ownership right, *haut domaine*, right of expropriation.

[27] Private ownership right.

4. Authors do not agree whence private dominion first arose. Some (Hugo Grotius, Pufendorf) wish that it arose from a social pact, by which men agreed that goods previously common to all would thereafter be divided among individuals. Others (Hobbes, Montesquieu, Bentham, several moderns) teach that the division of goods was first made by civil law. Others, namely modern Socialists, teach that the division of goods was introduced by violent occupation, so that the stronger, having overcome the weaker, violently and unjustly occupied goods previously common. Others have devised still other theories.[28]

These opinions being left aside, it is better and more correct to distinguish in this matter the question of right and the question of fact. Certainly, sometimes private dominion was made by first occupation, as when inhabitants arrived in a land up to that point uninhabited. Sometimes, however, private dominion is constituted by civil law, as when the civil government assigns lands to be cultivated to certain farmers. Finally, sometimes the division of properties was made from a social pact, as we read in Sacred Scripture concerning the division of lands between Abraham and Lot.[29] But as to the question of right, without doubt private dominion (circumscribed by just limits) follows as a conclusion from natural law itself, not indeed in the sense that community of goods is directly against natural law,[30] but that, all circumstances considered, for the most part it is not so conformable to natural law. This is explained in this way by the Angelic Doctor:[31] a) Because each person is more solicitous in procuring something which belongs to himself alone than that which is common to all or to many. For care concerning things exacts fatiguing labor, and if one must labor for the common good, many shrink back from the fatigue. b) Because human affairs are treated in a more orderly way if to each person there is incumbent the proper care of procuring some thing; but there would be confusion if each one indiscriminately procured anything whatever. c) For the preservation of peace. Hence we see that many and frequent quarrels arise among those who possess one and the same thing in common.

Deservedly, therefore, Leo XIII said in the Encyclical *Rerum novarum*: "To possess things privately as one's own is a right given to man by nature." Pius X proposed the same doctrine in the Motu proprio of 18 Dec. 1903 (Prop. 5). But if St. Thomas (and with him several theologians) teaches that private dominion was introduced

from the *ius gentium*, under the name of the *ius gentium* he does not understand the so-called international law of peoples, but a right derived from natural law itself.[32] Behold his words: "In another way something is naturally commensurate with another, not according to the absolute account of itself, but according to something which follows from it, for example the property of possessions; for if this field be considered absolutely, it has nothing by which it should be this man's rather than that man's; but if it be considered in respect to the suitability of cultivating it and to the peaceful use of the field, according to this it has a certain commensuration to this, that it be of one man and not of another."[33] And the same Angelic Doctor says: "Those things belong to the *ius gentium* which are derived from the law of nature, as conclusions from principles."[34] From all these things it is manifestly drawn out that private dominion is something licit, but Communism preached by the Socialists must be rejected.

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[28] Cathrein enumerates seven diverse theories (*Moralphilos.* II, 44).

[29] Gen. 13:8 sqq.

[30] Hence St. Thomas says: "The property of possessions is not against natural law, but is superadded to natural law through the devising of human reason" (*S. theol.* 2, 2, q. 66, a. 2 ad 1).

[31] *S. theol.* 2, 2, q. 66, a. 2. Franc. Walter, *Das Eigentum nach der Lehre des hl. Thomas von Aquin und des Sozialismus* (1895) 7 sqq., and Franc. Schaub, *Die Eigentumslehre nach Thomas von Aquin und dem modernen Sozialismus* (1898) 259 sqq., wrote more broadly concerning this matter.

[32] Concerning the diverse acceptions of the *ius gentium*, cf. Cathrein, *Moralphil.* I, 8, 6, § 2.

[33] *S. theol.* 2, 2, q. 57, a. 3.

[34] Ibid. 1, 2, q. 95, a. 4.

5. Scholion. On The Enemies Of Private Dominion. That private dominion is illicit and therefore to be abolished was taught by: a) the Apostolics (*Apotacticae*, Renuntiators), asserting that a man cannot be saved unless, after the example of the apostles, he lives free from any possession;[35] b) the Manichaeans, saying that to possess fields, houses, and money is illicit;[36] c) the Waldenses and Albigenses, teaching that at least perfect men must renounce every possession. But especially with all their strength there fight against private dominion: d) modern Socialists and Communists.

Modern Socialism is usually joined with Anarchism, with Indifferentism in matters touching religion, indeed almost always with a fight against every positive religion. In present times Socialism widely rages almost everywhere on earth and grows day by day. Although the Socialists are divided among themselves, nevertheless almost all agree in the principle stated by Karl Marx: Capital is pure and putrid theft, because it has been born from the retention of that money which was owed to workers for their labors. Likewise the following demands are proposed by all Socialists:

1. The right of choosing deputies completely general both for men and for women (from the twentieth year of age).
2. The right of choosing all superiors and officials of the state.
3. Religion is a private matter, that is, each person should exercise the religion which he prefers.
4. A lay school without religious instruction.
5. Separation of Church from State.
6. Abolition of all indirect taxes.[37]

Things To Be Noted For Practice. Certainly it is not forbidden that workers and other men of lesser condition strive by any legitimate means both to have a better wage and favorably to raise their condition; nevertheless it is never licit to employ means forbidden by Catholic moral Theology in order to obtain that end. Several associations imbued with Christian principles already exist for improving the lot of workers. The priest must cautiously and prudently foster associations of this kind; but all workers must be deterred from socialist associations and especially communist ones, since these, as mournful experience bears witness, almost always ruin the religion and good morals of workers, and do not make their material lot better. Hence the priest with all his strength should teach workers that private dominion is licit, and that the possessions of the rich are not always theft; that one must labor in the sweat of his brow, as already after the fall of Adam was foretold by God to the whole human race; that true human happiness is not situated in great possessions, but in the good use of material things, and that it is better to need less than to have more, as St. Augustine says. Above all he should also promote the fervent exercise of religion both among the rich and among workers. For because charity has grown cold, thence hardness has arisen among the rich. But since faith has become tepid among all, thence workers no longer with all their strength long for eternal happiness, but through right and wrong seek earthly happiness and are carried away by monstrous passions.

Socialism does not everywhere have the same degree of perversity, whence the circumstances of individual regions must be considered. But generally speaking, all who freely and positively adhere to the sect of the Socialists (and a fortiori of the Communists) are not worthy of sacramental absolution unless they seriously promise to leave that sect as soon as they can. More mildly can those be treated who adhere to the Socialists not freely but compelled by grave fear, and not actively but merely passively. For if these seriously promise the confessor faithfully to observe the precepts of religion and to guard against scandal according to their powers, they can receive the sacraments. Nevertheless they must gradually, according to their powers, separate themselves from the socialist sect. Several authors, such as Heiner, D'Annibale, Ballerini-Palmieri, etc., teach that positive socialists fall into the excommunication laid upon those who plot against civil or ecclesiastical power. Whatever may be said of this opinion,[38] this is certain: socialists greatly harm the Catholic religion.

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[35] Cf. St. Epiphanius, *Adv. haer.* 61; St. Augustine, *De haer.* 40; St. John Damascene, *De haer.* 61; see also Wetzer and Welte, *Kirchenlex.*, s. v. "Apostoliker."

[36] Cf. St. Augustine, *De mor. eccl.* l. 1, c. 35, n. 78.

[37] The history and diverse forms of Socialism may be seen in Tanquerey, *Theol. mor.: De virtute Iustit.*, n. 54 sqq.

[38] Cf. below in the treatise on censures, III 516.

Chapter II. On The Object Of Right Or Dominion

The whole doctrine concerning the object of dominion is comprised in five principles:

6. Principle 1. Man has useful dominion, but not absolute dominion, in the goods which are intrinsic to him, namely those of soul and body.

The reason is that man is as it were God's steward, to whom diverse talents of body and soul have been entrusted to be administered for attaining his supernatural end. Moreover, a steward does not have absolute dominion of the goods entrusted to him, but is held to administer them according to the good pleasure of the lord; nevertheless he can use the talents given for his own advantage. From this principle there follow very practical corollaries, namely:

Corollary 1. Man arrogates to himself a right which he does not have when he destroys the life of the body by suicide. "You are, O Lord, he who has power of life and death," it is said in Sacred Scripture.[39] Likewise man commits an injury against God if he corrupts bodily health or calls it into danger without sufficient reason. But much greater is the injury brought against God when man through mortal sin loses the life of his own soul.

Corollary 2. Man cannot treat his own body just as it pleases him. Hence man cannot licitly cut off his own members, procure for himself surgical sterilization or vasectomy, unless this is necessary for driving out a grave sickness; he cannot use his own body for lust; but he can, indeed he must, even with bodily detriment, guard the life of the soul; he can also, on account of the exercise of virtues and for the great utility of the soul, expose bodily health to danger or diminish it, for example by fasting, undertaking grave labors, setting out to foreign missions for the preaching of the Gospel, etc.

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[39] Wis. 16:13.

7. Principle 2. To man there belongs strict dominion (although limited) over his own reputation.

The reason is that reputation truly is a property which man has acquired for himself by his own labor, namely by the honorable exercise of his faculties, or at least from inheritance. A good reputation is a most precious good. Hence it is said in Sacred Scripture: "A good name is better than many riches."[40] Hence he commits a great injury who takes away or diminishes another's good reputation by calumny or detraction.[41]

Nevertheless man's dominion over his own reputation suffers limitations. For since a good reputation is so necessary for the happy and fruitful operation of man, a grave cause is truly required in order that its voluntary loss may be licit. Hence Sacred Scripture also admonishes: "Have care for a good name: for this will remain for you more than a thousand precious and great treasures. The number of days of a good life: but a good name will remain forever."[42] Therefore, just as it is not licit to dissipate one's temporal goods, so a fortiori it is not licit to call one's reputation into danger without grave cause. But man is gravely prohibited from diminishing his own reputation, especially if his infamy redounds upon his neighbor, for example upon his family, upon the convent in which he lives, if a good reputation is very necessary for exercising the duties of his state. Hence, for example, a priest cannot permit (without seriously contradicting) the wounding of his own reputation, because the faithful will not have confidence in a priest whose reputation is stained. Nevertheless, from a reasonable cause, man can voluntarily make a loss of his own reputation, for example for exercising humility, for celebrating the mercy of God, etc. Hence St. Augustine wrote the book of the *Confessions*, St. Francis of Assisi wished to be regarded as foolish, etc. Therefore the general rule is: it is licit to suffer the loss of one's own reputation if the good effects following from it prevail over the evils. In practice it is usually safer not to trust too much in one's own judgment in this matter, but to seek the counsel of a prudent man.

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[40] Prov. 22:1.

[41] How restitution must be made after such an injury, see below n. 187, where damage-inflicting is treated.

[42] Ecclus. 41:15 sq.

8. Principle 3. Man has dominion over the offspring of his own intellect and industry, according as, however, it has been determined by individual civil laws.

The offspring of intellect are: books published by an author, images, musical rhythm, medicinal remedies newly invented, and other artifacts made by an artisan. All indeed teach that it is pure and putrid theft if

someone secretly takes away from another manuscripts or artifacts or inventions not yet made matters of public right, because the legitimate owner is reasonably unwilling on account of grave damage and grave injury brought against him. But when a manuscript has already been printed, or if an invention (commonly, Patent) has already been divulged, theologians dispute whether a new printing of the book made without the author's permission or imitation of the invention is against natural right and obliges to restitution. Some deny this, because a work once published already becomes a common good, which can licitly be occupied by all;[43] but the more common and truer opinion affirms it, yet with the restrictions indicated by positive law. And indeed it seems to be a great injury that he who perhaps with hard labors wrote a book, or invented something new, should be frustrated of the fruits of his labors because another publishes the book again or makes an imitation of the invention. Nevertheless, from another side, it would be very harmful to the common good if the publication and imitation of such works remained reserved forever. Wherefore it is necessary that positive laws indeed protect the rights of the author, but also limit them; and thus in fact it has been done among all cultivated nations. Indeed, concerning this matter there exist international pacts among several nations. Already in the year 1886 at Bern in Switzerland such a pact was entered into among some nations, and it was augmented at Paris in the year 1896. But afterward certain nations entered into still special pacts.[44]

Things To Be Noted For Practice. Since natural right does not have special determinations concerning the dominion of authors, and since the determinations of diverse civil laws seem sufficiently just and constitute true rights, they also oblige in conscience, and transgressions induce not only sin but also the obligation of restitution, if the true owner has suffered grave and certain damage. Thus is the opinion today more common. In practice the quantity of restitution can be determined with difficulty, because it is almost impossible to weigh the damage which the author has suffered. Lehmkuhl writes to the matter: "He is held to that restitution which the judge will have defined, if he is called into law. If the author is unwilling to pursue the matter in judgment, and nevertheless does not renounce restitution, that must be restored to the author and publisher in which, according to equitable estimation, they have suffered damage or have been defrauded of profit."[45]

It must be noted that sometimes restitution must be made not only to the inventor but also to buyers. For example, someone has produced a liquor similar to the very celebrated liquor commonly called "Chartreuse" and sells it as true "Chartreuse." In this case the damages brought must be repaired: 1. to the legitimate proprietors producing true "Chartreuse"; 2. to all those who bought false "Chartreuse" in error, since that false liquor has much less value than true liquor, and besides perhaps diminished the health of those drinking it. Since the buyers for the most part are unknown, something must be given in their place to the poor or to pious causes. But how much and how it must be restored can hardly be defined easily. The falsifier does not deserve great indulgence. If he has been detected, even by civil law itself he is most gravely punished and is held to pay the imposed penalty. But if he has not been caught by the civil judge, nevertheless there falls upon him the moral obligation of repairing the damages. Perhaps restitution can then be made in this way: after deducting the expenses which the adulterator made in the fabrication of the thing, let him divide the whole profit into two parts, of which let him expend one upon pious causes, but restore the other to the legitimate proprietor producing it. Thus, saving a better opinion and with circumstances altogether particular, sometimes occurring, set aside.

Often the permission of the author can be presumed for publishing small articles published by him or for transcribing music for private use; the same is valid concerning translations into another language, provided nevertheless that it is a matter of lesser moment. For thus common usage bears. But many authors in these cases require that it be indicated by the translator or new publisher whence he took the written article. But if

it is a matter of translations of greater moment, for example of an entire book, then the permission of the author or publisher cannot be presumed, and therefore such an illegitimate translator must be treated in the confessional almost as was said above concerning an illegitimate publisher.

[43] Thus especially Bucceroni, *Theol. mor.* I, n. 878; somewhat also Morres, *De iust.* I, n. 24; Vermeersch, *De iust.* n. 246 sqq.

[44] Cf. *Herders Konversations-Lex.*, s. v. "Urheberrecht."

[45] *Casus consc.* I, n. 580.

9. Scholion. On The Dominion Of Authors According To Some Modern Civil Laws. The dominion of authors is protected by Spanish civil law during the life of the author and after his death for 80 years;[46] by French civil law during the life of the author and after his death still for 50 years; by German, Austrian, and Swiss law during the life of the author and then for 30 years; by British law for 42 years after the first appearance of the work; by the law of North America for 28 years from the day on which the book was sent to the "Librarian of Congress, Washington"; the duration of 28 years can be prolonged for another 14 years.

Concerning the laws of diverse regions about the right of a new invention (commonly *Patentrecht*, Patent right, *droit sur les brevets d'invention*), since those laws are not easy either for understanding or in practical application, there is no leisure to speak here. If a case occurs in the confessional, the confessor should first consult an upright man who is skilled in this matter (commonly *Patentanwalt*); for it is morally impossible that the confessor be able to render a right judgment in so arduous a matter without the previous counsel of someone skilled in civil law.

[46] Cf. Larraga-Sarollegui, *Comentarios al P. Larraga* n. 703; Cod. civ. a. 428 sq.

10. Principle 4. To man there belongs strict dominion over external goods legitimately possessed.

This is clear from what was said above, n. 4, concerning the licitness of such private dominion and concerning the absurdity of Communism.

11. Principle 5. Man does not have full dominion over another man, but he can have useful dominion.

The reason is that each man has received from the Creator some inalienable rights. Hence no private man can dispose of the bodily or spiritual life of his neighbor. For as to this all men are equal. Whence it is a most grave injustice if someone by his own authority kills another, unless nevertheless he acts from legitimate defense or with the moderation of inculpable self-protection, as will be explained below concerning an unjust aggressor. A legitimate judge can inflict the penalty of death as bearing the place of God, as will be said below, n. 118.

Useful dominion over the faculties and works of a neighbor can belong to some man, because this follows necessarily from the inequality of the states of diverse men. This diversity indeed has been instituted by God himself, since he willed some to be masters and others to be servants. Wherefore all theologians teach that, pagan slavery being rejected, by which a slave was regarded altogether as a material thing or a brute animal, even slavery properly so called, by which someone is held through his whole life to serve another in all licit things, is prohibited neither by natural right nor by positive-divine right. Hence we see slavery existing not only among barbarous nations, but also among the Jews.[47] Slavery is manifestly presupposed as something in itself licit also in the New Testament. For the Apostles command that slaves be subject "in all fear to masters, not only to the good, but also to the harsh";[48] they exhort masters to treat slaves kindly;[49] they sometimes advise them, but do not command them, to free them.[50] Nevertheless, history bearing witness, slavery has

almost always involved many abuses; and therefore both civil and ecclesiastical law gravely prohibit slavery properly so called in our days.[51]

[47] Cf. Ex. c. 21; Lev. c. 25; Deut. c. 20-21.

[48] 1 Pet. 2:18; similar things are found in Col. 3:22; Eph. 6:5.

[49] Cf. Eph. 6:9; Col. 4:1.

[50] Almost the whole Epistle to Philemon.

[51] Cf. Gregory XVI, Const. *In supremo apostolatus*, 3 Dec. 1839, and Leo XIII, Encycl. *In plurimis*, 5 May 1888.

12. Scholion. On The Various Kinds Of Goods. After what has been said concerning the object of dominion, it is useful to add small explanations concerning the various kinds of goods which fall under dominion. For diverse civil codes distinguish very carefully among diverse kinds of goods. They are:

1. Movable and immovable goods. Movable goods[52] are those which can easily be transferred from place to place. Immovable goods are those which either cannot be transferred, or are considered to be inseparably joined with an immovable thing. In individual codes it is usually determined which goods are considered immovable and which are not. Both in German law and in French law there are considered immovable goods, besides houses and fields and other things which adhere to the soil, also: a) crops and other fruits, as long as they are joined with the soil, but not after they have been separated from the soil by harvest; b) rights which are joined with some immovable good, for example the right of patronage, active servitudes, etc.; c) machines necessary in some workshop; animals necessary for carrying out agriculture, etc.[53]
2. Fungible and non-fungible goods.[54] Fungible things are movable goods which can function in place of others; moreover, they are those things which in commerce are customarily numbered, weighed, or measured, and are consumed by the first use, for example money (which among all fungible things, according to modern practice, obtains the first place), oil, grain. For if someone has lent me, for example, 100 francs, I am not held to return altogether the same little coins of gold or silver, but in place of the coins loaned, any other coins of the same value can function. But non-fungible things are those which cannot be substituted by others, but, if they have been loaned or taken away, must be returned altogether identically; for example, if someone has loaned this horse, it does not suffice to return another horse, but altogether the same horse must be returned.
3. Consumable and non-consumable goods.[55] Consumable goods are considered to be those things which, as such, are consumed by the first use, for example food, drink, money, etc. But I say: which as such are consumed by the first use; for it is not required that they be altogether destroyed or receive another nature. Thus, for example, the cloth from which a garment has been made indeed remains, but it has now been made clothing and ceases to be cloth. Therefore it is considered a thing consumable by the first use. But non-consumable goods are things which are by no means consumed by the first use, but remain in their first state, for example a garment, a house, books, etc.

These divisions must be committed to memory, because otherwise several expressions of civil codes can be understood only with difficulty.

[52] *Fahrnis, fahrende Habe.*

[53] Cf. Cod. Civ. Germ. §§ 93-98, where these things are called: *Wesentliche Bestandteile einer Sache und Zubehör.*

[54] *Vertretbare und nicht vertretbare Sachen* (cf. Cod. civ. Germ. § 91).

[55] *Verbrauchbare und nicht verbrauchbare Sachen* (ibid. § 92).

Chapter III. On The Subject Of Right Or Dominion

The subject of dominion is called he who is the master of some thing, or he to whom dominion belongs. It is clear of itself that to God the creator there belongs the most perfect dominion of all things. But it is asked what creature is the subject of dominion.

13. Principle. Only the rational creature can be the subject of dominion (but not the irrational creature, nor a fortiori the inanimate creature).

The reason is: a) Because only the rational creature is the image of God, since he has a spiritual soul endowed with intellect and will; but other creatures are nothing except a vestige of God. But that this is the cause of human dominion is drawn out, not obscurely, from the words of the Creator saying: "Let us make man to our image and likeness, and let him rule over the fishes of the sea and the beasts of the earth."[1] For the Creator granted to man dominion over the fishes and beasts, that is, over the whole creature, because he is the image of God; or because he has intellect and will.

b) Because dominion is a moral faculty of disposing concerning some thing, as was said above, n. 3. Now no being except a rational one has a moral faculty, since this supposes intellect and will.

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[1] Gen. 1:26.

14. Resolves. 1. Animals are not the subject of right, as was already said above, n. 1. Therefore if someone wantonly slaughters or cruelly treats animals, he wounds no right, nor does he even commit injustice. Nevertheless, cruelly to treat and harass animals (without sufficient reason) is sinful, both because it is opposed to right reason, and because man in such torture often seeks pleasure that is plainly perverse. And indeed man is held in all actions to act for an honorable end. Now cruelly to treat animals without sufficient reason evidently is not done for an honorable end. Therefore man sins by uselessly tormenting animals.[2] This sin indeed of itself is nothing except venial, since it is nothing except excess in an otherwise licit use;[3] but by accident it becomes mortal, for example on account of sexual lust caused not rarely in the torturer (Sadism). If the torture of animals is done from an honorable end, as in vivisection scientifically and rationally performed, it is not a sin.

2. Even the insane and children before the use of reason are capable of dominion habitually; for they too have intellect and will, although they cannot actually use these powers. But the actual use of reason and will is by no means required for dominion; otherwise even those sleeping and the drunk would lose dominion. Hence St. Paul attributes to little children true dominion of an inheritance left behind in these words: "As long as the heir is a little child, he differs nothing from a slave, while [i.e. although] he is lord of all; but he is under tutors and guardians until the time prefixed by the father."[4] Thus also modern civil laws establish.[5] Since man even before birth (at least in the last months after conception) certainly possesses a rational soul, hence as to some things at least, already after conception he is capable of dominion, for example as to the capacity of receiving an inheritance.[6]

3. Not only physical persons can be the subject of dominion, but also moral or juridical persons; for they are usually formed from several physical persons. Ecclesiastical juridical persons are, for example, parishes, monasteries, etc.; but civil juridical persons are, for example, commercial associations

legitimately instituted, such as banking institutions (commonly Bank). But what is required in order that some ecclesiastical or civil juridical person have all the rights of dominion is determined by ecclesiastical or civil law.

The subject of dominion is not rarely rather restricted in the exercise of his dominion by both civil and ecclesiastical law. It is long to treat all these matters, which pertain rather to jurists than to theologians. But since there are special difficulties concerning wives, sons of families, and ecclesiastics, according as these are the subject of dominion, moralist authors also are accustomed to treat each of all these matters individually. Several theologians also treat separately of the dominion of authors, but those things which were said above concerning dominion over the offspring of one's own intellect plainly suffice.

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[2] Cf. St. Thomas, *Contra Gent.* III, 112.

[3] Thus also Gopfert, *Moraltheol.* II, n. 141; Noldin, *De praeceptis* n. 346.

[4] Gal. 4:1 sq.

[5] For example, Cod. civ. Germ. § 1; Cod. civ. Gall. a. 8.

[6] Cf. Cod. civ. Germ. § 1923.

Article I. On The Dominion Of Spouses

15. General Principles. A man and a woman contracting marriage enter into an undivided companionship of life, of which the man is the head. Nevertheless each one in the matrimonial society retains natural rights, as is clear of itself. Therefore each one remains capable of dominion. Both spouses must strive strongly for the suitable support of offspring; one must also suitably support the other. From these things it follows (however civil laws have been established and although the wife has contributed nothing to the material good of the family), nevertheless she has a strict right to suitable support according to her condition, or just as other women of the same condition.

16. The honorable support of a spouse comprises: a) suitable food and clothing (and probably also after the death of the other spouse).[7] For the wife is not a maidservant but the companion of the husband. b) The faculty of spending certain things for honorable recreation, of giving small gifts, of giving alms, just as other spouses of the same condition are accustomed to do. Hence the wife does not sin against justice if she does all these things without consulting the husband or against his will. Nevertheless, in practice it is not expedient that a wife, against the husband's will, dispose thus of common goods (the matter stands otherwise if the wife disposes of her own peculiar goods), unless true necessity, at least moral, demands it; because otherwise great abuses and very many quarrels can easily arise between spouses. This indeed is especially valid if it is a matter of alms and gifts; for it is better to abstain from these than to procure discord. There is a greater difficulty if the wife is held to help her parents or sons perhaps had from a prior marriage. In which case, if the parents or those sons are in grave necessity, the wife is held to help them from her own goods, if she has any; but if she has no goods of her own, she can help them from common goods, but she must not notably exceed the quantity concerning which she can dispose as alms. Certain theologians[8] permit the same toward brothers and sisters if they are very poor. In practice wives are to be exhorted first to make the husband more certain about extraordinary alms to be given; but if this cannot be done, then wives are to be induced to acquire for themselves, by special industry or extraordinary labor, certain goods from which they can licitly give those alms; or also, from those things which are granted to them by the husband for clothing, amusements, etc., to save money for giving these alms.

If the husband is too prodigal and dissipates the goods of the family, then the wife can laudably hide certain goods, lest they be dissipated. Generally speaking, since the wife is not the servant but the companion of the man, she can prudently dispose of small goods of the family, because the husband cannot reasonably be unwilling concerning such a manner of acting.

The administration of common goods pertains to the husband, since he is the head of the family; but if the husband by gravely bad administration, dissipation, gambling, drinking, etc., has brought grave damage upon the wife, he is held to restitution. Nevertheless, in practice it must be seen what system of goods has been established in the matrimonial contract; whence also in the forum of conscience those things must be attended to which will be said below concerning the diverse statutes of civil laws.

As to practice, let the confessor strongly insist that both spouses administer material goods with united strength and minds. Although sometimes the wife does not commit injustice strictly so called if she disposes of common goods, and therefore is not held to restitution, nevertheless such clandestine dispositions are accustomed to produce many inconveniences, as was already said. Since these things are so, in this matter not only the virtue of justice must be observed, but also the virtue of prudence and charity.

These are the things which are valid in general concerning the dominion of spouses. Older moralists in this matter attended only to Roman civil law. But since in our times Roman law has almost everywhere been removed by other civil laws, we touch only briefly upon the statutes of Roman law and insist more on modern laws.

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[7] Cf. Lehmkuhl, *Theol. mor.* I, n. 1068.

[8] Lessius, Lugo, St. Alphonsus (*Theol. mor.* l. 3, n. 542), Aertnys, etc.

On The Dominion Of Spouses According To Roman Law

17. Roman law distinguished the wife's goods of three kinds, for example: 1. paraphernal, 2. dotal, 3. common.

1. Paraphernal goods (so called from the Greek words παρά, that is, besides, and φερνή, that is, dowry) are goods handed over to the husband besides the dowry,[9] and which the wife is accustomed to receive from gifts, inheritance, her own industry, etc. But in order that those goods be regarded as paraphernal, the wife must reserve them for herself explicitly or implicitly; otherwise they are considered dotal, since by marrying the wife is thought to give herself and all her things to the husband.
2. Dotal goods are those which the woman hands over to the husband for the relief of the burdens of matrimony and for the support of the family.
3. But common goods are those which are acquired by the labor of each spouse during matrimony.

With these distinctions established, the following principles are valid:

1. The wife has perfect dominion (that is, direct and useful) and also administration of paraphernal goods.[10]
2. The wife indeed has direct dominion of dotal goods, but neither their administration nor useful dominion, both of which pertain to the husband.[11]
3. The wife has direct dominion of one half of the common goods, so that when the husband dies this half of the goods falls to the wife; but useful dominion and the administration of all common goods pertain

to the husband.

[9] In the German and Swiss civil Code paraphernal goods are called *Vorbehaltsgut*, *Sondergut.*

[10] Cod. lib. 5, tit. 14, l. 8.

[11] Dig. lib. 23, tit. 4, l. 7.

On The Dominion Of Spouses According To The Civil Codes Of Certain Nations

Preliminary Note. The civil codes of diverse nations, in almost the same way as Roman law, distinguish between dotal, paraphernal, and common goods, and also, just as Roman law, attribute to the husband the administration and use of all goods, excepting only paraphernal goods, although sometimes they limit the husband's faculty somewhat. Therefore this must be kept before the eyes as a general rule: The husband has the use and administration of all the goods of the wife. Paraphernal goods are excepted.

Very briefly there are added the civil statutes of certain nations, which the confessor must know and according to which he can judge occurring cases. But if greater difficulties occur, let the confessor not omit to seek counsel from one skilled in law.

§ 1. On The Dominion Of Spouses According To German Law

18. 1. German law obliges, in the whole German Empire from the day 1 Jan. 1900, all citizens of that kingdom contracting marriage within the borders of Germany. If a German man contracts marriage outside Germany, he is still bound by German law; but not if a woman does this same thing.

2. A twofold regime of goods in marriage is distinguished, namely: a) legal regime (*gesetzliches Güterrecht*) and b) conventional regime (*vertragsmäßiges Güterrecht*), which nevertheless is subdivided into four species.

A. Legal Regime.

1. This regime is presumed unless it is certainly established concerning a conventional regime.
2. In this regime there are distinguished: the wife's brought-in goods (*eingebrachtes Gut*) and reserved goods (*Vorbehaltsgut*).

Reserved goods are considered to be:[12]

a) Things destined for the wife's use alone, for example garments, feminine ornament, etc.

b) Things acquired by the wife in an altogether independent business, for example by exercising the office of midwife.

c) Things received by inheritance or by donation between the living, provided nevertheless that the testator or donor expressly established that things of this kind constitute the wife's reserved goods.

d) Fruits of reserved goods.

All other goods are brought-in goods, if the legal regime is in force.

3. Over reserved goods the wife has completely free disposition; nevertheless from their proceeds, if this is necessary, she must contribute to the family estate.[13]

4. Over brought-in goods the husband indeed has usufruct and administration,[14] but he cannot alienate them (at least if they are immovable) without the wife's consent; he must administer them diligently, otherwise he is held to restitution; their fruits he must spend first of all upon the suitable support of the family.
5. The wife can petition in court that the administration and usufruct of her goods be taken away from the husband, if a true danger of bad administration is present, or if the husband does not provide suitable support to the wife and children.[15]

B. Conventional Regime.

Those about to marry can enter into a pact concerning their own goods before a judge or notary; and this pact, after marriage has been entered, can again be dissolved or changed by them before a judge or notary.

Moreover, a pact of this kind is fourfold, namely: a) universal community of goods (*Allgemeine Gütergemeinschaft*); b) community of gain (*Errungenschaftsgemeinschaft*); c) community of movable goods (*Fahrnisgemeinschaft*); d) separation of goods (*Gütertrennung*).

a) Universal community of goods.

1. This universal community of goods causes that from the goods of the man and woman there coalesces one common good (*Gesamtgut*),[16] whose administration pertains to the husband, who nevertheless in several cases needs the wife's consent.
2. It is also licit to exclude certain goods from this union (*Vorbehaltsgut*), according as it may please the contracting parties themselves.
3. This universal union of goods seems rarely to be advised from the beginning of marriage. But it could be fitting for avoiding inconveniences on account of an inheritance to be taken.

b) Community of gain.

1. In this regime, which is as it were a composition of the legal regime and the universal community of goods, there are the wife's reserved goods, as in the legal regime. Moreover, still other goods can be designated as reserved. But the husband does not have reserved goods.[17]
2. Reserved goods excepted, the administration and usufruct of the remaining goods pertain to the husband.
3. The brought-in goods of each spouse remain under his or her direct dominion, but the fruits of those goods become a common good.[18]
4. If this union of fruits is legitimately dissolved, then the obtained fruits are divided equally between the man and the woman.[19]
5. A union of fruits of this kind can especially have place in second marriages of either spouse, namely lest the offspring of the first or second marriage suffer damage.

c) Community of movable goods.

1. In this regime there exists a broader union of goods than in the union of gain. For to the union of all gain perceived from the brought-in goods there is added the union of all movable goods.

2. The wife, but not the husband, can have reserved goods.[20]
3. From this union of goods there are excluded (as is clear of itself) immovable goods, which must be treated just like brought-in goods.

But what goods are considered immovable was said in n. 12.

d) Separation of goods.

1. If by pact before or after the nuptials separation of goods has been stipulated, then the husband has no right to the use and administration of the wife's goods. Nevertheless, the wife can according to her own judgment concede to him the administration or use of those goods.[21]
2. The husband is indeed held to bear the burdens of matrimony, but the wife also must contribute something from her own fortune.[22]
3. The pact of separation of goods must be made according to legal form, otherwise it produces no effect.[23]
4. A pact of this kind seems advised if the goods of either spouse are in great danger, for example on account of commerce.

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[12] Cod. civ. Germ. §§ 1366-1370.

[13] § 1371.

[14] §§ 1373-1374.

[15] § 1418.

[16] § 1438.

[17] § 1526.

[18] § 1519.

[19] § 1546.

[20] § 1555.

[21] § 1430.

[22] § 1427.

[23] § 1431.

§ 2. On The Dominion Of Spouses According To French Law

19. General Rules:

1. Before marriage, the betrothed (if they are minors, the assistance of the father or guardian is required), as to their goods, have the faculty of entering into all pacts which they wish, provided that these be made before a public notary and are not opposed to good morals or laws.[24] If a special pact is lacking, the marriage is considered to have been entered under the regime of community.[25]
2. After the marriage has been celebrated, pacts previously entered can in no way be changed, unless nevertheless in the case of divorce or through the sentence of a judge.[26] This determination is hard, and therefore those about to marry must be very cautious in making matrimonial pacts.

3. Under any regime whatever, the wife cannot without the express consent of the husband: a) give her immovable goods between the living, alienate them, burden them with mortgage, or acquire another's goods (the husband's consent can be supplied by the authority of the judge);[27] b) appear in civil judgment.[28] Nevertheless, exceptions are given, especially those introduced by the law of 13 July 1907.

A twofold regime of goods is in force: a) legal (*communauté légale*), b) conventional (*régime conventionnel*), of which nevertheless the second is again subdivided, so that there are five systems of the regime of goods according to French law.

A. Regime Of Legal Community.

1. This legal community is always presumed unless the contrary is expressly established.[29]
2. This community coalesces: a) from all movable goods, both present and future; b) from all revenues of immovable goods; c) from immovable goods which, while the marriage stands, have been acquired from common goods. But to each spouse there remain as his or her own: a) immovable goods possessed before marriage; b) immovable or movable goods acquired after marriage by donation or inheritance under the explicit condition that they be one's own.[30]
3. The wife indeed retains ownership of her own goods, but she has neither administration nor usufruct over them, nor (a fortiori) over common goods (nevertheless she can make a testament concerning her own goods).[31] But the husband has administration and usufruct over all these goods, and he is held to furnish suitable support to the wife and family. He cannot alienate immovable goods without the wife's consent.
4. This community of goods can be dissolved, not indeed by the consent alone of each spouse, but a) by the death of either spouse, b) by a sentence of divorce or separation of bodies, c) by a sentence of separation of goods.[32]
5. When the union has been dissolved, the common goods and debts are divided into two parts between the spouses or their heirs. The proper goods of each spouse remain intact, as is clear of itself. In this separation of goods the wife enjoys certain privileges: a) besides her own goods, she can claim for herself an indemnity to be taken not only from the common goods, but also from the husband's goods; b) she can repudiate the half of the common goods falling to her. The effect of this repudiation is that from the goods left behind the wife can demand nothing except her garments, and her heirs nothing at all; but, conversely, she is not held to pay the debts of the community.

B. Conventional Regime.

This regime is divided into four parts: a) conventional community (*communauté conventionnelle*); b) regime without community (*régime sans communauté*); c) regime of separation (*clause de séparation des biens*); d) dotal regime (*régime dotal*).

a) Conventional community.

1. Future spouses can by an express pact extend or restrict the legal community just as they wish, provided nevertheless that they stipulate nothing against laws or good morals. "The principal modifications are those which occur by stipulating in one or the other of the following ways, namely: 1) That the community will embrace only the acquisitions [acquisitions which the spouses make by onerous title during marriage. This clause of community reduced to acquisitions is very frequent]. 2)

That the present or future movable property will not enter into community, or will enter into it only for a part. 3) That all or part of the present and future immovables will be comprised in it by way of rendering movable. [To render an immovable movable is, in the proper sense, to make it movable. The clause of rendering movable is that which has the effect of making an immovable fall into conventional community in the same way that movables fall into legal community. But under all other respects, the immovable rendered movable remains immovable.] 4) That the spouses will pay separately their debts prior to marriage. [This clause is often to be advised.] 5) That in case of renunciation, the woman will be able to take back her brought-in goods free and quit. [In this case the woman must have the value of the things which she brings at the time of her marriage established.] 6) That the survivor will have a *preciput*. [The word *preciput* comes from the Latin *praecapere*, signifying: to take beforehand. The *preciput* is the portion of common goods which a spouse, having already exercised his or her prior takings, takes by force of a convention before the division of the community, that is to say, before the composition of the lots.] 7) That the spouses will have unequal shares. 8) That between them there will be community by universal title."[33]

2. For the confessor, difficulties cannot easily arise from all these forms of conventions. If some doubt occurs, the words of the contract and the intentions of the contracting parties must be attended to.

b) Regime without community.

1. This regime is very similar to the regime of legal community, concerning which above. In this regime all the wife's goods are dotal.
2. The wife has and retains radical dominion of all her own goods, but the husband has full administration and usufruct of them and is held to the support of the wife and family. In one word: the husband is as it were the wife's steward.[34]
3. When the marital union has been dissolved, all the wife's goods return under her full dominion.

c) Regime of separation of goods.

1. In this regime all the wife's goods are paraphernal, and therefore the wife has full dominion and administration of them, with this sole exception: the wife cannot alienate an immovable good without the consent of the husband or of the judge.
2. Each spouse, according to the proportion freely established, is held to concur in the support of the family. If a fixed quantity is lacking, the wife is obliged up to a third part of her proceeds.[35] "The woman can therefore keep two-thirds of her revenues."
3. But if either spouse is reduced to want, the other must bear the expenses of the family estate.[36]

d) Dotal regime.

1. This regime agrees with the regime of separation of goods in this, that all the wife's goods are considered paraphernal, unless a) they are expressly determined by the wife as dotal, and b) they are given to the wife in the matrimonial contract.[37]
2. The husband has usufruct and administration of dotal goods; but he cannot alienate immovable goods constituted as dowry or burden them with mortgages, unless this has been established in the

matrimonial contract and in certain other cases designated by law.[38]

3. While marriage stands, a dowry can neither be constituted nor increased.[39]
4. The wife has full dominion over her own paraphernal goods. Nevertheless she cannot alienate immovable goods, nor appear for them in civil judgment, without the consent of the husband or of the judge.[40]

Scholion. From what has been said, it follows that in none of the five regimes of French law is the wife altogether independent from the husband; for she can never alienate immovable goods or appear in civil judgment without the husband's consent or the authority of the judge. Nevertheless, she can make a testament against the husband's will. This dependence of the wife upon the husband is fitting to the nature of marriage, because thus many damages are avoided which could arise for the whole family from a bad alienation of immovable goods made by the wife. Nevertheless to some this dependence seems exaggerated, especially if the husband is endowed with bad morals. Hence in almost all the codes of other nations greater liberty is conceded to wives.

In order that the rights of children from a prior marriage be preserved whole, French law provides that from the goods of a spouse married a second time, who has children from a prior marriage, too great a part should not fall to the new spouse. Hence it establishes that a widowed spouse can never give to the new spouse beyond a fourth part of his or her goods. But if he or she has had more (than three) children from the prior marriage, then he or she can concede to that spouse the same part which one legitimate child has.[41]

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[24] Cod. civ. Gall. a. 1387-1390, 1394, 1398.

[25] Art. 1400, concerning which below.

[26] Art. 1395 and 1443.

[27] Art. 217, 219, 1449, 1538.

[28] Art. 215, 216.

[29] Art. 1400.

[30] Art. 1401-1408.

[31] Art. 226.

[32] Art. 1441.

[33] Art. 1497-1527. Cf. C. Picot, *Code Napoléon expliqué* II, 172 sqq.

[34] Art. 1530-1535.

[35] Art. 1537.

[36] Art. 1448.

[37] Art. 1541.

[38] Art. 1554, 1557-1559.

[39] Art. 1543.

[40] Art. 1576.

[41] Art. 1098 sqq.

§ 3. On The Dominion Of Spouses According To English Law

20. 1. Just as French law and German law, so also English law recognizes two regimes of goods, namely legal and conventional.

2. The legal system now in force must be taken from the Married Women's Property Act, 1882, which law indeed is in force from the day 1 Jan. 1883.

3. During marriage the husband retains scarcely any right in the wife's goods, and therefore all the wife's goods are paraphernal in the most perfect sense, so that the wife can freely dispose of all her own goods.

4. During marriage the wife has a right to the suitable support of herself and her children from the husband's goods. If nevertheless the husband himself is constituted in necessity, the wife is held to support him insofar as it is possible.

5. When the husband has died, the wife has a right, during her own life, to the third part "of all the lands and tenements of which her husband was seized or possessed in fee simple or fee tail at any time during the coverture, and of which any issue that she might have had could have been heir."

6. A conventional system of goods can be entered most freely, both before and after marriage, between spouses according to their own wishes.[42]

[42] Cf. Slater, *Princ. theol. mor., de iust.* c. 7, § 3.

§ 4. On The Dominion Of Spouses According To The Law Of North America

21. 1. The United States of America does not, even today, have a uniform law concerning the goods of spouses, but diverse laws are in force in diverse states.

2. Nevertheless, generally there exists between spouses a perfect separation of goods, so that all the wife's goods are not only paraphernal, but also so that the wife has free administration and use of her own goods. Nevertheless common goods can also be constituted.

3. The wife is not held to pay the husband's debts, nor the husband the wife's debts, unless nevertheless it is a question of debts contracted on account of the family.

4. As dotal goods there can be considered the third part of the immovable goods which the husband possessed during marriage and which therefore cannot be alienated without the wife's consent. These dotal goods the wife can claim for herself after the husband's death, and therefore concerning this third part the husband cannot make a valid testament. In some states this right also belongs to the husband in the wife's immovable goods. "So in Maryland according to the new law of 1898 every husband shall acquire by virtue of his marriage an estate for his life in one third of the lands held or owned by his wife at any time during the marriage whether by legal or equitable title."[43]

5. Since so great a liberty of disposing has been conceded to spouses in the United States, a difficulty will not easily occur for the confessor. If some nuptial pact exists, its clauses must be attended to.

[43] Cf. Tanquerey, *Suppl. pro Mai. Britannia* p. 11, and Sabetti, *Compend. theol. mor.* n. 358.

§ 5. On The Dominion Of Spouses According To Austrian Law

22. 1. Austrian law presumes separation of goods, unless the contrary has been established by an authentic pact. "If spouses have made no special agreement concerning the use of their property, then each spouse retains his or her previous right of ownership, and upon that which each party acquires during the marriage and in whatever way obtains, the other has no claim. In doubt it is presumed that the acquisition comes from the man."[44]

2. Unless the wife has contradicted, it is presumed that the husband has administration and usufruct of all the wife's goods.[45] The husband is held to preserve the very substance of these goods; otherwise he is obliged to restitution. But he can dispose freely of the fruits.

3. The husband can before the nuptials demand a dowry, but he can also yield his right. The husband, during conjugal life, has usufruct of the dowry and its increase, but he is obliged to return the substance or an equivalent value of the dowry in case of death or divorce or cession of goods. Indeed those who hand over the dowry can from the beginning demand assurance of it.[46]

4. The wife has a strict right to suitable support from the husband's goods according to the condition of his state.[47] Those things which the wife receives from her husband, for example ornaments, jewels, etc., pass into the wife's full dominion, unless the contrary has been expressly stipulated.[48]

5. From Austrian law no difficulties can arise for the practice of the confessor. Liberty between spouses is very great. If a nuptial pact has been entered, its clauses must be observed, just as those of any legitimate contract.

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[44] Cod. civ. Austr. § 1237.

[45] § 1238.

[46] § 1245.

[47] § 91.

[48] § 1247.

§ 6. On The Dominion Of Spouses According To Italian Law

23. 1. In many things Italian law agrees with French law set forth above, and especially in the clause of the immutation of a contract entered after marriage. ("Matrimonial conventions of whatever species cannot be changed in any way after the celebration of marriage.")[49]

2. The determination of the dowry can be made from the wife's present or future goods, but once the dowry has been determined it cannot be increased during marriage.[50]

3. The husband indeed has administration and usufruct of the dowry, but not direct dominion over it, just as it has been established in French and Roman law.

4. For making changes concerning the dowry, alienation of goods, and the nuptial pact itself, the authority of the judge is required.[51]

5. In case of the dissolution of marriage, whether by the death of either spouse or by divorce, restitution of the dowry must be made according to the norms of art. 1409-1418. But the sentence of a judge is always required ("every extrajudicial separation is null").[52]

6. The wife indeed retains full dominion and administration of paraphernal goods,[53] but she cannot alienate her own immovable goods without the authority of the husband.[54]

7. Italian law does not admit another union of goods except the union of fruits (*communione degli utili*);[55] it is almost the same as *Errungenschaftsgemeinschaft* in German law and *communauté des acquêts* in French law.

8. For the confessor according to Italian law, difficulties can more easily arise on the part of the husband, whose rights are rather limited, than on the part of the wife, whose rights are broader.

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[49] Cod. civ. Ital. a. 1385.

[50] Art. 1389 and 1391.

[51] Art. 1405.

[52] Art. 1418.

[53] Art. 1427.

[54] Art. 134.

[55] Art. 1433.

§ 7. On The Dominion Of Spouses According To Spanish Law

24. 1. In Spain Roman law still is in force, with a few modifications applied. Thus, for example, in Roman law dotal goods are greatly distinguished from paraphernal goods; but in Spanish law dotal and paraphernal goods are indeed distinguished verbally, but in fact there is a small difference between them. Hence Larraga-Saralegui[56] says: "According to our Code, paraphernal goods are scarcely distinguished from dotal goods."

2. Unless there is a special antenuptial pact, the community of gain (*sociedad legal de gananciales*)[57] is supposed by the Spanish code, and all goods pertain to this union unless the contrary has been expressly proved.

3. From these common goods there must be paid not only all debts contracted by both the husband and the wife during marriage, but also expenses for the education of common children and even legitimate children of either spouse. This last rule seems to be altogether particular to Spanish law, just as also the other rule, namely that from these common goods fines perhaps imposed upon either spouse are not paid.

4. For the confessor, difficulties do not seem able easily to arise from these norms of Spanish law.

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[56] *Comentarios al P. Larraga* n. 697.

[57] Cod. civ. Hisp. a. 1315; *Errungenschaftsgemeinschaft, communauté des acquêts.*

§ 8. On The Dominion Of Spouses According To Swiss Law

25. General Rules.

1. According to the new Swiss law obliging in all Switzerland from the day 1 Jan. 1912, a conjunction of goods is in force between spouses (*Güterverbindung*), unless something else has been expressly stipulated.[58]

2. If spouses do not wish to adopt the legal conjunction of goods, they must before or after marriage[59] choose one of the two other systems, which are called: unity or participation of goods (*Gütergemeinschaft*), and separation of goods (*Gütertrennung*); nevertheless it is licit to stipulate certain modifications concerning the individual systems.[60]

3. In order that these stipulations and their modifications and introduced changes be valid for the contracting parties themselves and their heirs, it is required that they be signed by the contracting parties themselves (or their legitimate curators) and made by public instrument. In order, moreover, that they have value with respect to external persons who are not heirs of the contracting parties,[61] it is necessary that they be inscribed in the register (*Güterrechtsregister*) of the husband's domicile, and if the husband changes domicile, that this inscription be made within three months in the register of the new domicile.

4. Stipulations which are made after marriage has been entered are not valid unless the permission of the tutelary tribunal has first been had ("without permission of the guardianship authority").[62] Moreover, by no stipulations can any goods already burdened by debts be withdrawn from the payment of those debts.[63]

5. The new civil code distinguishes: a) the wife's goods (*Frauengut*) and the husband's goods (*Mannesgut*), b) reserved goods (*Sondergut*) and brought-in goods (*eingebrachtes Gut*). As reserved goods there are considered:

a) those which are designated as such in the matrimonial contract;[64]

b) goods pertaining to an altogether personal use (garments, ornament);[65]

c) revenues had by the wife from independent labor (for example, the art of midwifery, a wage obtained outside the home, etc.).[66] All other goods are brought-in goods. Revenues had by the wife must be used for the support of the family insofar as this is necessary.[67]

A. Legal System Of Conjunction Of Goods.

1. This system, as is already indicated from the words themselves, conjoins the goods of each spouse into one whole, whose administration and usufruct pertain to the husband.[68]

2. The husband not only has administration and usufruct of the wife's goods (excepting fruits from reserved goods), but also full dominion of them;[69] nevertheless some administration of the goods of the family is conceded to the wife.[70]

3. The wife is held from reserved goods to pay debts which she contracted without the husband's consent.[71]

4. In case of collapse of fortune (*im Konkurs und bei der Pfändung*), the wife can reclaim her own proper goods, if they still exist intact, and for others already consumed demand compensation. Indeed, if she cannot recover at least one half part of her own goods, the compensation owed to her must be made before the demands of other creditors are paid.[72]

B. Conventional System Of Unity Of Goods.

1. This system produces a much stricter union of goods than the preceding system, since through it there is effected a perfect union both of the goods themselves and of the revenues, so that both spouses have

altogether the same dominion over the united goods.[73] ("In the system of general community of goods, a separate ownership of the man and of the wife is no longer to be distinguished. The assets and liabilities of the property-complexes on each side, all that is brought in, inherited, acquired, given, earnings and increase become one common mass, and the owners of this total mass are the spouses.")[74]

2. The administrator of the united goods is the husband, and sometimes the wife, but only as taking the husband's place.[75]
3. The wife is held from reserved goods (if she still has any) to pay debts which she contracted without the husband's consent.[76]
4. In case of collapse of fortune, the same things are valid which were said above in the prior system, n. 4.[77]
5. When this union of goods is dissolved (by death or another legitimate cause), the goods are divided into two equal parts,[78] unless nevertheless something else has been established by the nuptial pact.[79] But in no case is it licit to withdraw from the heirs of the deceased spouse a fourth part (1/4) of all the united goods.[80]
6. In this system difficulties can arise for the confessor if the wife has made debts without the husband's consent. These debts must be paid from the wife's reserved goods, or otherwise from savings or extraordinary labors made by her.

C. System Of Separation Of Goods.

1. This system among the goods of spouses arises either from pact, or from law, or from the sentence of a judge.[81]

Separation of goods arises by law by the fact itself: a) by collapse of fortune ("when the creditors in the bankruptcy of one spouse come to loss"),[82] and b) by the death of either spouse.

Separation of goods arises from the sentence of a judge in several cases, which you may see in art. 183-185.

2. In this system each spouse has full dominion and administration of his or her own goods. The husband is held to support the family; nevertheless he can demand that the wife suitably assist him from her own goods.[83]
3. In this system no difficulty can arise for the confessor.[84]

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[58] Cod. civ. Helv. n. 178.

[59] Art. 179.

[60] Cf. a. 214, 226, 239, 247.

[61] Art. 181, 248, 250.

[62] Art. 181.

[63] Art. 188. Certainly a very good law, forestalling deceitful attempts!

[64] Art. 190.

[65] Art. 191.

[66] Ibid.

[67] Art. 192.

[68] Art. 194-214.

[69] Art. 195.

[70] Art. 203.

[71] Art. 208.

[72] Art. 210 sq.

[73] Art. 215.

[74] Cf. Huber, *System und Geschichte des schweiz. Privatrechts* I, 258 sq.

[75] Art. 216.

[76] Art. 221.

[77] Art. 210 sq.

[78] Art. 225.

[79] Art. 226.

[80] Ibid.

[81] Art. 241.

[82] Art. 182.

[83] Art. 246.

[84] For a fuller explanation of the dominion of spouses according to Swiss law, see P. Tuor, *Das neue Recht, eine Einführung in das schweizerische Zivilgesetz* (Zürich 1912) 147-185.

Article II. On The Dominion Of Children Of Families

26. Notions. Children of families are called all children of each sex, whether legitimate or legitimated, who are still constituted under paternal or maternal power. For having greater clarity and avoiding confusions, the following names must be distinguished:

a) An infant, or child, or little one, who has not yet completed the first seven-year period.

b) An impubes, who has not yet arrived at legal puberty, that is, at the 14th year of his age if he is a boy, or at the 12th year of age if she is a girl.[85]

c) A minor or minor-aged person, who (whether impubes or pubes) has not yet attained the age of majority established by canon or civil law. In diverse nations there are diverse statutes concerning the age of majority; thus, for example, in Switzerland the completed 20th year constitutes majority, in Germany and in France it is the completed 21st year. The same is in canon law c. 88, § 1; in Austria it is the 24th year.

d) A major-aged son is not the same as an emancipated son, but as to practice there is a small difference, since an emancipated son does not indeed have the age of majority prescribed by law, but by the authority of a judge has been declared major-aged. Thus, for example, in Switzerland nuptials by that very fact give emancipation;[86] whence if some girl of 16 years has rightly entered nuptials according to civil law, by that very fact she is emancipated.

e) A legitimate child is he who was born from a valid or at least putative marriage.[87] Concerning him those things are valid which will be said below concerning the dominion of children of families.

f) But an illegitimate child, who was born from parents not joined in marriage, is not considered to be under the power of the father, but is of his own right. Hence those things which will be said below are not valid concerning him. And indeed an illegitimate child is not bound by so great gratitude toward his parents as a legitimate child; for he must often bear the disgrace of the parents and suffer many other inconveniences. Hence he is rightly considered to be of his own right. Whence German law establishes that an illegitimate child with respect to the mother and her blood-relatives has the same right which a legitimate child has with respect to his own parents; but the right of a parent does not belong to the mother.[88]

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[85] Cf. Cod. Iur. can. c. 88, § 2.

[86] Cod. civ. Helv. a. 14.

[87] Cod. iur. can. c. 1114.

[88] "The illegitimate child has, in relation to the mother and the relatives of the mother, the legal standing of a legitimate child" (Cod. civ. Germ. § 1705). "The mother does not have parental power over the illegitimate child" (ibid. § 1707).

27. Distinction Of Goods Which Pertain To Children Of Families. Roman law distinguishes the goods of children as castrensian, quasi-castrensian, adventitious, and profectitious.

Castrensian goods were those which a child of the family acquired by military service.

Quasi-castrensian goods were considered to be those which a child of the family acquired from the toga-wearing service, that is, from public offices, for example from the office of judge, advocate, physician, cleric.

Adventitious goods were those which came to the son from the mother, or from the maternal line, or by some other way, for example donation, inheritance, singular industry and labor; in one word: all those goods which came to the son without respect to the father.

Profectitious goods were considered to be those which came to the son from the father, or in view of the father, or which the son gained by doing business with the father's goods.

Modern civil codes are accustomed to distinguish only goods of two kinds of children of families, namely free goods, concerning which the son can dispose freely, and non-free goods, which pertain to the administration of the father and sometimes also to his usufruct. Which goods are free and which are non-free according to diverse civil codes will be said below.

§ 1. On The Dominion Of Children Of Families According To Roman Law

28. According to Roman law,[89] the following principles were established by theologians:

1. The son has full dominion of castrensian and quasi-castrensian goods.
2. The son of a family indeed has direct dominion of adventitious goods, but not administration and usufruct; these pertain to the father. Nevertheless certain cases are excepted in law.
3. Of profectitious goods the son has neither direct nor useful dominion, but the whole is the father's.

Concerning the second and third principle, the *Corpus iuris civilis* establishes:[90] "It has been sanctioned by us that, if anything from the father's thing comes to him [namely, the son], according to the ancient observance he acquires this whole for the parent. (For what envy is it, that what has proceeded from the occasion of the father should return to him?) But what the son of the family has acquired for himself from another cause, of this he will acquire the usufruct indeed for the father, but the dominion will remain with him, lest what has

come to him by his own labors or by prosperous fortune should, by passing to another, proceed mournfully for him."

To anyone considering it, wonder immediately occurs why the son has full dominion in castrensian and quasi-castrensian goods, but not in adventitious goods. Looking only at natural law, there does not seem to be a sufficient reason for establishing such a difference. For why, for example, could a young physician living in the paternal house retain goods acquired through the exercise of medicine (they are quasi-castrensian goods), but his full brother living in the same paternal house, but conducting commerce with goods received gratuitously from an uncle (they are adventitious goods), would be held to give the acquired profit to his father, who has usufruct of that profit? Likewise, if a son receives certain goods from his father and with them makes profit, all these things according to old Roman law belong to the father, as being profectitious goods; but if the same son receives those goods from his mother and with them makes profit, they pertain to him, as being adventitious goods, although the father has administration and usufruct. All these things indeed in present times would be admitted by the faithful only with difficulty, and nevertheless all moral theologians established the principles stated above as obliging in conscience. Therefore no other sufficient reason seems able to be assigned for the moral obligation of those principles except Roman civil law, which at that time was accepted by the Church as sufficiently agreeable to right reason and natural law. Since these things are so, in this matter the same obligation in conscience seems to be attributed to present-day civil codes, since their statutes are likewise sufficiently conformable to right reason, natural law, and the circumstances of places and times. Thus also several modern theologians, for example Aertnys, saying: "Laws which absolutely define property are valid in conscience. Such are, for example, those which establish modes of acquiring dominion through accession, usucaption, invention, etc.; likewise those which attribute property to children of families and authors of books; which concede to the father usufruct in the goods of children and of the wife; and also those which define succession from intestacy beforehand."[91] This at least seems certain: present-day cases concerning the goods of children of families cannot be resolved according to ancient Roman civil law, as is done by certain authors. For the distinction of castrensian, quasi-castrensian, profectitious, and adventitious goods today seems to be of no use. Whence for modern practice only free and non-free goods must be distinguished.

General rules in our times can be had:

1. A major-aged (or emancipated) son does not sin against justice if he retains for himself everything rightly acquired (even by working in the paternal house), after deducting those things which are spent by the parents for his support. Thus is the common opinion.
2. A minor-aged son living and working outside the paternal house does not sin against justice if he retains his own wage. Thus also several modern codes establish, for example, Cod. civ. Helvet. a. 295, Cod. civ. Gall. a. 387.
3. A minor-aged son living in the paternal house but receiving a wage for labor performed outside the house does not sin against justice if he pays the expenses for his own support, but retains the rest for himself. But some modern codes establish that those wages pertain to the parents, for example Cod. civ. Helvet. a. 295.
4. A minor-aged son living and working in the paternal house seems to sin against justice if he secretly takes something from paternal goods which is not necessary for his own suitable support.

5. Against piety all children of families, whether major-aged or minor-aged, sin whenever by the retention of goods they cause an undue burden to their parents.

How children wounding justice must restore to parents, cf. below n. 83.

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[89] Dig. l. 49, 17, 10; C. 12, 36.

[90] Lib. 2 *Institutionum*, tit. 9 "Per quas personas."

[91] *Suppl. ad VII praec.* according to German law, p. IV.

§ 2. On The Dominion Of Children Of Families According To German Law

29. Preliminary Notes.

1. According to German law, every man is capable of dominion (*rechtsfähig*) immediately after birth,[92] indeed he is capable of taking an inheritance (*erbfähig*) immediately after conception.[93]
2. Only minor-aged sons and major-aged sons are distinguished; to the latter are equated emancipated sons (*großjährig erklärte Kinder*).
3. Minor-aged persons are considered to be those who have not yet completed 21 years of their age. To them are equated those who are declared by law altogether unfit or at least insufficiently apt for doing business (*entmündigt werden*).
4. Major-aged persons are considered to be men after the 21st year of their age. To these are equated emancipated children. But in order that someone be emancipated, three conditions are required, namely: a) that the son have completed the 18th year of age; b) that both he himself and sometimes also his guardian give consent; c) that the tutelary tribunal (*Vormundschaftsgericht*) authentically pronounce this emancipation, and indeed on account of the utility of the one to be emancipated.[94] Therefore according to German law emancipation is not had by the very fact that someone licitly enters marriage, as, for example, is established by the Swiss code.[95]

Dominion Of Minor-Aged Persons.

1. Minor-aged persons before the completion of the seventh year of their age and after this seven-year period until the time of majority or emancipation are distinguished.
2. Minor-aged persons before the completion of the seventh year of their age are altogether unfit (*geschäftsunfähig*) for the exercise of any act of dominion. The same is valid concerning those who on account of insanity have been declared unfit by a judge.[96]
3. Minor-aged persons after the completion of the seventh year of their age are limited as to the exercise of dominion (*beschränkte Geschäftsfähigkeit*).[97] The same is valid concerning those who have been declared by a judge not sufficiently apt. Moreover, not sufficiently apt for the exercise of any dominion can be declared: a) not only the insane, but also the demented; b) dissipators exposing their own or the family's fortune to danger; c) those addicted to drunkenness.[98] Nevertheless, minor-aged persons can have the free exercise of perfect dominion if with due permission of the tutelary judge and guardian they carry out some business or hire out their labors.[99]

4. The administration and usufruct of goods proper to minor-aged persons pertain to the father or mother, unless nevertheless these goods are free goods.[100]

5. Free goods of minor-aged persons are:

a) things pertaining to the personal uses of the son, for example garments, ornaments, utensils;

b) wages and revenues which the son has either from his labor or from some business legitimately undertaken;

c) inheritances or gifts received, if nevertheless the testator or donor expressly established that those gifts constitute the son's free goods.

Although the usufruct of these goods does not pertain to the father, but to the son, nevertheless administration seems ordinarily to pertain to the father, unless the contrary has been established concerning the goods enumerated under n. c). Whence the father can demand that sons hand over the wage received from labor done in another's workshop. Nevertheless, he must spend that wage for the good of the son. It is greatly to be advised (at least for the most part) that parents administer all goods of minor-aged persons, which otherwise, as experience proves, are often dissipated. But this paternal right of administering the free goods of minor-aged sons does not seem to induce so grave an obligation that the son of itself sins mortally if he wounds it. Hence minor-aged sons indeed are greatly to be warned that they hand over the wage received for their labors to the parents; if nevertheless they refuse this and at least compensate the parents for the expenses of support, they can be absolved in the confessional. A fortiori this must be said if the sons retain only a small part of the wage and hand over the rest to the parents.

6. Minor-aged persons not having free goods can make no onerous contract without the permission (at least presumed) of the father or guardian.[101] Hence their purchases and sales are not valid, contracted debts do not oblige, etc.

7. Minor-aged sons have no right to a wage if they labor in the paternal house or workshop.[102] Hence they sin against justice and are held to restitution if they secretly take anything from paternal goods. Concerning the quantity of this restitution and the causes excusing from it, the discourse will return below, n. 83.

Dominion Of Major-Aged Persons.

1. Major-aged sons have full dominion of their own goods; for they are perfectly of their own right.

2. Nevertheless, according to their powers and state, they are held to serve the parents as to the family estate and their affairs.

3. Unless a major-aged son has expressly demanded compensation for the fruits perceived by the parents from his own proper goods, he is presumed to have conceded fruits of this kind gratuitously to the parents.[103]

4. Major-aged daughters have a right to a competent dowry, unless nevertheless the parents have legitimately objected against the marriage to be entered.[104]

5. For the confessor, the following things seem to be noted in practice:

a) A major-aged son working outside the paternal house or workshop is indeed held to contribute to sustaining the paternal family, but the wage obtained is his property, and therefore he can dispose of it

without wounding justice.

b) A major-aged son working in the paternal house or workshop does not have a strict right to a suitable wage, and therefore he cannot secretly compensate himself. But when the son by extraordinary labor increases the family estate of the father, and otherwise he would be of a much worse condition than his brothers or sisters, he can demand indemnity.

Scholion. In regions where the German civil code is in force, let this be the general rule: Before the fact, let the confessor generally admonish all children of families, whether minor-aged or major-aged, that they expend their labor gratuitously for the paternal family estate and be content with those goods which the father or mother liberally concedes. After the fact, namely if children of families, whether minor-aged or major-aged, have retained something of their wage, but have handed over a sufficient part for their own support, they are not to be compelled to restitution.

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[92] Cod. civ. Germ. § 1.

[93] § 1923.

[94] §§ 3-5.

[95] Art. 14.

[96] § 104.

[97] § 106 sqq.

[98] § 6.

[99] § 112 sqq.

[100] §§ 1649-1651.

[101] §§ 102, 110-112.

[102] § 1617.

[103] § 1618.

[104] § 1621.

§ 3. On The Dominion Of Children Of Families According To French Law

30. Preliminary Notes.

1. According to French law, each person is capable of dominion and already from conception is capable of taking an inheritance.[105]
2. Children are minor-aged up to the completed 21st year of their age. From this term they are major-aged; nevertheless, as to entering marriage, special statutes exist, namely, a son and daughter before the completed 21st year cannot enter marriage without the consent of the parents. If the mother dissents, the consent of the father suffices.[106] If one of the parents has died or from some cause cannot manifest his or her will, the consent of the other suffices.[107] In the case in which both parents are dead or cannot manifest their will, grandfathers and grandmothers bear their place in this matter.[108] After the aforesaid age, and indeed up to the completed 30th year, sons and daughters were held by a reverential act ("by a respectful act") to solicit the consent of the parents three times; but that respectful act was suppressed by the law of 21 Jan. 1907.[109] According to the discipline in force, it suffices that sons and daughters

about to marry, by the work of a notary, notify the parents of the marriage to be contracted. 30 days after this notification the marriage can be contracted.[110]

3. Minor-aged children can be emancipated:

a) By a declaration of the father, or (if he is lacking) of the mother, made before the justice of the peace, if the minor-aged person has completed at least the 15th year of age.[111] When both parents have died, the same declaration can be made by the so-called family council, but only after the 18th year of age.

b) Minor-aged persons are emancipated by the fact itself when they enter marriage.[112]

4. An emancipated minor-aged person by no means has the same rights as a major-aged person, but in several actions depends upon his guardian. These individual actions are enumerated in art. 480 sqq.

Dominion Of Minor-Aged Persons.

1. Minor-aged persons have naked dominion of all things which have come to them by a just title, for example inheritance, donation, etc.[113]
2. The administration and usufruct of goods pertaining to a minor-aged son is in the hands of the father, and when he has died, in the hands of the mother, up to the completed 18th year of age. Nevertheless the following cases are excepted:

a) if the minor-aged person is emancipated;

b) if the mother, when the father has died, enters new nuptials;[114]

c) as to goods which the minor-aged person has acquired by separated labor and industry, or which have been given or bequeathed to him under the condition that the parents lack usufruct;[115]

d) if the parents have been declared unworthy,[116] or if they have induced the daughter to prostitution;

e) if the surviving spouse has neglected to make an inventory of goods within three months after the death of the consort.[117]

3. Goods which a minor-aged person acquires by separated labor and industry seem to be all those which he does not acquire in the paternal workshop. Whence if a son, although living in the paternal house, conducts his own commerce, if he exercises an art altogether diverse from the father's art, if he labors in a workshop outside the paternal house, all these seem to be separated labor and industry.[118]
4. A minor-aged son, especially after the 18th year of his age, working outside the paternal house does not sin against justice if he pays the expenses of his support to the parents but retains the rest of the wage for himself. Nevertheless, he is to be warned (at least commonly) that he hand over the whole wage to the parents, since this is more conformable to piety and obedience.
5. A minor-aged son cannot make any contract except in the cases determined by law.[119]

Dominion Of Major-Aged Persons.

1. A son who has become major-aged (with the completed 21st year of his age) is plainly of his own right and capable of all civil acts.[120]

2. From article 488 it seems to follow that a major-aged son owes nothing else to his parents except to repay the food to be received daily from them. If nevertheless the parents are in need, then already natural law itself commands that each child be held according to his powers to help them.

[105] Cod. civ. Gall. Art. 8 and 725.

[106] Article 148 received modification through the law of 21 Jan. 1907.

[107] Art. 149.

[108] Art. 150.

[109] Art. 152.

[110] Art. 151 new.

[111] Art. 472.

[112] Art. 476.

[113] Art. 389.

[114] Art. 386.

[115] Art. 387.

[116] Art. 230.

[117] Art. 1442.

[118] Cf. Marres, *De iust.* l. 1, n. 29.

[119] Art. 1124 sq.

[120] Art. 488; cf. also the law of 22 Jan. 1907.

§ 4. On The Dominion Of Children Of Families According To English Law

31. 1. A minor is emancipated when he reaches the 21st year, or when he enters marriage, or when he leaves the paternal house and by reason of occupation ceases to be subject to the father, as if the minor becomes a soldier or the servant of another.[121]

2. If the son is supported in the paternal house and by his own labor acquires something, the father can take this up to the 16th year; for thus the support is compensated in some measure. But after this time the parents can demand from the son only the price of support. But when children labor without remuneration or hand over the whole wage to the parents, they are considered to renounce their rights.

[121] Cf. Slater, *Princ. Theol. mor.*, *De iust.* c. 3, § 2, and W. Eversley, *The Law of the Domestic Relations* p. 598.

§ 5. On The Dominion Of Children Of Families According To The Law Of North America

32. 1. In North America a uniform law concerning the rights of parents does not exist. Nevertheless, the following things are rather commonly established.

2. Parents indeed are not held to pay debts contracted by children (unless, however, by the explicit or implicit authority of the parents the children contracted those debts); but they must suitably support the children.

3. Parents have the right that minor-aged children, i.e., up to the twenty-first year,[122] dwell and labor under their service and custody.

4. Parents permitting children to devote themselves to labors or business outside the paternal house are judged by that very fact to permit them to have disposition over the wage received. In this case, however, the obligation of the parents to support their children also ceases.

5. Parents are obliged to repair damages which are committed by the children while they are in the paternal house, when the parents know of them and do not prevent them.

[122] "In the United States some statutes have reduced the age required for majority." Thus Tanquerey, *Suppl. pro Stat. Americ. Septentr.* p. 9.

§ 6. On The Dominion Of Children Of Families According To Austrian Law

33. 1. Austrian law, just as it grants greater liberties to wives, so also grants them to children of families.

2. The father has administration of the goods which minor-aged children acquire.[123] If, however, a minor-aged son, living outside the paternal house, acquires something by his own industry, this is left to his free disposition.[124]

3. Revenues received from the goods of a child of family ordinarily fall under the administration of the father, but they must be expended for the suitable education and support of the child. If anything of greater moment remains over, it falls to the advantage of the child; but if it is of lesser value, it pertains to the father.[125]

4. Children become major-aged after the completed twenty-fourth year of their age,[126] and then they become entirely of their own right, unless the judge has determined the contrary.[127] Marriage entered by a minor-aged person does not make him major-aged.[128] Children can be emancipated before majority with the explicit consent of the father and of the judge, and moreover if the father consents that a son of twenty years conduct his own family affairs.[129]

5. Minor-aged persons before the eighteenth year cannot make a testament except before a judge; but after this age they can freely make a testament.[130]

6. Minor-aged persons generally cannot enter into any onerous contract without the consent of parents or curators.[131]

[123] Cod. civ. Austr. § 149.

[124] § 151.

[125] § 150.

[126] § 21.

[127] § 172.

[128] § 175.

[129] § 174.

[130] § 569.

[131] § 865.

§ 7. On The Dominion Of Children Of Families According To Spanish And Italian Law

34. These laws agree sufficiently and establish that the usufruct and administration of all goods which pertain to minor-aged persons[132] belong to the parents, unless the contrary has been expressly established. But when children live outside the paternal house with the consent of the father, the goods acquired by them are left to their free disposition.[133]

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[132] In Spain a son becomes major-aged if he has completed twenty-three years (Cod. civ. a. 320); but in Italy after the completed twenty-first year of age (Cod. civ. a. 323).

[133] Cf. Cod. civ. Hisp. a. 159 (in Larraga-Saralegui, *Comentarios* n. 693), and Cod. civ. Ital. a. 394-397 (in Marc, *Instit. mor.* I, n. 861).

§ 8. On The Dominion Of Children Of Families According To Swiss Law

35. Preliminary Notes.

1. The old law of the diverse Swiss districts does not differ much from the French law explained above. But the new law introduced sufficiently great changes.
2. Capacity for dominion arises from the first moment of man's existence.[134] But the exercise of this dominion is not permitted except to those who are major-aged and endowed with the use of reason.[135] A man becomes major-aged either after the completed twentieth year of his age or through contracted marriage.[136] He is judged to be endowed with the use of reason who does not labor under insanity, dementia, drunkenness, or similar states of mind.
3. A minor-aged son can be emancipated after the completed eighteenth year, provided that this is done by the guardianship tribunal and with his own consent and that of his parents.[137]
4. One who lacks the use of reason can enter into no valid contract.[138] One who enjoys the use of reason, but nevertheless is minor-aged or has been declared incompetent (*entmündigt*), can indeed acquire advantages, but he is not able to enter onerous contracts without the consent of the legitimate curator. If nevertheless he has done illicit acts, he is held to restitution.[139] This article is of great moment for the practice of the confessor. If, for example, a minor-aged person has contracted debts, or has completed contracts of purchase or sale, all these things are invalid, but the minor-aged person is held according to his powers to repair the damage to those with whom he contracted.[140]

Dominion Of Minor-Aged Persons.

1. To the parents belongs the administration of all goods pertaining to the children, unless the contrary has been expressly established.[141]
2. To the parents belongs the usufruct of all goods pertaining to minor-aged children, unless the contrary has been expressly established. Nevertheless the parents must suitably care for the education and support of the children.[142]
3. Goods which a minor-aged person acquires by his own labor done in the family community pertain to the parents; but goods which he acquires either by his own business carried on with the consent of the parents, or by labors done outside the family community, are left to the free disposition of the minor-aged person, with his obligations toward the parents nevertheless remaining safe.[143] These two articles are of great moment for the practice of the confessor. For minor-aged children have no right to demand a wage from the parents, nor can they secretly take anything for themselves on account of labors done

in the family community; on the contrary, children living outside the paternal house as maids, servants, clerks, apparitors, etc., freely dispose of the wage acquired; nevertheless they are held to repay to the parents the expenses of maintenance and besides, in a case of want, to assist the parents.[144]

Dominion Of Major-Aged Persons.

Major-aged children have free disposition over their goods. Therefore they can not only retain the wage of their labor done outside the paternal house, but even demand a wage for labor performed in the family community.[145] Yet they are held to contribute their works to the suitable support of the paternal family.[146]

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[134] Cod. civ. Helv. a. 11. "Everyone is capable of rights" (*Rechtsfähig ist jedermann*).

[135] Art. 13.

[136] Art. 14.

[137] Art. 15.

[138] Art. 18.

[139] Art. 19.

[140] Art. 411.

[141] Art. 290 and 294.

[142] Art. 292-294.

[143] Art. 295 and 296.

[144] Cf. art. 328 and 329.

[145] Art. 633.

[146] Art. 328 and 329.

Article III. On The Dominion Of Secular Clerics

36. Preliminary Note. Almost this whole matter pertains to canon law, and therefore the positive ecclesiastical laws enacted concerning this matter must especially be attended to. For fuller doctrine the canonists are to be consulted.

Divisions. Clerical dominion (which is also sometimes called clerical peculium) is fourfold:

1. patrimonial peculium; 2. quasi-patrimonial; 3. beneficial; and 4. savings peculium.

2. Patrimonial peculium, or the patrimonial goods of a secular cleric,[147] are those goods which come to clerics independently of every ecclesiastical ministry as well as benefice; but they are called patrimonial because ordinarily they come from paternal inheritance, although they can also come from any profane cause, for example from donation, from profane labor, from published books, etc. Of patrimonial goods the secular cleric has perfect dominion;[148] for in this matter he is not of worse condition than a layman.

3. Quasi-patrimonial peculium (they are also called quasi-ecclesiastical or industrial goods) are those goods which clerics acquire not indeed by reason of an ecclesiastical benefice (or from goods offered and appropriated to the Church herself), but by reason of personal ecclesiastical ministry, as it were by way of wages and stipend; or more briefly: they are those goods which come to clerics from a spiritual title indeed, but not from the title of a benefice. To these goods pertain those so-called "stole rights,"

which are given to non-beneficiary clerics on account of ecclesiastical functions performed,[149] the stipends of manual Masses (but not the stipends of founded Masses), gratuitous offerings which the faithful offer to the pastor and other priests, and generally all those goods or revenues which are received especially by non-beneficiary priests on account of ecclesiastical offices performed. Non-beneficiary priests are, for example, vicars and cooperators of pastors, those serving hospitals, spiritual rectors of schools, etc. Of these quasi-patrimonial goods clerics have perfect dominion. Thus the common opinion. The reason is that neither from the nature of the thing nor from positive law is the dominion of clerics over such goods limited.

4. Beneficial peculium is those revenues which a cleric receives by reason and title of an ecclesiastical benefice; or more briefly, they are the revenues of an ecclesiastical benefice destined for the fitting support of beneficiary clerics. Concerning the origin and history of benefices, the authors who are canonists dispute much.[150] As strictly beneficial revenues according to modern practice are held not only the proper fruits of the benefice, for example revenues coming from estates, fields, etc., pertaining to the benefice, but also:

a) Pensions or supports which civil governments sometimes regularly pay to beneficiary clerics, for example in Germany, in Austria, etc. Thus the Sacred Penitentiary expressly established on 19 Jan. 1819 and 9 Jan. 1823. The case seems different concerning pensions which are sometimes granted to an emeritus cleric by the government or even from some benefice formerly held.

b) Contributions of the faithful[151] imposed by way of a tax, when a suitable support of beneficiary clerics cannot be had either from beneficial goods or from a pension of the civil government. For these offerings seem to be almost the same as the tithes imposed in ancient times. Now tithes are very commonly held as beneficial revenues.[152] Likewise to beneficial revenues seem to pertain those offerings of the faithful which, by force of statutes or custom, are given to pastors by reason of the title, for example in North America at the time of Christmas or Easter,[153] or stole rights that are strictly parochial.

c) Stipends of founded Masses which are united with a benefice, if nevertheless they are received by the beneficiary himself; for if those Masses are said by a non-beneficiary priest, their stipends are no longer beneficial peculium.

d) Choral distributions of canons. If, however, all the revenues of the benefice consist in choral distributions, then the third part is left to the free disposition of the beneficiary.[154]

In present days almost no other ecclesiastical benefices are given (besides the Cardinalate) except parishes, canonries, episcopates, and certain ecclesiastical chaplaincies.

With regard to the suitable support of the beneficiary, beneficial peculium is either a) necessary or b) superfluous or c) savings, concerning which below.

The things said thus far about the threefold peculium of clerics can be briefly and clearly comprehended in this way:

A cleric acquires

a) patrimonial peculium as a man,

b) quasi-patrimonial peculium as a cleric,

c) beneficial peculium as a beneficiary.

[147] Religious clerics are not treated here, since they are bound by the vow of poverty and therefore cannot freely dispose of temporal goods.

[148] Cf. c. 12 X, 26, 9; St. Alphonsus, *Theol. mor.* l. 3, n. 490.

[149] Sometimes the offerings made by the faithful in place of tithes on account of particular ecclesiastical functions are called stole rights. Those stole rights are beneficial goods when they are given to truly beneficiary clerics (Cod. iur. can. c. 1410).

[150] See our *Man. iur. can.*, 8th ed., p. 503.

[151] The *denier du culte*, worship tax for the support of pastors, but not worship tax for the support of chaplains, sacristans, churches, etc.

[152] Cf. tit. 30, l. 3 *de decimis, primitiis et oblationibus*, and tit. 39 *de censibus, exactionibus et procurationibus*; cf. also Wernz, *Ius Decret.* III 183, and Bargilliat, *Prael. iur. can.* n. 1384.

[153] Cf. Bargilliat, l. c.

[154] Cod. iur. can. c. 1410.

37. Obligations Concerning Beneficial Peculium. a) All modern theologians and canonists teach that true dominion over beneficial revenues belongs to clerics, when these are necessary for suitable support, so that they can dispose of them with the same liberty with which they enjoy patrimonial and quasi-patrimonial goods.

In ancient times indeed a few canonists taught the contrary, but their opinion is now entirely obsolete. The reason is that, as St. Paul testifies, all who serve the altar share with the altar.[155] Therefore clerics can take honorable support from the revenues of the benefice, and this even if they have other patrimonial or quasi-patrimonial goods.[156] But what support is to be called suitable cannot be determined by a certain rule, but is left to the prudent judgment of a God-fearing cleric. For many circumstances must be attended to, namely a) the person of the cleric; for one thing is the support of a simple rural pastor who enjoys very good health, and another is the support of an elderly and weak bishop. Likewise b) circumstances of places and times must be attended to. To suitable support also pertain honorable recreations, hospitality to be exercised, certain gifts to be given, and becoming maintenance of blood-relatives, especially if they are needy. With regard to the manner of living, the admonitions given by the Council of Trent to bishops should be kept before the eyes of all clerics.[157] A beneficiary cleric may indeed bestow alms from the goods of his benefice, but not gifts, at least not larger ones.[158]

b) Beneficiary clerics (Cardinals excepted[159]) are held under grave obligation to expend superfluous revenues from beneficial goods upon the poor or upon pious causes.[160] Thus all teach, and it is clearly drawn both from the Council of Trent[161] and especially from Cod. iur. can. c. 1473, which establishes: "Although a beneficiary has other non-beneficial goods, he can freely use and enjoy the beneficial fruits which are necessary for his honorable support; but he is held by the obligation of expending the superfluous goods for the poor or pious causes, with the prescription of can. 239, § 1, n. 19 remaining safe."

Canonists and theologians dispute whether this grave obligation is an obligation of justice, so that its transgression constitutes an obligation of restitution, or whether it is only a grave obligation from ecclesiastical law. The truer and much more common opinion teaches that that obligation arises only from ecclesiastical law and does not imply restitution if it has been neglected.[162] Already St. Thomas taught that opinion.[163] For he objects to himself: "Whoever consumes what belongs to another is held to restitution: but the goods of clerics are the goods of the poor, as is clear through Jerome's gloss on that of Isaiah 3:14: 'The plunder of the poor is in your house.' Therefore if clerics uselessly consume ecclesiastical goods, they are held

to restore to the poor from elsewhere, if they have anything." ... To this objection he responds: "Ecclesiastical goods must not only be dispensed to the poor, but also to the ministers of the Church: whence according to the canons they must be divided in this way, that some part go to the use of the poor and some part to the uses of ministers and to the worship of the Church. Therefore it must be said otherwise concerning those ecclesiastical goods which principally are to be attributed to the necessities of the poor and consequently to the necessities of ministers, such as are the goods of hospitals and of other such things. And otherwise concerning those goods which are principally attributed to the uses of ministers, such as are prebends of clerics and other such things. For in the first goods sin is committed not only from abuse, but also from the very condition of the things, while someone assumes for his own uses what belongs to another; and therefore he is held to restitution as a defrauder of another's thing. But in the second goods sin is not committed except through abuse, as was said also concerning patrimonial goods. Hence one is not held to restitution, but only to performing penance." The fundamental reason why a cleric abusing the superfluous goods of his benefice is not held to restitution is this: restitution is not to be imposed unless its obligation is certainly established. Now no certain title of restitution can be brought forward, nor any ecclesiastical law clearly prescribing this obligation.[164] Moreover, although the obligation of restitution is not to be urged, nevertheless in the case in which a cleric has not expended notable superfluous beneficial revenues for pious causes, he is accustomed to cause grave scandal and must be gravely rebuked; for it matters little whether he goes to Gehenna because of violated justice or because of violated obedience. What injury in this matter is grave sin must be prudently determined with the circumstances of the donor and of the donation considered. Certainly, however, a much greater quantity (perhaps twice or three times greater) is usually required than in theft gravely illicit, since the cleric does not take what belongs to another, but badly expends his own.[165]

Relatives or other non-poor men who have received superfluous revenues of this kind from a beneficiary cleric through donations among the living are not to be obliged to restitution; indeed, if they were in good faith, they did not sin. But the matter is otherwise if a beneficiary cleric having superfluous beneficial revenues dies without a testament; for in this case, since the intention of the dead cleric must be presumed to have been that he wished to dispose of those goods as he ought, and since he certainly ought to have disposed of those revenues for the poor or pious causes, the heirs cannot licitly usurp the goods left behind, if they certainly are superfluous beneficial revenues. This indeed holds a fortiori if they have impeded the cleric from making a testament. Nevertheless in practice this case happens rather rarely; first, because clerics rarely have beneficial revenues so ample that after suitable support something superfluous still remains; then, supposing that the benefice really was very rich, nevertheless it is almost impossible to discern among the goods left behind which were savings goods and which were superfluous beneficial goods. Hence lay heirs generally are not to be disturbed, provided that they did not fraudulently procure for themselves such an inheritance, which perhaps comes from superfluous beneficial revenues. Besides, they are often in good faith, and if the confessor wished to compel them to return goods of this kind, perhaps they would refuse to obey, and thus from material sins formal sins would be made; which indeed must be avoided.

Note. Since the sudden death of clerics happens not rarely, each secular cleric, and especially each beneficiary, should not delay making his testament. Especially he should not omit to dispose of sacred vestments, paraments, and vessels. Special statutes have been enacted in this matter for Cardinals.[166] For it can be very unbecoming that these things be left to the free disposition of laymen or be sold by laymen at a greatly diminished price.[167] Moreover, it is usually much better and more conformable to the mind of the Church that a beneficiary cleric at once spend superfluous goods received from beneficial revenues on pious causes or on the poor, so that it is not necessary to make a testament about them.

There are authors, for example Hollweck,[168] who teach that all secular clerics, even non-beneficiaries, are held to spend superfluous goods received from ecclesiastical ministry on pious causes. This opinion indeed is to be counseled in practice, since it is fitting to right reason and to the clerical state, but it cannot be imposed as a strict obligation.

4. Savings peculium consists of those things which a beneficiary cleric saves from beneficial goods by living more modestly. Concerning these goods he can dispose freely. It is clear of itself, because the cleric has a right to suitable support from beneficial goods. Therefore if he has freely subtracted something for himself from that suitable support, concerning that also he can dispose freely.

The whole doctrine concerning the revenues of secular clerics can be expressed by this single phrase: secular clerics have free disposition over all their revenues, except superfluous beneficial revenues, which indeed under a grave precept, but not under the obligation of restitution, they must expend for the poor or pious causes.

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[155] Cf. 1 Cor. 9:13.

[156] Cod. iur. can. c. 1473.

[157] Sess. 25, c. 1 *de reform.*

[158] How a cleric can support blood-relatives from beneficial revenues is excellently taught by St. Ambrose, *De offic.* l. 1, c. 3, and St. Thomas, *S. theol.* 2, 2, q. 185, a. 7 ad 2.

[159] Cod. iur. can. c. 239, § 1, n. 19.

[160] Pious causes are judged to be all those works or institutes which from their nature or from the end of the one acting proximately serve a supernatural end. Pious causes are not those so-called humanitarian institutes, for example hospitals, asylums entirely profane, which indeed serve social utility, but not religion.

[161] L. c.

[162] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 492. Concina, *Theol. christ. in Decal.* I, diss. 6, c. 18, attacks this opinion most vehemently indeed, but not effectively.

[163] *Quodl.* 6, q. 7, a. 12 ad 3; *S. theol.* 2, 2, q. 185, a. 7.

[164] Cf. Billuart, *De iure et iust.* diss. 3, a. 5, where this controversy is treated excellently.

[165] Cf. St. Alphonsus, l. c. n. 490, IV, who defends the more severe opinion.

[166] Cf. Cod. iur. can. c. 1298.

[167] c. 1301: "Cardinals, residential bishops, and other beneficiary clerics must through a testament valid also in civil law take care that, according to canonical prescriptions, disposition be made concerning sacred furnishings. Wherefore they must in timely fashion designate a person of intact reputation who, when their death comes, may take possession not only of the sacred furnishings, but also of books, documents, and other things pertaining to the church and legitimately hand them over to whom they are owed."

[168] *Das Testament der Geistlichen*, Mainz 1901.

38. Scholion. On The Administration Of Ecclesiastical Goods. Beneficiary clerics are held to administer all ecclesiastical goods with diligent care according to canonical sanctions and particular statutes. If they presume to usurp ecclesiastical goods or convert them to their own uses, they are punished by excommunication and other grave penalties.[169] Especially the pontifical and episcopal statutes concerning alienation of ecclesiastical goods are to be observed.[169a] Not rarely in modern times particular statutes have also been enacted by civil governments concerning the administration of ecclesiastical goods; these, if they are

tolerated from Concordats or from the concession of the Supreme Pontiff, each cleric must diligently observe. Otherwise great inconveniences can arise. In the administration of ecclesiastical goods a cleric must indeed avoid all negligence, but he should also beware everything that savors of purely worldly commerce. Hence let the cleric not be too solicitous about those material things. Especially let him avoid speculative actions, as they say, at banking exchanges.[170] For it is established by sad experience that through those actions clerics have both given scandal to the faithful and moreover inflicted great losses on ecclesiastical goods. Certainly in itself clerics can licitly buy bank shares and obligations, since even today the Church has not prohibited this (at least expressly), but it is prohibited to a cleric to practice commerce and trade, as things which do not befit clerical dignity.

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[169] Cod. iur. can. c. 2346.

[169a] Cf. Pontif. Commissio d. 29 Iul. 1929 (*Act. Ap. Sed.* XXI 574).

[170] Commonly, Bank and Börse.

Chapter IV. On The Modes Of Acquiring Dominion

39. Preliminary Note. A mode of acquiring dominion is understood as the title upon which the acquisition of some thing is founded. Many authors distinguish original and derivative modes of acquisition. Those modes are called original according to which, at the first, the division of common goods or private dominion arose; but derivative modes are judged to be those according to which, after the division of goods has already been made, dominion of some thing is derived from one owner to another. In our regions, where there no longer exist things which have never been under private dominion, original modes of acquiring dominion are rarely given. In other regions not yet inhabited there are still lands and things which have never been under private dominion. There, therefore, an original mode of taking dominion can have place. For the most part in our times the consent of the civil government is required in those regions.

The modes of taking dominion are founded either in law (natural or positive), and then they are suitably called legal modes; or upon an agreement entered among men, and then they are called conventional modes. The conventional modes of acquiring and transferring dominion are the manifold contracts; these modes indeed are most frequent, whence below contracts must be treated especially. To those conventional modes of acquiring dominion, hereditary succession also is reduced at least in some way. But legal modes are generally distinguished as four: occupation, finding, accession, prescription; whence these four must be treated one by one.[1]

Also to be noted is a certain distinction of goods which often occurs in modern civil codes; namely, vacant goods, derelict goods, and lost goods are distinguished:

Vacant goods are called those whose owner has died or disappeared, no heir or successor having been left and no testament having been made;[2] sometimes they are taken more broadly for those goods which have never had an owner, as pearls in the sea.

Derelict goods are called those which have been left by the owner without the intention of recovering them, for example fruits, nuts, grapes, ears of grain, which remained after the harvest had already been completed.

Finally, lost goods are those which even now actually have an owner, who nevertheless is unknown, for example a lost gold ring.

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[1] Some authors, especially modern ones, enumerate labor also among the modes of acquiring dominion; but labor seems better to be reduced either to contracts, if namely it is concerned with another's thing, or to industrial or mixed accession, if it is concerned with one's own thing.

[2] Cf. Cod. Iustin. X, 10.

Article I. On Occupation

We shall treat 1. of occupation in general; 2. of the occupation of animals; 3. of the occupation of treasure; 4. of booty to be taken in war.

§ 1. On Occupation In General

40. Notion. Occupation[3] in general is the apprehension of a thing which belongs to no one, with the intention of acquiring it for oneself. Therefore under the name of occupation do not come thefts or robberies, because in those cases the things do not belong to no one, but their legitimate owner exists.

All admit that occupation is a legitimate mode of acquiring dominion; for by natural law things belonging to no one become the property of the first occupant, as the common adage says, to which, after the old Roman law, our civil codes expressly consent, for example those of Germany,[4] Switzerland,[5] and Spain,[6] which nevertheless ordinarily do not admit occupation of an immovable thing, for example of some field.

The conditions required so that occupation may be a legitimate title of acquiring dominion are the following:

1. that the thing truly belong to no one (i.e., be vacant or derelict) and be able to fall under private dominion; otherwise a real injury would be done either to the legitimate owner or at least to the community. Hence occupation is illegitimate, for example, if the owner of the thing is known, or if someone wishes to occupy a public road, since it cannot fall under private dominion;
2. that true and real apprehension be present; nevertheless this can be physical or moral according to the nature of the thing or positive laws. Therefore the intention or desire of having the thing does not suffice;
3. that the intention of making the thing one's own be present; whence, for example, occupation causing true dominion is not present if a rich man has thrown away a garment which another finding it wishes to return to the former owner.

Occupation chiefly has place in the occupation of animals, in the finding of treasure, and in some way also in booty to be taken during war; whence we shall treat the individual matters one by one.

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[3] Appropriation of ownerless things (*Aneignung herrenloser Sachen*).

[4] § 958.

[5] Art. 718.

[6] Art. 610.

§ 2. On The Occupation Of Animals

41. Notions. For the sake of clarity three kinds of animals are customarily distinguished:

a) wild or sylvan animals, which naturally shrink from human fellowship and are accustomed to be constituted under the dominion of no one; for example lions, hares, deer, boars, fish, etc.

b) tamed or domesticated animals, which indeed of themselves shrink from the fellowship of men and live in liberty, yet by human industry and art have been brought under the perfect dominion of man; for example doves in a dovecote, bees in a hive, fish enclosed in a small pond, etc.

c) tame or domestic animals, which by their nature are accustomed to human society and serve domestic uses; for example sheep, cattle, hens, dogs. Some authors still distinguish animals gone wild, namely those which were tame or tamed, but afterward, having obtained liberty again, fled human society; for example doves no longer returning to their own dovecote. These animals are equated with wild ones.

Principles: 1. Wild animals (or even animals gone wild) belong to the first occupant.

The reason is that they belong to no one; and because things belonging to no one, both according to natural law and according to the civil codes, become the property of the first occupant.[7] Whence, for example, one who catches a fish in the sea or a hare in open woods is their owner. The discussion will return below to the obligation of civil laws concerning hunting.

2. Tamed or domesticated animals remain the property of the owner so long as they have not escaped his custody or lost the custom of returning to it; but when they have become wild, they belong to the first occupant, like wild animals.

Concerning the first part of this principle there is no difficulty, and all think so, since such animals are private property. Whence he commits theft who, for example, attracts another's doves by more choice food and retains them. But if those tamed animals cause great damage to another, which their owner does not wish to repair, then no one is held to suffer this; but the one suffering damage can kill the damaging animals, lest they do harm. This case indeed can easily happen if hens and doves cause notable damage at the time of sowing and standing grain; likewise cats in others' houses or gardens often are harmful. Yet it is not licit to kill those animals, against the will of the owner, unless true necessity requires it, because, even if justice is not injured, nevertheless charity is often injured, and many quarrels and enmities can arise from it.

The other part of this principle has already been proved in the principle. Civil laws are accustomed to determine when animals gone wild pertain to the first occupant; these determinations indeed seem to oblige even in the forum of conscience. Thus, for example, Swiss law[8] establishes that a swarm of bees which flies over into another's field still remains under the dominion of the prior owner, unless it has joined itself to the hive of another owner; while, on the contrary, German law decrees that a swarm of bees flying out immediately becomes the property of the first occupant, unless nevertheless the owner, by pursuing it, tries to bring it back.[9]

3. Tame animals always remain the property of their owner, even if they have departed from custody.

For concerning them one must judge as concerning other things of property. But when those animals have wandered off, the finder has the same rights and obligations as the finder of other movable things.[10]

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[7] Cf. Justinian, *Inst.* l. 2, 1, 12 and Cod. civ. Germ. § 958.

[8] Art. 719 and 725.

[9] § 961.

[10] Cf. below n. 48, where finding is treated.

42. On The Right Of Hunting And Fishing.

Principle. A prince or republic can by various titles prohibit hunting, fowling, and fishing, not only on its own lands, but also in open places, and reserve them to itself.[11]

It Is Explained. The chief title of this reservation is the common good. For experience establishes that hunting open and licit to all often causes great inconveniences, and on the contrary that reserved hunting brings many utilities to the common good. But I say: the reservation of hunting can touch only public places; for hunting in an entirely enclosed place pertains to the owner of the place. Hence, for example, no one can be impeded from catching fish in his own fishpond. This is clear of itself.

Corollaries. The Malice Of Illegal Hunting. 1. He who hunts, fowls, or fishes against a prohibition made by reason of public utility sins, unless, however, there is a sufficiently excusing cause.

The reason is that such a hunter transgresses a just law, which does not seem to be merely penal. That civil laws concerning hunting commonly are just cannot be denied. In reality it is of no little interest to the common good that wild animals not be totally destroyed, as happens in some uncivilized regions and as has happened also in our regions concerning some wild animals now no longer existing. On the other hand it is also necessary that the multitude of wild animals not increase too much. Hence the republic has the right and obligation of making laws concerning hunting. To this is added that from leased hunting no small monetary gain comes to the common good. Since these things are so, those modern authors seem to err who indiscriminately assert that all civil laws enacted concerning hunting are only penal. This assertion indeed lacks intrinsic and extrinsic foundation. Certainly many older authors taught thus, but their authority is not to be too greatly extolled in this matter, because today the hunting situation has been greatly changed. For in ancient times hunting was exercised by few men and was not accustomed to be leased. Moreover weapons were much more imperfect than now. Today, on the contrary, hunters are very numerous and not rarely even travel into distant regions for the sake of hunting. No small gain for the common good grows out of hunts, while on the contrary in ancient times hunting tended to the utility and delight of a few. From all these things it is clearer than light that modern hunting is not to be judged as authors of the sixteenth and seventeenth centuries judged. Although in practice neither mortal sin nor a grave obligation of restitution easily arises from illicit hunting, as will be clear from the things to be said below, from this it is not licit to conclude that all laws concerning hunting are merely penal laws. But to discern the gravity of this sin committed from illicit hunting, many circumstances must be considered:

2. It seems to be a grave sin if someone has brought into custom hunting gravely prohibited with lethal weapons;[12] but if there is question of hunting by means of net or hook or snare, it will not so easily be mortal sin, unless the damage inflicted is truly very grave.

The reasons why habitual hunting with lethal weapons, exercised against civil laws, is gravely illicit are: 1. the grave damage which in the lapse of time is caused in this way to those having the legitimate right of hunting; 2. the disordered passion which almost always arises from those illicit actions; for experience establishes that such hunters,[13] on account of the passion for hunting, often neglect family affairs, expose their health to six hundred dangers, and are gradually brought to cruelty against men and beasts; 3. the most grave danger to which those hunters expose themselves; for not only will they have a most severe penalty if they have been caught by the keepers of the hunt, but they are also often placed in the most urgent peril of life, because almost always, in a case of encounter, a cruel fight arises between them and the keepers of the hunt, in which fight not rarely the death either of the keeper or of the illegitimate hunter occurs. Hence they are not worthy of absolution who do not wish to renounce prohibited and illegitimate habitual hunting with lethal weapons.

[11] Thus rightly Billuart, *De iure et iust.* diss. 4, a. 2, § 2.

[12] Thus also teach Göpfert, *Moraltheol.* II, n. 70 (5); Mausbach, *Moraltheol.* III, § 33 (2).

[13] Commonly *Wilddiebe*, *braconniers*, poachers.

43. 3. Obligation Of Restitution. With regard to restitution to be demanded on account of the exercise of illicit hunting, account is not so much to be taken of how many and what sort of wild animals were taken (since wild animals belong to the first occupant, as was said above), but of how much damage was really and unjustly inflicted either upon the public good or upon the legitimate possessor of the hunting right.

Hence if by furtive hunting a hunting district can no longer be leased at so good a price, or if the proprietor or lessee of the hunting right has truly suffered grave losses, the furtive hunter is held to repair the damages inflicted. In practice, however, notable restitution is rarely to be demanded, because a) those who lease a hunting district are accustomed to intend not so much profit to be taken from the captured wild animals as delights and joy to be had from the very capture; therefore they do not suffer material damage; b) likewise it does not happen so often that a hunting district cannot be leased at a good price because of illegitimate hunters. But restitution must be made if, for example, all the fish of some brook have been killed with quicklime, or if many precious deer have been taken by very great and altogether extraordinary skill. On the contrary, he is not held to restore who takes or kills wild animals in order to avoid damages in his own fields or lands. For the government does not seem able to impede possessors of fields and other lands from warding off wild animals; whence if the government or lessee of the hunting right does not give sufficient compensation for damage caused by wild animals in private fields,[14] then anyone can defend himself against such injustice, and, if it cannot conveniently be done otherwise, even by killing and taking the wild animals rushing into his own fields.

4. He who hunts or fishes in another's enclosed place, from which animals cannot escape, sins against commutative justice and therefore is held to restitution. But the quantity of restitution is to be measured not precisely from the price of the prey itself that was taken, but from the damage really caused to the legitimate owner.

In this case all admit that commutative justice is injured, since animals enclosed in this way do not have the liberty of escaping and therefore are to be equated with tamed animals. If the place of enclosure is so narrow that the animals can be taken very easily, then the furtive hunter is more a thief than a hunter, and therefore is held to restore the whole price of the captured animals. But if the place of hunting is sufficiently broad, so that the capture of animals is difficult and uncertain, the restitution to be made must be measured not according to the whole price of the captured animals, but according to the hope of capture which the owner would have had. In practice the norm of restitution to be made can with difficulty be assigned. Since, however, the hope of capture in vast woods or in a broad lake is not so great with regard to individual animals, and since the proprietors of hunting rights are commonly very rich men, I would not oblige a penitent under grave obligation to restitution unless the captured animals had a price of 300 francs; and in that case it would perhaps suffice to restore the fourth part, namely 75 francs. Thus, saving a better opinion.

5. When hunting has not been leased by the governmental authority of the community, as is accustomed to happen in certain rural regions, then a wild animal captured on the open land of another pertains to the hunter; nevertheless the proprietor of the land can impede the hunter from entering the land, and a fortiori can demand that damage perhaps arisen from the hunting be repaired to him; yet he cannot take the prey itself. The opinion of certain authors[15] seems too casuistic, teaching that an animal caught

in a snare on another's land indeed pertains to him who placed the snare, and that the proprietor of the land cannot usurp that animal, but can release it still living from the snare and, when the animal has been released, give it liberty for a little while and immediately capture it again, and thus appropriate it to himself.

[14] Commonly *Wildschaden*, damage caused by game.

[15] Cf. Lehmkuhl, *Theol. mor.* I, n. 1085, 6; Gury-Ballerini, *Comp. Theol. mor.* I, n. 572, q. 3, note.

44. Scholion. On The Common Estimation To Be Attended To Concerning Illicit Hunts. The same customs do not exist everywhere concerning illegal hunting. The confessor must indeed attend to those customs. For if in some region furtive hunts are commonly not judged gravely illicit and shameful, or if they are exercised even by men of good reputation, then the confessor can judge more mildly; but if the contrary custom is present, judgment must be made more severely. Likewise after a furtive hunt has been done, judgment is to be made more mildly, at least with regard to imposing restitution; on the contrary, before the fact the faithful are to be deterred from those furtive hunts.

§ 3. On The Occupation Of Treasure

45. Notion. Treasure, as it is taken here, "is a certain old deposit of money, of which no memory exists, so that it now has no owner."

Thus from Roman law,[16] with which modern laws commonly agree. It is said: old, because if it were a recent deposit, an owner or at least his heir would still exist, and therefore it would not be treasure. It is said: deposit, whether in an immovable thing, as in a field, or in a movable thing, as in an old garment, in an ancient chest, etc. But it by no means seems necessary that the deposit have been made by men; rather, it suffices that the things have been hidden for a long time in whatever way; whence ancient coins, statues of pagans, which perhaps were covered by an earthquake or eruption of a volcano, can be held as treasures.[17] It is said: of money, through which are understood any movable things whatsoever, as gems, precious vessels, etc. But it is required that those things have been made by art and not be natural. Whence precious stones, coals, metals found in the bosom of the earth do not seem to be treasure, but fruits of the earth.[18] It is said: of which no memory exists, because if it were known who hid the thing, it would no longer be held as treasure in the strict sense, but would be a found thing.

[16] L. 31, Dig. 41, tit. 1; cf. Cod. Hisp. a. 352; Helv. a. 723; Gallic. a. 716.

[17] D'Annibale (*Summa theol. mor.* II, n. 130) and others teach the contrary.

[18] Lessius, Soto, and others teach the contrary. In practice the civil laws of the place are to be attended to.

46. Dominion Of Treasure. If only natural law is attended to, found treasure pertains totally to the finder. For treasure is a thing belonging to no one. Now by natural law a thing belonging to no one belongs to the first occupant. Nevertheless the civil codes of diverse nations have limited this natural right in some way; moralists very commonly assert that these determinations ordinarily oblige even in conscience, because they do not seem to be purely penal laws, and otherwise they are conformable to right reason. Almost all civil codes determine the following:

1. Treasure found on one's own land pertains totally to the finder.[19]

2. Treasure found on another's land must be divided equally between the finder and the proprietor (but not the usufructuary) of the land. Thus civil codes commonly establish.[20]

There are theologians, for example Lehmkuhl[21] and Göpfert,[22] judging that those laws which in certain cases ascribe part of the treasure to the treasury (when the land does not pertain to it), or which deprive the finder of his part, are probably to be held as merely penal laws, so that before the sentence of the judge the finder does not injure justice if he retains the portion which is taken away from him by those laws. According to this opinion, therefore, he who in Switzerland finds treasure on another's land can retain half the part for himself until the judge has compelled him to hand over the whole treasure. Whether this opinion is truly probable does not so appear.

Theologians here ask whether he who knows that treasure lies hidden on another's land can licitly buy that land according to the common price and then afterward acquire not only half but the whole treasure. The answer is affirmative with Soto, Navarro, Bañez, Sylvius, Wigandt, Billuart, Göpfert, Bucceroni, and others. Some prove this from the words of Christ: "The kingdom of heaven is like a treasure hidden in a field, which a man who finds it hides, and for joy thereof goes and sells all that he has and buys that field."[23] But whatever may be said about the value of this proof, since Christ proposes this only as a parable, but does not expressly approve this manner of acting, the affirmative opinion can be proved otherwise. For treasure is not a fruit of the field nor does it pertain to the substance of the field, as all concede. Therefore the field does not increase in price because by chance treasure has been hidden in it. To this is added that treasure belongs to no one (as again all concede) and that by natural law it pertains to the finder. Therefore he who finds treasure in another's field and then buys that field at the common price does not injure anyone's right. Nor should it be said that he who knows treasure lies hidden in the field has already found it, and therefore a right to half the treasure immediately arises for the proprietor of the field. To this it is answered: treasure of itself belongs to no one and falls under dominion not through simple finding, but through occupation. But in our case the treasure has not yet been occupied. Therefore it has remained a thing belonging to no one and consequently has not increased the price of the sold field.[24] St. Thomas also favors this opinion,[25] which seems to be safe in practice, unless, however, in some region the civil code (following the opinion of certain jurists) establishes that treasure pertains to the dominion of the land by way of accession. Thus, for example, the Swiss Civil Code seems to establish.[26]

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[19] Cf. Cod. civ. Germ. § 984; Cod. civ. Austr. § 399; Cod. civ. Gall. a. 716.

[20] The Swiss Civil Code establishes that treasure pertains totally to the proprietor of the immovable or movable thing in which it has been found; if, however, the treasure has great scientific value, it must be handed over to the government of the district, but the proprietor of the land and the finder receive suitable compensation: "If ownerless natural objects or antiquities of considerable scientific value are found, they pass into the ownership of the canton in whose territory they have been found.... The finder, and in the case of treasure also the owner, have a claim to an appropriate compensation, which however should not exceed the value of the objects" (art. 723 sq.).

[21] *Theol. mor.* I, n. 1087.

[22] *Moraltheol.* II, § 102, n. 71.

[23] Matt. 13:44.

[24] Cf. Billuart, *De iure et iust.* diss. 4, a. 2, § 5.

[25] *S. theol.* 2, 2, q. 66, a. 5 ad 2.

[26] Art. 723.

§ 4. On Booty To Be Taken In War

47. Preliminary Note. Since this booty to be taken pertains to well-known owners, it is acquired by occupation not properly but broadly so called. For occupation properly so called is concerned with things belonging to no one, as was said above. Nevertheless old Roman law considered the goods of enemies as things belonging to no one, which therefore could be acquired by true and properly so-called occupation. Hence it established: "Things captured in war ... become his who first obtained possession of them."[27] Canon law indeed adopted this doctrine, but limited it to a just war.[28]

Just as customs have changed with regard to hunting, so similarly in present times, with regard to booty during war, much milder usages prevail than in ancient times. Hence also on this point the authority of the old doctors is not to be exaggerated. In ancient times the saying was held as an adage: "The right of war is unlimited"; and St. Thomas[29] wrote: "Concerning booty one must distinguish; because, if those who despoil enemies have a just war, the things which they acquire by violence in war become theirs; and this does not have the character of robbery, whence they are not held to restitution." But now, through international agreements, the right of plundering in time of war has been determined in many things (although not in all).[30]

General Principles Of Present International Law:

1. All those things can be seized from the goods of the enemy which are necessary for waging a just war, for example weapons, food, clothing. Such exactions today are customarily called "contributions" and "requisitions."
2. Booty taken does not pertain to individual soldiers, but to the belligerent government, according to that saying: "Things acquired in war fall to the republic."
3. Outside the case of true need, individual soldiers cannot licitly take from enemies, by their own authority, either food to eat or clothing to wear.
4. Since war is not waged against individual citizens and private persons, but against the whole kingdom, the goods of private persons are inviolable, unless, however, there is urgent necessity, or those private persons illicitly attack the soldiers. Thus at least in land war; for in naval war international statutes concerning this matter have not yet been accepted by all nations.

Corollaries. 1. Soldiers who, laboring under hunger, seize food from enemies without the authority of a superior officer act illicitly indeed, but they are not obliged to restitution, because the prohibition is made rather for preventing abuses and for preserving military discipline than for establishing an obligation of justice. 2. Soldiers seizing other goods of notable value from enemies without legitimate authority are held under grave obligation to restitution, not indeed from natural law, but from international agreements; and if in some war these are not observed on both sides of the belligerents, they can no longer effect that those soldiers ought under grave obligation to restore.[31]

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[27] L. 1, D. 41, 2.

[28] Cf. Ferraris, *Prompta bibliotheca*, s. v. *bellum*, art. 3.

[29] *S. theol.* 2, 2, q. 66, a. 8 ad 1.

[30] Among the international agreements made concerning this matter those stand out which were entered at The Hague of the Dutch on 29 July 1899 and 18 Oct. 1907. Other agreements for naval war also were made at London on 26 Feb. 1909.

[31] We wrote more broadly concerning this matter of great moment in *Linzer Theol. Quartalschrift* 1918.

Article II. On The Finding Of A Lost Thing

48. Preliminary Note. The finding of a lost thing, although it is not properly a species of occupation, nevertheless can be reduced to it. But a lost thing differs from treasure in two ways: a) because it has not been hidden; b) because it does not belong to no one, but still has an owner, although here and now unknown.

Concerning finding we shall treat 1. according to natural law, and 2. according to the statutes of certain civil laws.

§ 1. Principles Of Natural Law

1. From strict justice a private man is not held to carry away with him and preserve another's thing perhaps found; nevertheless ordinarily there is present an obligation of charity, at least light.

That an obligation of justice is not present is almost clear of itself; for a private man, apart from a special contract, is not held from justice to care for another's thing. But that an obligation of charity is present is also clear, because for the most part there exists some hope of restoring the lost thing to the legitimate owner and of forestalling his damage. But from charity we are obliged to ward off damage from our neighbor, if that can easily be done. This obligation indeed for the most part is only light, unless there is question of forestalling truly grave damage.

2. He who has taken up a found thing is held to guard it diligently and to inquire for the owner of the thing. This obligation arises from justice, so that the violation of it induces an obligation of restitution.

The reason is that such taking up is nothing other than management of affairs freely accepted, which carries with it the obligation of diligently guarding the thing taken up for the legitimate owner. Nevertheless both the guardianship of the thing and the inquiry for the legitimate owner are done at the expense of the owner and not of the finder, because the lost thing remains under the dominion of him who involuntarily lost it, so long as he has a reasonable hope of recovering it.

The finder is held to seek the unknown owner by suitable means; and if he does not do this, or, what is much worse, if he hides the found thing, he sins against justice and is held to restitution, because culpably he brings it about that the owner cannot recover his own thing. But by what modes in individual cases the inquiry for the owner must be made natural law does not determine, but it is customarily determined by civil law; nevertheless these determinations sometimes are directive rather than preceptive, and therefore they do not strictly oblige in conscience. Certainly he who uses the means prescribed by civil laws has sufficiently fulfilled this obligation of seeking the owner of the found thing.

If the owner of the thing has become known, the finder is held to restore it. Hence that saying of St. Augustine: "If you found something and did not return it, you stole it."[32] But the finder can demand not only compensation of all expenses made in guardianship and investigation, but also a reward.[33] For the management of affairs done by the finder is not gratuitous, especially if this has also been established by civil law.

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[32] It is found in the Decree of Gratian, C. 14, q. 5, c. 6.

[33] Commonly *Finderlohn*, finder's reward.

49. 3. If, after diligent inquiry has been used, there is no longer a founded hope that the owner of the thing will be discovered, the finder can retain the thing for himself; nevertheless more laudably he distributes it to

pious uses or to the poor.

Rightly and clearly Wigandt, O. Pr., writes:[34] "The most salutary counsel is this, namely, to expend those found goods for the poor or for public and pious uses, especially if the finder is not in need. But if he himself is in need, he can apply the whole or a part to himself for his necessity; but he will act best if for this he uses the counsel of a prelate or confessor." This same opinion is held by very many ancient and modern authors, while nevertheless very many others contradict it, for example Castropalao, Lessius, Cajetan, Billuart, etc., who wish found goods necessarily to be expended on pious causes or on the poor, if the owner cannot be found.

The first opinion is held by St. Thomas, who, distinguishing between treasure and other found things, says concerning these latter: "But certain found things were recently among someone's goods (i.e., a short time before they had a legitimate owner). And then if someone takes them not with the intention of retaining them, but with the intention of restoring them to the owner, who does not hold them as abandoned, he does not commit theft; and likewise, if they are held as abandoned, and the finder believes this, although he retains them for himself, he does not commit theft."[35] Therefore according to the Angelic Doctor the finder does not commit theft, nor consequently sin against justice, who retains found things which the owner holds as abandoned. Now, if after diligent inquiry has been made the owner cannot be found, then he is deservedly judged to hold his things as abandoned. St. Alphonsus teaches almost the same thing:[36] "When a thing, with the circumstances of length of time or distance of place considered, or because the thing can no longer be recognized by the owner as his own, as happens in ordinary coins, does not seem able to return to the owner; then it becomes a thing belonging to no one, and therefore is acquired by the first occupant, who is not held to give it according to the will of the prior owner, since through the impossibility of recovering it he has altogether lost dominion over it."

The second opinion can be proved neither by any text of law nor by any convincing reason.[37] For the principal reason brought forward does not prove the opinion of the adversaries. For they say that found goods must be expended according to the presumed will of the legitimate owner. But the presumed will of the owner regularly is that they be expended for uses useful to himself or to his own, or at least to the republic, and therefore for the relief of the poor, for Masses, or for other pious uses. I say: this reason does not prove the point, for it is by no means established that this will is regularly to be presumed; on the contrary, the will of the prior possessor is to be presumed that his goods remain in such a state in which he can recover them more easily. But the owner can recover them more easily if they remain with the finder, because thus they can be better recognized and preserved, than if they are consumed in pious causes or by the poor. Moreover, it does not seem that much care is to be given to the presumed will of the prior owner, because otherwise this will would also have to be attended to in the occupation of treasure; yet no one will say this. Some weight is brought to the stricter opinion by the surely very great authority of the Roman Catechism, which seems to favor it, saying:[38] "Therefore those also are thieves who buy things taken away by theft, or who in any way retain things found, occupied, or taken away; for St. Augustine says: 'If you found something and did not return it, you stole it.'[39] But if the owner of the things can in no way be found, those goods must be conferred for the uses of the poor." But it seems not so clear whether the final phrase is to be referred to things taken away by theft only, or to all things, whether taken away by theft, found, occupied, or taken away. This latter does not seem likely, for at least things legitimately occupied no one is held to confer upon the poor. Therefore the authority of the Roman Catechism either proves too much or proves nothing for the opinion of the adversaries. Consequently in practice the opinion permitting the finder to retain found goods for himself is safe, provided that he has used sufficient diligence in finding the legitimate owner. Civil codes do not speak of

an obligation of expending found things for the uses of the poor, but otherwise dispose of them. Therefore even from civil codes an argument cannot be found for the stricter opinion.

4. Although the finder can retain the found thing for himself after prudent hope of finding the true owner has ceased, nevertheless finding alone does not seem to be a sufficient title of property, but it is necessary that the title of prescription be added according to the laws of each region.[40]

There are several authors, for example Noldin[41] and Lehmkuhl,[42] who teach that the finder acquires dominion of the found thing by occupation and not by prescription. But in practice this doctrine can suffer difficulties. Let there be an example: Peter found a purse in a public street, in which there is the sum of 100 francs; he seeks the proprietor in the best way he can, but in vain. Then he consumes the 100 francs on a pleasure trip. After three months the true owner of the lost purse unexpectedly appears, and Peter is compelled by the judge to return the purse with 100 francs. If Peter acquired the purse and the 100 francs by true occupation as soon as every prudent hope of finding the owner ceased, he is not held to return the found thing, and if nevertheless he is compelled by the judge to return it, he can secretly compensate himself; which, however, hardly anyone would say in the present case. Therefore finding itself does not seem to be a sufficient title of dominion, but it is necessary that the title of legal prescription be added, concerning which below, n. 57 sqq.

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[34] *Tribunal confessar.* tr. 8, exam. 3.

[35] *S. theol.* 2, 2, q. 66, a. 5 ad 2.

[36] *Theol. mor.* l. 3, n. 603.

[37] Forcefully and at the same time most truly Dom. Soto says (*De iure et iust.* l. 5, q. 3, a. 3): "By the law of nature and of nations those things belong to the finder, and there is no evangelical or ecclesiastical law which attributes them either to the poor or to anyone else. Therefore the finder can take them for himself."

[38] P. 3, c. 8, q. 7.

[39] Sermon 178, c. 8 (Migne, *Patr. lat.* 38, 965). This saying of St. Augustine has become almost an adage in Germany: "If you make a find and do not make it known - you are a robber that very hour" (*Tust du einen Fund und machest ihn nicht kund - ein Räuber bist du zur Stund*).

[40] Cf. Cod. civ. Germ. § 973; Helv. art. 722; Austr. § 392; Hisp. art. 615.

[41] *De praeceptis* n. 393.

[42] *Theol. mor.* I, n. 1090.

§ 2. Statutes Of Modern Civil Laws

In general it is to be noted that the statutes of civil laws must be observed in conscience, unless the principles of natural law manifestly determine otherwise. But certain statutes seem to be directive norms rather than preceptive ones.

50. I. German Law.

1. He who finds and takes up a lost thing is held to return it to the legitimate owner; or if the owner is unknown and the thing exceeds the value of three marks (of the former currency), he must announce the finding to the public police.[43]
2. The finder is held faithfully to guard the thing, or if this guardianship is impossible or joined with great expenses (for example if someone finds a cow), he must sell it at auction, with the police nevertheless

having been forewarned, and preserve the price of the sold thing or hand it over to the police.[44]

3. The finder can demand from the owner not only compensation of all expenses, but also the legitimate reward of finding, namely 5% up to the value of 300 marks; but concerning a found thing which exceeds this value, beyond 15 marks, still 1%. Therefore if someone, for example, finds 500 marks, he can demand 17 marks as the reward of finding. The reward of finding is only 1% if there is question of found animals.[45] If the owner refuses compensation and the legitimate reward of finding, the finder can retain the thing.[46]

4. If the owner of the thing has not appeared and claimed the thing within a year (to be computed from the day of denunciation in the public police), the found thing pertains to the finder.[47]

5. If the finder omits the obligation of announcing or conceals the finding, he loses the right to the reward of finding or to the dominion of the thing.[48]

6. If someone finds a thing in the business premises (*Geschäftsräumen*) or in the vehicles of some public office or business, for example on the railway, in a tramway, in theaters, in inns and hotels, etc., he is held to hand over the thing to the officials or to the head of that public office. If within three years the owner of the thing has not appeared, the thing falls either to the treasury or to the public office itself. But the finder receives nothing.[49] This statute is indeed very useful for finding the legitimate owner, but in some way hard for the finder himself. Whether it obliges in conscience is not so clear. If the handing over of the thing is morally necessary so that the legitimate owner can be found, for example if someone finds a garment or a book on the railway, then this statute seems to oblige in conscience, because otherwise the finder does not use sufficient diligence for finding the legitimate owner of the thing. But if such handing over is not necessary, because from the beginning it is morally established that the legitimate owner cannot be found, then this statute does not seem to oblige in conscience. For example, if someone finds a coin of money on the railway, he can ordinarily retain it for himself, because it is almost impossible that the legitimate proprietor can prove that this coin is his own.[50]

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[43] Cod. civ. Germ. § 965.

[44] §§ 966 and 967.

[45] §§ 971 and 972.

[46] § 974.

[47] § 973.

[48] § 971.

[49] §§ 978-983.

[50] Thus also Lehmkuhl, *Bürg. Gesetzbuch* § 978.

51. II. French Law.

1. French law distinguishes between "maritime wrecks" (*épaves maritimes*), "river wrecks" (*épaves fluviales*), and "land wrecks" (*épaves terrestres*). But under the name "wrecks" (*épaves*) is understood every movable good lost by its proprietor. Goods abandoned from shipwreck can be claimed by the proprietor within the space of 3 or 12 months. If the claim has not been made within this time, those goods pertain totally to the finder if he drew them up from the bottom of the sea; but a third part of

them, if on the surface of the sea; and nothing, if they were found on the shore. These latter determinations do not seem to induce a grave obligation in conscience.

2. Found things must be handed over to the public authority.[51] But if the owner has not claimed them within 3 years, they are returned to the finder, who then becomes proprietor. This ordinance is indeed very good, but it does not seem to have a grave obligation either in the civil forum or in the forum of conscience. Therefore it suffices if the finder in another way diligently inquires concerning the proprietor of the lost thing. If he has not appeared within three years, the thing pertains to the finder by title of prescription by force of the adage: "In the matter of movables, possession is equivalent to title" (*En fait de meubles, la possession vaut titre*).[52]

3. Things left behind through forgetfulness in public inns and hotels (*chez les hôteliers*) do not pertain to the owner of the inn or hotel, but must be sold by public authority.[53] But the price obtained, after the expenses of the innkeepers have been deducted, is deposited "at the Deposits and Consignments Fund" (*à la Caisse des dépôts et consignations*) for the benefit of the proprietor. This statute also, as not so consonant with the law of nature, does not seem to oblige in conscience.

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[51] "*Au greffe du tribunal*" according to the circular of 5 August 1825.

[52] Cod. civ. Gall. a. 2279.

[53] Law of 31 March 1896.

52. III. Swiss Law.

1. If someone finds a thing, he must either himself diligently inquire concerning the legitimate owner or report the found thing to the public police. But he is held to report a found thing to the public police if it exceeds the value of 10 francs. But if he finds a thing in an inhabited house or in some public transport establishment (*Verkehrsanstalt*), for example in an inn, in a theater, on the railway, etc., he is held to hand over the thing to the owner (lessor) of the house or to the head of the public transport establishment,[54] who then, by a fiction of law, is judged to be the finder, but they cannot demand the reward of finding.[55]

2. The found thing must be faithfully guarded; but, public authority having been obtained beforehand, it can be sold at auction if it cannot be preserved, or if guardianship causes excessive expenses. Then, however, the price of the found thing must be preserved.[56]

3. The finder who has fulfilled the precepts established by these laws acquires the found thing if for 5 years the legitimate owner has not appeared; but if he has returned the thing to the legitimate owner, he has a right to a suitable reward of finding.[57]

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[54] Cod. civ. Helv. a. 720.

[55] Art. 722; cf. what was said above n. 50 (6) concerning a similar statute of German law.

[56] Art. 721.

[57] Art. 722.

53. IV. Austrian Law.

1. The finder is held to make the found thing known in the accustomed manner if the value of the thing exceeds one florin (of the former currency); but if the value exceeds 12 florins, he must report the thing to the local superior.[58] But if the finder has neglected these statutes, he loses the right to the reward and besides must be gravely punished.[59]
2. The finder has the right to the reward of finding, and indeed 10%. But if the reward thus to be paid reaches the sum of 1000 florins, afterward only 5% is granted.[60] This reward of finding seems to be excessive. Nevertheless it must be paid at least after the sentence of the judge.
3. If within a year the owner of the thing has not appeared, the finder becomes its usufructuary, and after three years, proprietor by force of legitimate prescription.[61]

[58] Cod. civ. Austr. § 389.

[59] § 393.

[60] § 391.

[61] § 392 and 1466.

54. V. English And American Law.

Those things which the civil law of England prescribes concerning found treasures, goods lost by shipwreck, and vacant goods do not oblige in conscience before the sentence of the judge.[62] Concerning lost things there do not seem to exist special civil laws obliging in conscience. Hence in England (and North America) the confessor must attend only to the principles of natural law. Someone could nevertheless doubt whether a law obliges in conscience which establishes that the finder, after diligence for finding the owner has been applied in vain, indeed acquires dominion of the found thing, but with the obligation that, if the owner appears after any length of time, restitution be made to him. Therefore the law of England does not admit prescription against the owner of the lost thing.

[62] Thus Slater, *Princ. Theol. mor., de Iust.* c. 4, a. 1.

55. VI. Italian And Spanish Law.

1. The civil codes of Italy and Spain establish almost the same things concerning the finding of a lost thing.
2. If someone finds a thing whose owner he does not know, he must hand it over to the syndic (*sindaco*, *alcalde*) of the place where it was found. He will publish notice of the found thing on the two immediately following Sundays.
3. After two years have elapsed after these publications, the found thing (or its price) is handed over to the finder, unless the proprietor has appeared.
4. The reward of finding is 1/40 (and if the value of the thing exceeds the sum of 2000 francs, it is 1/20) of the value of the thing.[63]

[63] For Italian law see Cod. civ. a. 715-718; cf. Piscetta, *Theol. mor.* III, n. 124. But for Spanish law see Cod. civ. a. 615 sq.; cf. Larraga-Saralegui n. 708.

Article III. On Accession

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[64] In the German language it is said: *Zuwachs*, *Verbindung*, *Vermischung*, *Verarbeitung*.

56. Definition. Accession, as the discussion is here, is a legitimate mode of acquiring dominion of some thing acceding to a thing already legitimately possessed.

Only a few things must be said concerning this matter, since it has been wholly determined by modern civil codes, which, when a case occurs, must be consulted and also followed in conscience. The principles of natural law in this matter are: 1. If the things united can be separated without grave detriment, the individual things must be restored to their legitimate owners. 2. But if this cannot be done, "it is fitting that the accessory follow the nature of the principal";[65] but for the accessory thing thus acquired a suitable price must be paid. To this is added the adage: the thing fructifies for the owner.

Three species of accession are customarily distinguished, namely natural, industrial, and mixed, according as something else accedes to one's own thing either by natural powers alone (by birth, fructification, alluvion), or by human industry alone (by joining, mixture, specification, building), or from the influence of both.[66] Concerning the individual species, a few things:

1. Natural accession occurs:

a) by birth and fructification, when namely from a possessed thing another is born, for example a foal from a horse, grass from a field. The general rule is: "The offspring follows the womb," or whatever is born pertains to the owner of the one bearing or producing. Hence he who bought a cow which by mistake was not thought to be pregnant, but afterward bore a calf, acquired that calf also.

b) by alluvion, when by the force of waters an increase gradually (but not suddenly) accedes to some estate. In this case the statutes of modern laws must be observed.[67]

2. Industrial accession occurs:

a) by joining, when two things pertaining to diverse owners are so united by human industry that they either cannot in any way, or cannot except with great detriment, be separated. In this case laws are accustomed to determine that the two things thus united pertain to that owner to whom previously the more principal thing was proper, according to the principle brought forward above: the accessory follows the principal.[68] Nevertheless that owner is then held to make the other owner unharmed. But which thing is more principal is at times by no means easy to define. Therefore positive laws must be attended to. An example of joining is: an image painted on another's canvas.

b) by mixture or confusion, when from two things equally principal that have been mixed, pertaining to diverse owners, one thing arises, for example two heaps of grain, or two swarms of bees flying together into one.

c) by specification, when someone constructs something new from another's matter, for example a statue from another's wood. Again, in practice positive laws must be attended to.

d) by building, if the owner of the land and the owner of the thing built are diverse. Generally the dominion of the land draws with it whatever is placed above or below it. Therefore the house belongs to him whose land it

is, with due compensation having been provided.

3. Mixed accession especially occurs by planting and sowing, because then the two, namely nature and industry, coalesce into one. This accession is subjected to the same rules which are valid for building. Hence it is established according to the ancient verses:

Whatever is planted, sown, or built in,

All yields to the soil, if nevertheless it has put forth roots.

Note For Practice. When a case occurs, it is better to arrange the matter according to what is fair and good. But if this is impossible, the confessor can no longer do anything else, but must leave all things to the civil judge.

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[65] Rule of law 28 in VI.

[66] Cf. Marc, *Inst. mor.* I, n. 887; Noldin, *De praeceptis* n. 394.

[67] Cf. German law: *Einführungsgesetz* art. 65; French law art. 556 sq.; Swiss law a. 659.

[68] Cf. Cod. civ. Germ. § 950; Cod. civ. Gall. a. 570; Cod. civ. Helv. a. 727.

Article IV. On Prescription

We shall treat 1. of the notion, division, and value of prescription; 2. of the conditions required for legitimate prescription; 3. of the statutes of certain modern laws.

§ 1. On The Notion, Division, And Value Of Prescription

57. Definition. Prescription is the acquisition of dominion through continued possession for a certain time defined by law.[69]

It Is Explained. Prescription is the acquisition of dominion, and therefore is not only a pure exception against an action brought by another, or more clearly: prescription not only effects that another cannot thrust me down from possession of some thing or right through the sentence of a judge, but also legitimately grants dominion in the forum of conscience, as will be said below, n. 58. But the law which determines the titles of legitimate prescription and especially the mode and duration of the required possession is positive law (whether ecclesiastical or civil). For although prescription is most conformable to natural law, and therefore is said by certain authors to have been introduced by the law of nations (which is as it were a conclusion of the law of nature), nevertheless natural law does not determine the individual conditions necessary for legitimate prescription, but this has been left to the determination of positive civil or ecclesiastical law. By the words of the definition: "through continued possession," etc., are indicated the conditions required for legitimate prescription, concerning which there will be discussion below, n. 59 sqq.

Division. Prescription is customarily distinguished as twofold: one acquisitive, the other liberative. Acquisitive prescription, which by jurists is customarily called *usucapio*,[70] is a mode of acquiring a new right, for example a right of passing through another's field. But it is beautifully called *usucapio*, because through use something is taken as one's own. Liberative prescription,[71] however, is a mode of freeing oneself or one's thing from some burden, for example from some passive servitude.

By some authors, especially ancient ones, the word "*usucapio*" is also taken in other senses.[72] Thus, for example, Schmalzgrueber[73] writes: "From this distinction, that *usucapio* properly affects only corporeal things,

but prescription also incorporeal things, another distinction arises, that *usucapio* does not proceed without possession (as the very etymon of the word itself indicates): but not rarely prescription does so, if namely it tends to incorporeal things, of which there is not true possession, but quasi-possession." - We always take prescription and *usucapio* in the juridical sense explained above. In general it is useful to note here that there is a rather great confusion in the assumption of words in this matter among diverse authors; whence Waffelaert[74] already wisely warned: "In reading authors one must diligently attend to the mode of speaking: for they do not define the terms in one manner."

Certain authors furthermore bring forward two other distinctions. They divide prescription 1. into memorial, whose beginning still exists in the memory of men, and immemorial, whose beginning surpasses the memory of men living today; 2. into ordinary, which is completed in a space of 3 or 10 or at most 20 years, and extraordinary, which requires 30 or more years. - Both of these divisions are of little utility and are not customarily acknowledged by modern civil codes.

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[69] Cf. L. 3, Dig. 41, tit. 3.

[70] *Ersitzung.*

[71] *Verjährung.*

[72] Cf. Billuart, *De iure et iust.* diss. 4, a. 3, § 1.

[73] *Ius can.* l. 2, tit. 26, n. 1.

[74] *De iust.* I, n. 2328.

58. Value Of Prescription. That prescription, furnished with all conditions, is a legitimate mode of acquiring dominion both in the public forum and in the forum of conscience, is now admitted by all theologians. For the common good evidently requires this. For:

a) Otherwise possessions would often remain uncertain and exposed to perpetual lawsuits. For it not rarely happens that a man cannot otherwise prove the ownership of some thing except by a long-standing and peaceful possession that has been exercised. For example, a farmer from immemorial time led cows through some private road. But he cannot prove that he has a strict right to this. Unless the remedy of prescription were present, he could suddenly be impeded in his mode of acting. Besides, if there is question of very ancient and doubtful possessions, there would be lawsuits without end, if from other titles it had to be proved who was the legitimate owner.

b) Otherwise some owners would be too sluggish in vindicating their own rights. But now, since they know that their own rights can be lost by prescription, they guard them more diligently.

c) To these arguments taken from Roman civil law[75] is added the authority of ecclesiastical law, in which the value of legitimate prescription in each forum is manifestly acknowledged: "Prescription, as a mode of acquiring and of freeing oneself, just as it is in the civil legislation of the respective nation, the Church receives for ecclesiastical goods (with the prescription of the canons that follow being saved)."[76]

Corollary. He who, by legitimate prescription having been completed, has acquired a thing or right against another, is not bound in conscience to give up the thing or right, even if the former owner claims it back. Thus St. Thomas teaches.[77] Indeed prescription once legitimately completed is computed backward with respect to all fruits received from the first day on which the prescription began to proceed. Wherefore such fruits are not to be restored to the former owner.

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[75] L. 1, Dig. 41, tit. 3; l. 23, Cod. VII, 40.

[76] Cod. iur. can. c. 1508; cf. c. 3, X 2, 26.

[77] *Quodl.* XII, a. 24. St. Raymond of Peñafort (*Summa, de praescript. et usucapione*) and several others remained doubtful.

§ 2. On The Conditions Required For Legitimate Prescription

Five conditions are commonly enumerated, expressed by these verses:

Not by use shall you take, unless there be for you such five things:

Let there be a suitable thing, faith, title, possession, time.

59. 1. A suitable or prescriptible thing generally is that which can fall under the dominion of the one prescribing. Therefore all those things which by disposition of law cannot fall under the dominion (of a private man) are generally imprescriptible (at least by a private man). But not only civil law, but also ecclesiastical and natural law hold certain things as imprescriptible. Not rarely in this matter there is a conflict between ecclesiastical law and civil law. Thus, for example, ecclesiastical law does not admit lay prescription in certain sacred things, which nevertheless civil law permits. In a case of conflict, ecclesiastical law certainly prevails of itself; nevertheless in practice it almost always is better to make a composition according to what is fair and good with the authority of the legitimate ecclesiastical superior.

Things totally or partially exempt from prescription:

a) All rights and obligations of natural and divine law are totally exempted. Hence, for example, there is no prescription against the obligation of receiving the sacraments, of honoring parents, of not dissolving marriage, etc.

b) Sacred things, i.e. things consecrated to divine worship and not yet deconsecrated or profaned, are partially exempted. But I say, "not yet deconsecrated or profaned"; for in certain cases determined by canon law[78] consecrated things can be deconsecrated or profaned, and then they are again like other lay things. Sacred things pertaining to the Church cannot be acquired by prescription by private persons; but nothing prevents, α) that a sacred thing existing in the dominion of private persons (or even of a civil juridic person) be prescribed, for example, a layman having the privilege of a private oratory possesses several consecrated chalices; these chalices can be acquired by title of prescription, just as other movable lay things; β) that one church or ecclesiastical juridic person prescribe a sacred thing against another church or ecclesiastical person.[79] Thus, for example, the oratory of some church, already from immemorial time existing in the use of some confraternity, can be acquired by title of prescription by that confraternity. Nevertheless there are several ecclesiastical things which can never be prescribed even among diverse churches, for example the certain boundaries of a parish or diocese, ecclesiastical benefices, and especially burdens of Masses, not satisfied even by the longest custom.[80]

c) Things deputed to public uses, as public roads, squares, bridges, etc., cannot be prescribed by private men; they can, however, be prescribed by one community against another. The reason of both is that those public things do not fall under the dominion of a private man, but of the community.

d) Things declared by civil or ecclesiastical law to be imprescriptible, for example goods of pupils, goods of those who are limited in the management of affairs,[81] payment of the cathedraticum.

[78] Cf. Cod. iur. can. c. 1170.

[79] Ib. c. 1510.

[80] C. 4 X; 3, 29; cf. St. Raymond of Peñafort, *Summa*, lib. 2 *de praescr. et usucapione.* Cod. iur. can. c. 1509.

[81] Cf. Cod. civ. Germ. §§ 206, 207, 937, 939.

60. 2. Good faith is a judgment by which someone prudently judges that the thing which he possesses is his own. This judgment indeed is objectively erroneous, but arises from invincible ignorance and therefore inculpable ignorance. Bad faith is present when the possessor knows that the thing possessed belongs to another. Doubtful faith, however, is present when the possessor has a positive and founded doubt concerning the legitimacy of his possession. Good faith is distinguished as twofold: one positive, which has just been defined; the other negative, which is the persuasion of the one prescribing that he is doing and has done nothing against the right of another.

Good faith is altogether necessary for every prescription (whether acquisitive or liberative) to be begun and continued. Thus it is manifestly drawn from Rule of Law 2: "A possessor of bad faith prescribes at no time," and from the Fourth Lateran Council: "Since everything which is not from faith is sin, by synodal judgment we define that no prescription without good faith, whether canonical or civil, is valid, since generally derogation must be made from every constitution and custom which cannot be observed without mortal sin. Whence it is necessary that he who prescribes, in no part of the time, have consciousness that the thing is another's."[82] - From this text it is held that good faith must necessarily be present during the whole time of prescription. Whence he who in good faith began prescription, but afterward becomes of bad faith, now cannot prescribe. He who at first was in good faith, but afterward seriously doubts whether he legitimately possesses the thing, must solve the doubt. But if he has culpably neglected this, the prescription now is not legitimate. If, however, with sufficient diligence having been applied, he could not solve the doubt, or if the doubt was not so grave, then it is to be spurned and the adage is valid: "In doubt the condition of the possessor is better."

In acquisitive prescription good faith is customarily required also by modern civil laws; in liberative prescription, however, negative good faith or the absence of fraud seems to suffice; i.e., prescription is valid if the debtor did nothing illicit, lest the creditor be able to vindicate his right.

Resolutions. Peter's field is burdened with a passive servitude in favor of Paul, who nevertheless does not freely use this servitude for many years. After the legitimate time of prescription has passed, the servitude of the field is extinguished, because Peter certainly was not bound to warn Paul about using the servitude. Theologians teach this rather commonly. The matter is not equally clear in the following example. Someone buys merchandise from another at the price of 100 marks. The seller not only does not urge payment of the price, but neither sends that which is called an account, commonly: a "bill to be paid." The buyer in conscience is not bound to warn the seller to send that bill. Whence at least within 10 years and perhaps even after five years he seems to prescribe against him and now not to be bound to paying the sum of 100 marks, although he well knows and always has known that the debt has not yet been paid. But the reason is that in this case the debtor had negative good faith, i.e. he employed no fraud and did nothing illicit, so that the creditor might vindicate his right; but civil laws can rightly establish that after so great an interval and so great negligence of the creditor, every debt of paying is now extinguished.[83] Hence also no one disapproves the almost universal use of banking institutes (commonly Bank), which pay nothing to those presenting slips (commonly coupons) after five years have elapsed.

The good or bad faith of him who previously possessed the thing also in some way influences the prescription of him who afterward acquired the same thing.

a) If both predecessor and successor are in good faith, then the time of possession employed by both is computed together. For example, if Peter in good faith possessed for 20 years a thing which afterward his successor Paul possessed in good faith for 10 years, a prescription of 30 years coalesces. Thus the common opinion. But the reason is that the predecessor is judged to transfer to the successor, together with the thing, every right which he had concerning it.

b) If the predecessor was in bad faith, but the successor in good faith, then judgment must be made, even in the forum of conscience, according to the laws prevailing in the region. According to the old Roman law (which canon law also adopted), the bad faith of the predecessor impeded from prescription the immediate universal successor, but not a particular or mediate successor.[84] The reason is that the immediate and universal heir by fiction of law was judged one and the same person with the deceased, and the possession of both one and the same possession. - But according to modern civil laws the bad faith of the predecessor is now not customarily injurious to successors, provided nevertheless that they themselves are in good faith.

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[82] Denz. 439. The Code of Canon Law c. 1512 establishes the same.

[83] Thus also Lugo (*De iust. et iur.* disp. 7, n. 48 sqq.), Pichler (*In ius can.* l. 2, tit. 26, n. 32 sq.), Génicot (*Theol. mor.* I, n. 493), Vermeersch (*De iust.* n. 268 sqq.; cf. nevertheless below n. 64 sq., where there will be discussion of civil laws).

[84] Cf. St. Alphonsus (*Theol. mor.* l. 3, n. 512), Lugo (*De iust. et iur.* disp. 7, n. 57 sqq.), Billuart (*De iust.* diss. 4, art. 3, § 9).

61. 3. Title is the cause on account of which someone possesses a thing, or is the reason on account of which the possessor thinks the thing to be his own. Thus, for example, a son possesses goods on account of inheritance or paternal donation. Therefore inheritance or donation in this case are titles of possession.

Five titles are customarily distinguished: true title, colored title, estimated title, presumed title, vicious title. A true title is that which in reality immediately transfers dominion in each forum, for example purchase, donation. - A colored title is said to be that action which seemed legitimately to place the possessor of the thing into true proprietorship, but which, on account of the hidden defect of some essential condition, in reality did not transfer ownership; for example a purchase, made in good faith, of some thing taken by theft. - An estimated title (also called putative) is not explained in the same way by all. It seems better that it is present then, when someone sincerely thinks that he has a right or dominion, but in truth does not have it on account of another's fault; for example a son thinks that a thing received from his father from inheritance is his own, when the father in reality did not possess that thing legitimately. - A presumed title is some fact which is presumed to have been present and to have effected dominion, but which on account of length of time cannot be proved. - Finally, a vicious title is that which from its very nature cannot transfer ownership, but only grants use or usufruct. It is sometimes also called a precarious title, because only precariously, i.e. in a transitory mode, does it bestow useful dominion of some thing. Whence, for example, a renter, borrower, depositary, curator can never prescribe the thing committed to him. For their title of possession is only precarious and vicious.

Note again that authors do not explain these diverse titles in the same way; whence confusion must be avoided, and it is necessary to attend rather to the sense of the words than to the words themselves.

According to natural law this principle must be kept before one's eyes: for legitimate prescription a true title is not required (inasmuch as it by itself alone, without prescription, transfers dominion; therefore prescription in this case is superfluous); a vicious or precarious title does not suffice (because it excludes good faith, concerning which above, n. 60); but a title either colored or estimated or presumed does suffice.

Modern civil laws speak otherwise concerning title, as will be clear below.

62. 4. Possession is the actual detention of a thing or the exercise of a right. Whence Rule of Law 3 in VI establishes: "Without possession prescription does not proceed." Possession adorned with the due qualities is the principal reason and foundation of prescription, since in it the whole right arises from possession. But the required qualities are the following: the one prescribing must possess the thing:

a) by title of proprietor, and not of depositary, usufructuary, lessor, etc. For there is question of ownership to be acquired. Moreover all who cannot possess anything, for example solemnly professed religious, or who possess some thing in another's name, as tutors, lessors, etc., cannot have the legitimate intention of acquiring it for themselves by simple detention. But it is not required that a man detain the thing by himself; for he can also occupy it through a servant, procurator, etc., because moral and not physical detention is necessary.

b) continuously, publicly, peacefully, certainly.

Possession must be continuous; for sometimes it "does not proceed" or "does not run," because it either "sleeps" or "has been interrupted." The statutes of the individual civil codes must be attended to.[85]

Possession must be public in this sense, that he against whom prescription proceeds can easily know it; wherefore, for example, if someone secretly usurps for himself the fruits of some thing for a long time, from this he does not yet prescribe against the proprietor. The reason is that clandestine possession is judged to have been done without good faith, which nevertheless is necessary for every legitimate prescription, as was said above.

Possession must be peaceful. Hence he who has occupied some thing by force, or against whom a lawsuit is moved in judgment, cannot prescribe.[86]

Finally, possession must be certain and not equivocal or doubtful. This is clear, because also in that case the good faith of the one prescribing can scarcely be present. But moral certitude suffices.

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[85] Cf. Cod. civ. Germ. § 939 sqq.; Cod. civ. Gall. a. 2228 sq.; Cod. obligationum Helv. a. 134.

[86] Cf. Cod. Iur. can. c. 1725.

63. 5. Time required for prescribing is determined in diverse ways by ecclesiastical and civil laws. Ancient authors were accustomed to distinguish in prescription:

a) a very brief time, which is below two or three years;

b) a brief time, which is below ten years;

c) a long time, which exceeds ten years;

d) a very long time, which exceeds thirty years;

e) an immemorial time, of whose beginning no memory exists, for example a time of 100 years.

For recognizing how much time is required in prescription, prescription between those present and prescription between those absent is still customarily distinguished. Those are judged present who either live in the same territory, or who exist under the same governor or judge. But those are called absent in whom these conditions are not verified.

Ecclesiastical law in some cases differs from modern civil laws in determining the time required for prescription. Although civil laws are not accustomed to care much about the ordinances of canon law, nevertheless without any doubt in conscience ecclesiastical laws must be observed, at least if there is question of prescription of ecclesiastical goods. Whence, for example, the goods of some parish or monastery cannot be

acquired by title of prescription, unless the statutes of ecclesiastical law have been observed. But it must be said otherwise if there is question of lay goods which some church or ecclesiastical juridic person acquires by title of prescription. In this case civil laws rather than ecclesiastical laws must be observed. But the reason is, 1. because lay goods are more principally ruled by civil laws than by ecclesiastical laws; 2. because ecclesiastical persons also are bound to observe just civil laws concerning contracts, concerning purchase, concerning sale, etc.

These are the more principal statutes of ecclesiastical law:

1. Acquisitive and liberative prescription, just as it is in the civil legislation of the respective nation, the Church receives for ecclesiastical goods, except in some cases,[87] as has already been said above. Hence the Sacred Rota on June 21, 1924 admitted the five-year prescription established by Italian law also for ecclesiastical goods.[87a]
2. Immovable things, precious movable things,[88] rights and actions, whether personal or real, which pertain to the Apostolic See, are prescribed by a space of 100 years; but those which pertain to another ecclesiastical moral person, by a space of 30 years.[89] The same holds concerning the prescription of actions in contentious matters[90] (commonly: *Rechtsklagen*).
3. Criminal actions are prescribed in 1 year, if there is question of injuries; in 5 years, if there is question of qualified delicts against the VI and VII precepts; in 10 years, if there is question of the delicts of homicide and simony.[91]
4. A benefice peacefully and without simony possessed by a cleric in good faith for 3 years is prescribed, even if he perhaps acquired it with an invalid title.[92]

Note. In practice, when a doubt arises concerning the prescription of ecclesiastical goods, it is better and safer to compose the matter according to what is fair and good, apostolic authority having first been obtained.

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[87] Cod. iur. can. c. 1508.

[87a] Acta Ap. Sed. XVI 480.

[88] Precious ecclesiastical things are not only those which have a notable metallic value, namely 500 francs, but also those which have notable historical, artistic, or scientific value, for example a very artistic chalice, a rare manuscript, etc. (cf. Hollweck, *Die kirchl. Strafgesetze* § 158, note 6).

[89] Cod. iur. can. c. 1511. The privileges conceded to some, for example to Mendicants, whose goods cannot be acquired by prescription before 60 or even 100 years have elapsed, have not been revoked.

[90] Cod. Iur. can. c. 1701.

[91] Ib. c. 1703.

[92] Ib. c. 1446.

§ 3. Statutes Concerning Prescription According To Certain Modern Laws

I. Germanic Law.

64. 1. Germanic law very precisely distinguishes between *usucapio* (*Ersitzung*), which is acquisitive prescription, and liberative prescription (*Verjährung*).

2. Immovable goods cannot be acquired either by *usucapio* or by prescription.

3. Movable goods can be acquired through ten-year *usucapio*, made in good faith.[93]

4. The ordinary time of prescription is 30 years;[94] nevertheless most debts of commerce, lease, and wages are prescribed in two years: "In 2 years the claims of merchants, manufacturers, craftsmen, and of those who carry on an industrial art are prescribed, for delivery of goods, execution of works, and management of another's affairs.... In 4 years claims for arrears of interest are prescribed...."[95]

Theologians do not agree whether these two-year prescriptions are valid in conscience. Aertnys,[96] Göpfert,[97] and Marc[98] deny it, but with Lehmkuhl[99] and Noldin[100] it is better affirmed. Thus Noldin rightly writes: "Therefore first of all it must be inquired whether the positive law truly intends to extinguish the debt or only to deny an action in judgment. But if it can be shown certainly or at least probably that the intention of the legislator was to extinguish the debt entirely after that time had elapsed, the debtor, with good faith supposed, can be considered immune from the obligation of paying.... Nevertheless there are those who think that, even for active liberative prescription, negative good faith suffices, which consists in the absence of fraud, although there is held a certain persuasion that the debt has not yet been paid; therefore that he who has not paid a rent or the price of a lease through the time suitable for prescription can with a safe conscience deny payment, especially if payment has not been made because of the negligence of the creditor. For since the whole force of prescription depends on civil law, where civil law does not require positive faith, it is lawful even in conscience to stand by it. Nor can a law be called unjust which tends to this, that creditors be rendered more diligent and more alert." - The civil code of Germany (just as generally all modern civil codes) does not care much about obligation in conscience, but generally imposes its own norms. It cannot be denied that these two-year prescriptions sometimes are very good. For from them many ambiguities are avoided; contracted debts are paid more quickly, and commerce is fostered rather than impeded. Besides, negative good faith can be present not so rarely. How often does it happen that someone thinks he has already paid the price for merchandise previously received, and yet in reality he has not paid! Therefore, with negative good faith acceding, the two-year prescriptions contained in § 196 perhaps can be applied in practice.[101]

II. French Law.

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[93] Cod. civ. Germ. § 937.

[94] § 195.

[95] § 196.

[96] *Theol. mor.* III, n. 278.

[97] *Moraltheol.* II, n. 80.

[98] *Inst. mor.* I, n. 901.

[99] *Das Bürgerl. Gesetzbuch* 60 sq.

[100] *De praeceptis* n. 407.

[101] Aloysius Piscetta teaches nearly the same thing excellently and defends it with arguments drawn from Lugo (*De iust. et iure* disp. 7, n. 48), *Theol. mor.* III, Augustae Taurin. 1907, n. 153 sqq.

65. 1. For legitimate *usucapio* there are required: a) continuous, peaceful, public, not equivocal, and truly proprietary possession ("To be able to prescribe, there must be a continuous and uninterrupted, peaceful, public, not equivocal possession, and under title of proprietor");[102] b) a time defined by law, namely, α) for acquiring immovable goods, 10 years, if the proprietor lives in the same district (within the jurisdiction of the imperial court in the extent of which the immovable is situated), and 20 years, if the proprietor does not live in

the same district.[103] In these cases, however, a legitimate title and good faith are required; if these are lacking, 30 years are required.[104] β) For acquiring movable goods no time is required, but that famous principle is valid: "In the matter of movables, possession is worth title."[105] Yet this principle is often understood falsely. Its sense is: "He who possesses a movable good is judged to possess it by just title, until the contrary is proved. But if the contrary has been proved, the possessor is bound to hand over the thing, and indeed, if the things were lost or taken by theft, still after 3 years. But if he bought things of this kind in good faith in a public market or from a merchant publicly selling things of this kind, he has the right of claiming from the proprietor the price given for those things."[106]

2. For legitimate liberative prescription a) the time of 30 years always suffices, without either title being required or bad faith being able to be opposed;[107] b) by a time of 5 years all annual or periodic prestations are prescribed ("everything which is payable by the year or at shorter periodic terms");[108] c) by a time of six months, one year, and two years several other smaller debts are prescribed, concerning which Picot rightly writes:[109] "They must not be considered as true ways of extinguishing obligations, but only as presumptions of payment; for this reason (excepting one exception, art. 2277) the oath can be deferred to him who invokes them. These presumptions of payment of debts, which in usage are called 'crying debts,' are introduced in the interest of debtors and especially of their heirs; they are founded upon the ordinary need of creditors of such obligations, upon the habit of debtors of paying promptly these thousand little daily debts without witnesses and without receipts."

III. Swiss Law.

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[102] Cod. civ. Gall. n. 2229.

[103] Art. 2265.

[104] Art. 2262.

[105] Art. 2279.

[106] Art. 2279, 2280.

[107] Art. 2262, 617, 706.

[108] Art. 2277.

[109] *Code Napoléon expliqué* II, a. 2270.

66. 1. Swiss law concerning this matter is found partly in the civil code, partly in the code of commercial obligations.

2. For legitimate *usucapio* Swiss law establishes these things:

a) Immovable goods are acquired by *usucapio* after 30 continuous years have elapsed and in peaceful possession of the thing;[110] but after ten years, if the immovable good has been entered in the land register (*Grundbuch*) and has been possessed peacefully, continuously, and in good faith.[111]

b) Movable goods are acquired by *usucapio* after 5 continuous years have elapsed and in peaceful possession of the thing, if nevertheless good faith was present.[112]

3. For legitimate liberative prescription these things are established:

a) Debts for which a hypothec has been given are never prescribed.[113]

b) Generally prescription has place after 10 years.[114]

c) After 5 years, however, very many debts are prescribed, for example the price of lease, interest, salaries of physicians, workmen, servants, etc.[115]

d) After one year or six months actions for obtaining indemnification are prescribed.[116]

Besides these prescriptions there are still others, for example of one month, of three months, of three years, etc., which principally have place in banking houses (commonly Bank).[117]

In the forum of conscience *usucapiones* and prescriptions seem to be valid after the elapsed time of at least 5 years, always with the good faith (positive or at least negative) of the one prescribing or acquiring by *usucapio* presupposed. This opinion is confirmed from the sentence of the Sacred Rota alleged above in n. 63. But shorter prescriptions do not seem to be valid in conscience.

IV. Italian And Spanish Law.

[110] Cod. civ. Helv. a. 662.

[111] Art. 661.

[112] Art. 728.

[113] Art. 807.

[114] *Obligationsrecht* a. 127.

[115] Ib. a. 128, 585.

[116] Ib. a. 210, 454, 693, and Cod. civ. a. 95.

[117] *Obligationsrecht* a. 803-807.

67. 1. The civil codes of Italy and Spain treat the matter concerning prescription very broadly, so that it is impossible to embrace the whole matter in a few words. Therefore authors who discuss this matter expressly must be approached.

2. All things which are in commerce are prescriptible.[118] Nevertheless there are many persons against whom prescription cannot obtain.[119]

3. Good faith is not required a) for thirty-year prescription,[120] b) for all liberative prescriptions.[121]

4. Authors do not agree whether the statutes of the Italian and Spanish laws concerning that prescription which does not require good faith are valid in conscience. Aloysius Piscetta[122] defends the affirmative opinion for Italian law; Saralegui[123] defends the negative opinion for Spanish law.

[118] Cod. civ. Ital. a. 2113; Cod. civ. Hisp. a. 1936.

[119] Cod. civ. Ital. a. 2119 sqq.

[120] Cod. civ. Ital. a. 2135.

[121] Cod. civ. Hisp. a. 1961.

[122] *Theol. mor.* III, n. 143 sqq.

[123] *Com. al P. Larraga* n. 742: "These dispositions of the Code must be understood in order to the external forum, ... but they do not avail in the internal forum, in which good faith is indispensable."

68. V. English Law And The Law Of North America.

1. American law in the diverse Federated States is not uniform; nevertheless generally it is sufficiently conformable with English law.

2. Prescription must very precisely be distinguished from the so-called "limitation of action" (*limitation of actions*), which is nothing other than a statute of law not admitting judicial actions after a determinate time has elapsed. There is not much need to care about this limitation of action in the confessional, since it is not valid to transfer dominion of a thing in conscience.[124]

3. Prescription never has place in movable things and in lands:[125] "A title by prescription can be made only to incorporal hereditaments and to certain exemptions and privileges. The rights claimable by prescription for the most part consist of rights in alieno solo. The most important are advowsons, tithes, commons, ways, watercourses, lights, offices, dignities, franchises, pensions, annuities, and rents. Land or movables cannot be claimed by prescription."[126] In this statute English and American law differ from all other European laws (insofar as it is permitted to know).

4. For prescription it is required that the rights causing prescription be exercised a) as true rights, and not as usurpations or simple licenses ("as of right"); b) peacefully and continuously; c) publicly, i.e. with the knowledge of the proprietor. Whence prescription is not present if the right was exercised by force, secretly, or in a precarious mode.

5. The time required for liberative prescription regularly is 20 years, but for acquisitive prescription ("rights of common and all other profits or benefits to be taken and enjoyed from or upon any land") regularly is 30 years; there are nevertheless exceptions, in which either 20 years suffice or 40 years are required.

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[124] Cf. the individual statutes in Tanquerey, *Suppl.* p. 15.

[125] Cf. Slater, *Princ. theol. mor. de iust.* a. 3.

[126] *Encyclop. Britann.* s.v. "Prescription."

69. Scholion. Certain Practical Rules For The Confessor.

1. Let any confessor take care to know at least the principal statutes of his own country concerning prescription, yet very precisely distinguishing statutes that transfer dominion from statutes that exclude judicial action. The former statutes oblige also in the forum of conscience, but the latter are not valid to transfer dominion in conscience.

2. In prescription transferring dominion there is always required good faith, i.e. a prudent judgment of ownership rightly obtained. In acquisitive prescription positive good faith is required, but in liberative prescription sometimes negative good faith suffices, i.e. the omission of any culpable action which could impede the legitimate owner from vindicating his ownership.[127]

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[127] Cf. Crolly, *De iure et iust.* I, n. 610.

Question II. On The Virtue Of Justice Considered In Itself

After enough has been said concerning right, now that virtue must be treated whose object is right, namely the virtue of justice. This question is divided into two chapters: 1. on the notion of justice, 2. on the parts of justice.

Chapter I. On The Notion Of The Virtue Of Justice

70. The name of justice is taken in diverse ways, and indeed:

1. In the broadest sense, for the complex of all virtues, or for total and integral moral rectitude (*Rechtschaffenheit*). In this acceptation it is said: "Blessed are they who hunger and thirst after justice."[128] "Unless your justice abound more than that of the Scribes and Pharisees, you shall not enter into the kingdom of heaven."[129]

2. In a broad sense, for justification or the state of sanctifying grace (*Rechtfertigung*). Thus it is said: "Abraham believed God, and it was reputed to him unto justice."[130]

3. In the strict and proper sense, for a special cardinal virtue. Thus accepted, it can be defined: "the constant and perpetual will of granting to each his own right"; or a little more broadly: a moral virtue inclining the will to rendering to each his own strict right; or according to St. Thomas:[131] "a habit according to which someone, with a constant and perpetual will, grants to each his own right." This definition handed down in the first place is already found in Ulpian[132] and has always been held as good.

It Is Explained. It is said, first: constant and perpetual will, by which words it is signified that justice is a habit which resides in the will as in its subject and renders it stable and apt for acting perpetually according to justice. Therefore the virtue of justice is not yet present if a man acts justly once or a second time,[133] - for this can happen without virtue from natural inclination alone - but if always and everywhere he renders to each one what is his own. It is said, second: of granting to each his own right. For right is the proper object of justice, which renders to each all things which are owed to him in the strict sense. But I say "owed in the strict sense"; for it does not pertain to justice itself to pay a debt in the broad sense, which is rather a certain fittingness. For this pertains to other virtues annexed to justice, as will be said below, n. 73.

The distinction between the virtue of justice and other virtues. From the definition thus explained, the distinction between the virtue of justice and other virtues appears. For justice is distinguished 1. from the other moral virtues both by reason of object and by reason of subject. The object of prudence is practical truth; the object of fortitude and temperance are passions to be moderated; but the formal object of justice is the good and just thing owed to another. The subject of prudence is the intellect; the subject of fortitude and temperance is the sensitive appetite; but the subject of justice is the will.[134] It is distinguished 2. from the theological virtues, inasmuch as these are always infused and directly have God as object. - Especially to be noted is the distinction between justice and charity toward neighbor. Each virtue, certainly, is toward another, as they say, namely toward neighbor; but in one way and another. If I exercise a work of charity, I give to my neighbor what is mine; but if I exercise a work of justice, I give to my neighbor what is his own. For charity rests altogether upon conjunction between the lover and the beloved. Whence he who rightly loves his neighbor loves him as another self. But justice, on the contrary, rests upon the distinction of one man from another. For each man has his own independence and his own inviolable rights. And so a man can indeed injure charity toward himself, but not justice (properly so called).[135] To acknowledge the rights of others and not to violate them is the office of justice. Certainly in itself and by reason of object charity far surpasses justice, but the obligation of justice is customarily stricter than the obligation of charity, which admits a certain latitude. Justice does not regard the diverse conditions of persons, but only the thing owed; and therefore it matters little, for example, whether someone is poor or rich, or noble, for he is always bound to render right to each one; and conversely anyone whose right has been injured can demand reparation of the injured right. Whence in justice there must be observed not only the mean of reason, as in all other virtues, but also the mean of the thing.

[128] Matt. 5, 6.

[129] Matt. 5, 20.

[130] Rom. 4, 3.

[131] S. theol. 2, 2, q. 58, a. 1.

[132] L. 10, Dig. 1, 1 (*lib. primo Regularum*).

[133] Cf. S. theol. l. c. ad 3.

[134] Cf. S. theol. l. c. a. 4.

[135] Cf. ib. a. 2. In a broader sense a man can also commit injury against himself, for example against his own body.

Chapter II. On The Parts Of Justice

Preliminary Note. Diverse authors do not assign the parts of justice in a uniform way.[136] We prefer the mode indicated by St. Thomas. But the Angelic Doctor assigns[137] the subjective parts or species of justice; then the integral parts, i.e. acts and habits necessary for perfect justice; and finally the potential parts, i.e. virtues annexed to justice.

[136] Modern authors are accustomed to distinguish justice as threefold: legal, distributive, commutative. For justice orders man to others. But this order to others is threefold, namely of part to whole, of whole to part, of part to part. Now legal justice orders the parts to the whole, inclining the members of society to work for the common good of the republic; distributive justice orders the whole to the part, i.e. inclines the governor of the republic to distributing goods and burdens according to the merits and powers of each one; commutative justice orders the parts among themselves, inclining individual men to rendering to each his own right. - This division indeed is very easily understood, but already by Dominic Soto (*De iust. et iure* l. 3, q. 5, a. 1) it was attacked. For virtues are not properly distinguished according to the subjects which they order, but according to the formal objects into which they first and per se tend. Now the formal object into which justice first and per se tends is not threefold but twofold, namely either the common good (legal justice) or the private good (distributive and commutative justice). Whence Aristotle (*Eth.* l. 5, c. 2) and after him St. Thomas (S. theol. 2, 2, q. 58, a. 7) more rightly and more profoundly employed a two-member division of justice, namely into general or legal justice, and particular justice. - Although distributive and commutative justice tend first and per se to the private good, remotely nevertheless they also procure the common good of the republic. Cathrein (*Moralphil.* I 359, ed. 5) defends a singular opinion, namely that legal justice does not pertain to the cardinal virtue of justice. Vermeersch (*Quaest. de iust.* n. 20 sqq.) deservedly rejects this opinion.

[137] Cf. S. theol. 2, 2, q. 58, a. 5 sqq., and q. 61, a. 1.

Article I. On The Subjective Parts Or Species Of Justice

71. General or legal justice (which by some authors is also called social) and particular justice are distinguished. But particular justice is subdivided into distributive and commutative. Distributive justice is again subdivided by some into distributive strictly so called and vindicative. The individual kinds are explained. Therefore general or legal justice is distinguished from particular justice.

1. General or legal justice is the constant and perpetual will of rendering to the community (whether civil or ecclesiastical) its own right.[138] Since man is by his nature a social animal, i.e. must live in human society, offices toward society also fall upon him. Therefore that virtue which perpetually and constantly inclines the will to fulfilling those social offices is deservedly called general justice, and indeed partly from its object and end, because namely the social good is a general good; partly from its effect and proper function, because upon this virtue falls the office of directing all acts and habits of man to the social and common good. Thus from the command of general justice the brave soldier fights strenuously; any citizen pays taxes and observes laws; the prince establishes good laws and urges their observance. General justice is also called, and indeed

not undeservedly, legal justice, because its chief function is to establish and observe laws, since these are always necessarily ordered to the common good.

This general justice (or legal or social justice) is most necessary for the common good; for without it peace is disturbed, and many damages are also inflicted upon fellow citizens, and this especially if the governors of the community injure it by establishing unjust laws.

There are those who think that this general justice is not a special virtue, but a certain ratio common to every virtue; but better and more rightly with the Angelic Doctor[139] general or legal justice is held to be a special virtue really distinct from other virtues. Certainly legal justice exercises a general force over all other virtues, ordering them to the common good, just as God also orders individual, even the smallest, creatures to the good of the whole world; but just as from this it is not lawful to conclude that God is something common and general (which would be Pantheism), so from the general force and influence of legal justice this cannot be called something common to all virtues. Besides, charity certainly is a special virtue, and yet it commands all virtues and directs their actions to its own end and object.[140]

2. Particular justice is the constant and perpetual will of rendering to individual persons (whether they be physical persons or juridic persons)[141] their own right, and it is subdivided into commutative and distributive as into two distinct species.[142]

a) **Commutative justice** is the constant and perpetual will of a private person of rendering to another private person his strict right, with the absolute equality of the thing to be rendered to the thing received having been preserved.[143] This part of justice receives the name of commutative justice because it especially has place in exchanges, for example in purchase and sale. But St. Thomas beautifully shows that this justice has place not only in purchase and sale, but in all the last six precepts of the Decalogue.[144] Commutative justice is justice in the strictest sense; whence its violation involves an obligation of restitution.[145]

b) **Distributive justice** is the constant and perpetual will inclining the prince of some community to distribute rewards, dignities, honors, and also common burdens (and - when the case occurs - punishments also) among individual subjects according to the proportion of merits or capacities. Therefore in distributive justice absolute equality is not observed (as happens in commutative justice), but equality of proportion. Distributive justice is indeed principally in the prince, who through it is inclined, with acceptance of persons set aside, to justly distributing common goods and burdens; but participatively it is also found in subjects, insofar as they are content with the equitable distribution made by the superior.

c) **Vindicative justice** is held by several theologians as a part of distributive justice; for it is the constant and perpetual will of the prince of distributing due and condign punishments upon guilty subjects. By other theologians vindicative justice is reduced to legal or general justice, because in inflicting punishments the public good must be cared for first of all. Finally, there are not lacking theologians who wish it to be a part of commutative justice, because superiors, from a quasi-contract entered into in the reception of office, are bound to punish guilty persons. - In so great a variety of opinions let each one abound in his own sense. If vindicative justice is considered insofar as it observes a just proportion between delicts and punishments to be paid, without doubt it pertains to distributive justice; but if it is considered precisely as conducing to the common good, it is commanded by legal justice; finally, if a judge through grave negligence omits the punishment of delinquents, he harms the common good, gravely fails in his office, and consequently is bound to restitution, because he has injured commutative justice.[146]

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[138] Ib. q. 58, a. 5.

[139] Ib. a. 6.

[140] Cf. ib.

[141] In particular justice the term toward which justice is exercised is a private person, whether physical or juridic. But in commutative justice not only the term toward whom justice is exercised is a private person, but also he who exercises justice. Thus, for example, Peter renders to Paul the just price for a thing bought. In this act of commutative justice Peter and Paul are private persons. - Peter renders to the government the just price for a thing bought. In this act also of commutative justice each contracting party is considered as a private person. For then the government is considered as a private juridic person selling its wares, and not as a superior directing its subjects.

[142] Cf. S. theol. 2, 2, q. 61, a. 1.

[143] Performance and counter-performance must be materially absolutely equal.

[144] Cf. S. theol. 2, 2, q. 61, a. 3.

[145] Cf. below n. 203.

[146] St. Thomas (S. theol. 2, 2, q. 80, a. un. ad 1) says: "Vengeance which is made by the authority of public power, according to the sentence of a judge, pertains to commutative justice." The Angelic Doctor has similar things ib. q. 108, a. 2 ad 1. Yet from this it is not yet lawful to conclude that the whole of vindicative justice pertains to commutative justice. For the Angelic Doctor seems to speak of that case in which the judge punishes one subject who has injured another. Then certainly the judge is bound to inflict upon the first subject as much punishment as the evil inflicted upon the other was, so that there may be compensation and as it were commutation. But if the judge inflicts punishments to save the injured public good, then such vindication seems to pertain to legal justice. Billuart (*De iust.* diss. 5, a. 3) says that vindication is indeed an act elicited by commutative justice, but commanded by legal justice. Cajetan has similar things in the Commentaries on the cited places. Besides, this whole controversy is of small moment. See Lugo, *De iust. et iure* disp. 1, n. 69.

Article II. On The Integral Parts Of Justice

72. St. Thomas enumerates two quasi-integral parts of justice, namely to do good and to decline from evil, not indeed under a general aspect, but under the special ratio of debt toward another.

The Angelic Doctor writes to the matter:[147] "If we speak of good and evil in common, to do good and to avoid evil pertains to every virtue, and according to this they cannot be posited as parts of justice, unless perhaps justice is taken insofar as it is every virtue: although even justice accepted in this way regards a certain special ratio of good, insofar namely as it is owed in order to divine or human law. But justice, according as it is a special virtue, regards good under the ratio of debt to one's neighbor; and according to this it pertains to special justice to do good under the ratio of debt in comparison to one's neighbor, and to avoid the opposite evil, namely that which is harmful to one's neighbor. But to general justice it pertains to do the good owed in order to the community and to God, and to avoid the opposite evil. But these two are called parts of general or special justice, as it were integral parts, because each of them is required for the perfect act of justice. For it pertains to justice to establish equality in those things which are toward another, as is clear from the things said above.... But someone establishes the equality of justice by doing good, i.e. by rendering to another what is owed to him; but he preserves the equality of justice already established by declining from evil, i.e. by inflicting no harm upon his neighbor." - From these things it follows that the act of restoring another's good unjustly taken and the act of repairing damage caused, which are sometimes enumerated as acts of justice, are reduced to the act of declining from evil inflicted upon one's neighbor.

Some modern authors enumerate as integral parts of justice constitutive justice, which bestows upon each what is his own, and restitutive justice, which repairs injured justice.

[147] L. c. q. 79, a. 1.

Article III. On The Potential Parts Of Justice

73. As has already often been said, the potential parts of some cardinal virtue are called virtues which indeed agree with it in its object considered generally, but in some way fall short of the perfect ratio of it. But the function of justice is to render to another what is owed, and indeed according to equality. Therefore in two ways can some virtue existing toward another fall short of the ratio of justice: 1. insofar as it falls short of the ratio of the equal; 2. insofar as it falls short of the ratio of strict debt.

On account of the first deficiency, namely in rendering strict equality, three virtues are joined to justice as potential parts, namely religion, piety, observance. 1. For religion is the virtue rendering due worship to God, but man is never able to worship God as He deserves. 2. Piety is the virtue inclining one to render due honor and love to parents. But according to equality there cannot be recompensed to parents what is owed to them by children. 3. Observance is the virtue inclining one to offer due reverence to men excelling in great virtue and dignity. Moreover great virtue also is not recompensed according to an equal reward on this earth.

On account of the other deficiency, namely of strict debt, six virtues are joined to justice: namely 1. veracity or truth, which is the virtue inclining one always to say the true and never to lie. To this virtue are reduced a) faith or fidelity in promises; b) simplicity, by which someone exteriorly shows himself in words and deeds to be such as he is interiorly. To veracity are opposed lying, infidelity, hypocrisy, simulation, and generally all those things concerning which there is discussion in the eighth precept of the Decalogue. 2. Gratitude or grace, which is the virtue inclining one at least in some way to compensate a benefit received. 3. Vindication, which is the virtue avenging injuries committed. Very closely related to vindication is the virtue of penance, by which one tries to repair injuries inflicted upon God by sinning. 4. Liberality, which moderates the love of money, so that we may willingly expend it for our own utility and that of our neighbor and for the honor of God. 5. Affability, which makes conversation with one's neighbor pleasing and fitting. 6. Equity or *epikeia*, which inclines one from just causes to pass over the words of the law and rather to act according to the presumed intention of the legislator.[148] - As is easily clear to one considering the matter, in all these six enumerated virtues there is not so strict an obligation of debt as in justice, and consequently all are deservedly enumerated as potential parts of the cardinal virtue of justice. Concerning the individual ones there will be discussion below.

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[148] *Epikeia* is taken in diverse senses, as will be said below, n. 617. Cf. also I, n. 231 sqq.

Question III. On The Violation Of Justice And The Reparation Of Violated Justice

This question is divided into four chapters: 1. on injustice in general; 2. on injustice committed through the taking away of another's thing; 3. on injustice committed through the damaging of one's neighbor; 4. on the reparation of violated justice through restitution.

Chapter I. On Injustice In General

Notions. Just as the words right and justice are employed in various senses, so also injury and injustice. For first, injustice generally signifies the state of sin or even sin itself; then, everything which is opposed to the cardinal virtue of justice, whether general or particular. Hence transgressors of the law, judges who are acceptors of persons, thieves, robbers are called unjust. Here we do not treat of injustice in the first sense, but only of injustice insofar as it is directly opposed to the cardinal virtue of justice (whether general or particular). - Injustice and injury are sometimes, especially by modern authors, for example Waffelaert,[1]

Tanquerey,[2] distinguished in such a way that injustice signifies the habit, but injury the act. The matter is of small moment.

[1] *Tract. de iust.* II, n. 2.

[2] *Synopsis Theol. mor. de virt. iust.* n. 264.

74. Principle 1. a) Injustice or injury, which is opposed to the cardinal virtue of justice, is a mortal sin from its genus; b) but it can be a light sin either from imperfection of act (i.e. from inadvertence or imperfect consent), or from smallness of matter.

a) Thus all teach. Sacred Scripture itself testifies that at least some acts of injustice are mortal sin; for example: "Do not err: ... Neither thieves ... nor the rapacious shall possess the kingdom of God."[3] Moreover if some acts of a vice, without any other moral species added, are mortal sins, it follows that such a vice from its genus is a mortal sin. - The same is clear from reason; for justice is exceedingly necessary for social life, so that it can deservedly be called the foundation of the good and peace of the community, and without it the peaceful cohabitation of men is wholly impossible. Therefore he who gravely violates justice commits great damage and consequently grave sin. Besides, charity can be gravely violated through acts of injustice, which are accustomed to cause sadness, quarrels, hatreds, damages, etc., to one's neighbor. But a violation of charity from its genus is a mortal sin.

b) Therefore injustice from its genus is a mortal sin. But it is most difficult to determine in particular when its individual acts are mortal or venial sins from gravity or lightness of matter. On the contrary, it is not so difficult to determine when there is imperfection of act from inadvertence or from imperfect consent.

As a general rule concerning gravity of matter it can be held: injustice is a grave sin if from it notable damage has arisen either to one's neighbor or to the common good, or, as St. Thomas says:[4] "Sins which are committed against one's neighbor are to be weighed, in themselves indeed, according to the harms which are inflicted on one's neighbor, because from this they have the ratio of fault." This rule is explained: every injustice causes damage, and indeed ordinarily a twofold damage, namely to one's neighbor and to the common good; for example, a thief taking away a sum of 100 francs causes damage: 1. to the legitimate proprietor, as is clear of itself; 2. to the common good, because he disturbs common peace, public tranquillity, and the mutual conjunction of men. - The same rule can also be expressed in this way: injustice is a grave sin as often as both he who suffers the damage and the governor of the community are reasonably gravely unwilling. Whence, for example, if someone takes 2 francs from a poor workman, that workman himself and the governor are reasonably and seriously unwilling; but if someone takes 100 francs from a very rich man, perhaps great injurious damage is not caused to that man, nevertheless the superior of the community must be gravely unwilling that such thefts be committed in his territory. - If the proprietor is gravely unwilling not on account of the objective value of the thing injured, but on account of a subjective and excessively exaggerated affection for the thing, for example for a beloved little bird, then the voluntary injury of such a thing can indeed be a grave sin against charity, but not against justice.

[3] 1 Cor. 6, 10.

[4] S. theol. 2, 2, q. 73, a. 3.

75. Principle 2. All injuries indeed are opposed to the virtue of justice, but nevertheless they are not of the same lowest moral species, and they are distinguished according to formally diverse objects.

Hence the injustice committed in theft is one thing, that in homicide another, that in detraction another, etc. But the reason is that diverse vices can be opposed to one and the same virtue. Especially two great categories of injustice are customarily distinguished, namely the unjust taking away of another's thing and the unjust damaging of one's neighbor in his diverse goods. Whence we shall treat each category individually below.

76. Principle 3. The unjust, speaking per se and formally, a) no one can do except one willing, b) nor suffer except one unwilling.

Thus St. Thomas writes most truly and in pregnant style.[5] The first part of this saying is clear of itself, because no one can sin except willingly. But formal injustice is always sin. For formal injustice, which someone knowingly and willingly commits, must be distinguished from material injustice, which indeed objectively violates the right of another, but without fault of the agent. Formal injustice, which is opposed to commutative justice and efficiently and really causes damage to one's neighbor, induces an obligation of restitution, but material injustice does not - at least not always - as will be said below.

The other part of the above-mentioned sentence is also expressed in Rule of Law 27 in VI: "To one knowing and consenting, neither injury nor deceit is done"; nevertheless it needs some explanation, because it is not true unless consent has the following conditions: a) that it be free. Whence, for example, if someone compelled by a robber consents that money be taken away from him, he nevertheless suffers injury and can reclaim the money taken away; b) that it be lawful. For in many cases a man cannot lawfully consent, because namely he does not have perfect dominion, or because there is question of inalienable rights; for example, he who kills one consenting sins and commits injustice; likewise he who commits adultery with a wife while the husband consents;[6] likewise he who strikes a cleric renouncing the privilege of the canon, etc. But when someone has perfect dominion of some thing, then no injury is done to him when he wills it; for example, no injury is done to a rich man having apples in his garden, and not unwilling that neighboring boys usurp those apples, if the boys really take away the apples.

Since, therefore, formal injustice does not proceed except from one knowing and willing it, the question arises how this knowledge and will influence the external act, especially with respect to the obligation of restitution; or more briefly: whether the intention of harming always renders the external act unjust. To this question I answer thus: if someone has the intention of harming another, he indeed sins, for he commits mental injustice, but he is not bound to restitution unless the external act placed from this evil intention is also by itself alone against justice. For example, if a private man, from hatred toward an enemy, does not save his house burning, although he can easily do this, he indeed commits grave sin, but he is not bound to restitution, because the external act of saving the house is prescribed to him not from justice, but from charity alone. The judge who, according to the laws indeed, but chiefly from an intention of harming, condemns the guilty person, sins! But he is not bound to restitution, because his external action is not unjust. But the reason for this response is taken from the character of commutative justice, in which above all the "mean of the thing" must be observed. But there is never an obligation of restitution unless the mean of the thing has in reality been injured.

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[5] S. theol. 2, 2, q. 59, a. 3.

[6] Cf. proposition 50 condemned by Innocent XI: "Copulation with a married woman, with the husband consenting, is not adultery; and therefore it suffices in confession to say that one has fornicated" (Denz. n. 1200).

Chapter II. On The Unjust Taking Away Of Another's Thing

77. Preliminary Note. The unjust taking away of a thing is either simple or qualified. In the first sense it is the same as theft. In the other sense there is added a certain quality changing the species. Qualities of this kind are two: that of a sacred thing and that of force employed in the unjust taking away. Therefore there are three species of unjust taking away, namely simple theft, real sacrilege, and rapine. It will be better to discuss sacrilege below, when local and personal sacrilege also will be treated. - Ancient authors, besides the qualified thefts just enumerated, assigned from Roman law certain others, namely 1. peculate, by which someone steals something from public goods or converts it to his own private uses; 2. plagium, by which someone abducts a man, whether free or slave, into servitude; 3. cattle-lifting, by which someone steals cattle in pastures. - All these indeed have only historical value; in confessional practice judgment must be made about them in the same way as about simple theft. Nevertheless some things will be said specially below, n. 84, concerning peculate or concerning thefts in public things.

Rapine is the unjust taking away of another's thing while the owner is present and unwilling, upon whom grave violence or fear is inflicted. Therefore rapine includes a twofold injustice: one real, the other personal; for another's thing is unjustly taken away, which constitutes real injustice; besides, by fear or violence a most grave injury is inflicted upon the person of the present owner, which constitutes personal injustice. Whence it is clear that rapine is a much graver sin than simple theft. Consequently it is also punished by civil tribunals much more gravely than theft. But rapine is not only a graver sin than theft, but is also specifically distinguished from theft, because it includes an injustice distinct in species.[7] But with respect to the restitution of goods carried off by rapine, the same things are valid which will be said below, n. 80 sqq., concerning the restitution of goods taken away by theft.

For the sake of clarity, all things that must be said in this chapter we divide into three articles: 1. on the nature and gravity of theft in general; 2. on certain thefts in particular; 3. on causes excusing the taking away of another's thing.

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[7] Cf. S. theol. 2, 2, q. 66, a. 4 and 9.

Article I. On The Nature And Gravity Of Theft In General

78. Definition. Theft is the hidden taking or taking away of another's thing while the owner is reasonably unwilling.[8]

It Is Explained. It is said, first: hidden, because if it were an open taking away, there would be rapine.

It is said, second: taking, which includes unjust detention; for "to detain that which is owed to another has the same ratio of harm as an unjust taking."[9] Therefore to theft are reduced: not paying debts, stealing something by fraud or deceit, not restoring to the owner a thing found, etc. - The taking away or detention is understood to have been done with the intention of retaining the thing for oneself and of using and enjoying it; for if the taking away was done from another intention, for example of lending the thing, or of soon returning it, or of destroying it, it is not theft strictly so called.

It is said, third: while the owner is reasonably unwilling. Theft strictly so called[10] is not present if the owner either consents to the taking away, or if he is unwilling not so much concerning the taking away itself as concerning the mode of taking away (for example, if a wife secretly takes away certain lesser goods, the husband is not unwilling concerning the very taking away of the thing, since it is of lesser moment, but concerning the mode of taking away, namely concerning the wife's furtive mode of acting), or if he is

unreasonably unwilling. But the owner is unreasonably unwilling if from justice or from piety or from another just cause he is bound to permit the taking away of the thing. Hence a wife does not steal if she takes away from her husband money which he would squander in games or drinking; likewise if in necessity she secretly takes from him things necessary for suitable sustenance. Nor can the husband reasonably be unwilling against such a mode of acting by the wife. Similarly a rich man is unreasonably unwilling that a poor man living in extreme necessity should take from the goods of the rich man the things necessary for life, or that a maidservant should give to the poor fragments of foods which otherwise would perish.

[8] Cf. S. theol. 2, 2, q. 66, a. 3.

[9] Ib. ad 2.

[10] Sometimes theft is taken in a broader sense, and then it is the deceitful taking away of any thing whatever (even one's own) deposited with another (cf. S. theol. l. c. a. 5 ad 3); or it also includes the unjust damaging of another's thing.

79. Malice Of Theft. Theft from its genus is a mortal sin.

This is clear from the things said above concerning injustice. For theft is injustice, which is a mortal sin from its genus. Besides, thieves are excluded from the kingdom of heaven, as is clear from the text cited above, n. 74. Moreover no one is excluded from the kingdom of heaven except on account of mortal sin. But by Christ the precept of not stealing is reckoned among the commandments which one must observe if he wishes to enter into life.[11] - But let no one say that from these texts it follows that theft is not only a mortal sin from its genus, but also from its whole genus, because it always excludes from the kingdom of heaven. For it would hardly be fitting to divine mercy if, for example, a boy stealing an apple were on that account thrust down into hell for all eternity. Therefore the texts of Sacred Scripture must not be understood concerning those very small thefts, which scarcely deserve the name of theft, but concerning greater thefts, which before God and men are acknowledged as shameful.

[11] Cf. Matt. 19, 18.

80. Gravity Of Matter In Theft. There are few matters in the whole of Moral Theology in which there exists so great a variety of opinions as in determining the gravity of theft. Nevertheless, it seems that here there is question not so much of the gravity of the sin of theft - which depends much on the lax or scrupulous conscience of the agent - as rather of the grave obligation of restitution arising from the taking away of another's thing. Certainly it is arbitrary enough if some moralist should wish to determine, for example, that he who took away 10 francs goes to hell; he who stole 9 francs goes to purgatory. On the contrary, moral theologians rather reasonably - while the Church is silent, indeed even consenting - try to determine the cases in which after the fact of theft there is a grave obligation of restitution. For restitution repairs the injured social order. As a rule in determining the grave obligation of restitution, above all there must be attended to the damage which has been caused by the unjust taking away. For theft is against the virtue of justice, and in sins committed against justice the gravity must be taken not so much from the affection with which the owner is borne toward the thing taken away, nor from the indignation or sadness with which he is affected from it, as from the damage inflicted. Whence, for example, he who unjustly takes away some little bird much loved perhaps sins gravely against charity, because he has saddened the mistress of the little bird most vehemently, but he does not sin gravely against justice, because he has not inflicted grave material damage. But grave material damage is judged to be present when either the injured person himself or the legitimate guardian of the social order is reasonably and gravely unwilling on account of that damage.

Most commonly modern theologians assign grave matter in theft, one kind absolutely, another relatively.[12]

Absolutely grave matter is taken from the value alone of the thing taken away, without any relation being had to the condition of the person from whom the thing has been taken. And therefore absolutely grave matter always and everywhere constitutes a grave obligation of restitution. But concerning what is absolutely grave matter authors do not agree. Tanquerey[13] thinks it to be in the regions of Europe 20-30 francs; but in the States of North America 7-8 dollars; Noldin[14] opines it to be 30 marks; Lehmkuhl[15] teaches the same; but Waffelaert[16] says it is about 40 francs. Since today the value of money has been enormously diminished, I think that there is always a grave obligation of restitution if someone altogether unjustly and without any excuse has taken away another's things at a price of about 100 francs (of gold value). The reason is that in our times the common persuasion of the people holds the unjust taking away of 100 francs to be a grave matter and to be punished severely on account of the injured public order. But I say: altogether unjustly and without any excuse; for if the thief has some excuse, or if the owner is not so unwilling, then a greater sum is necessary for inducing a grave obligation of restitution. Whence, for example, I would indeed admonish, but I would not strictly oblige to restitution, a son who took away 150 francs from his very rich father.

Relatively grave matter is that which brings grave harm to the owner, his condition being considered. Some authors assign the quantity by which a head of household needs for his daily sustenance with his family;[17] others better define a certain fixed amount in about this way:

a) with relation to the poor and wretched, about 2 francs;

b) with relation to men of middling fortune, about 10-12 francs;

c) with relation to the rich, about 30-50 francs;

d) with relation to the very rich, about 100 francs, or the same quantity which is judged as absolutely grave.

Note concerning these fixed amounts: 1. They are not wholly certain rules, because no authentic sanction of them is found anywhere. They are nothing other than a reasonable and sufficiently founded opinion. 2. In them there is not attended to damage which perhaps can follow by accident from the theft: for example, if someone takes away from a workman an instrument of the price of 1 franc, ordinarily he does not sin mortally; nevertheless if the workman, because that instrument is lacking, cannot work for a notable time, then the thief foreseeing this omission of labor sins mortally, not indeed on account of the taking away of the instrument, but on account of the unjust damaging caused. 3. When it is unknown upon whom damage has been inflicted, it is permitted to presume that it has been inflicted upon one moderately rich. Wherefore if the value of the thing does not exceed 10 francs, there is not a grave obligation of restitution.

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[12] But Billuart teaches that more probably the gravity of matter in theft is not to be estimated relatively, but absolutely (*De iure et iust.* diss. 11, a. 3).

[13] *Synopsis theol. mor. de virt. iust.* n. 436.

[14] *De praeceptis* n. 416.

[15] *Theol. mor.* I, n. 1114.

[16] *De iust.* II, n. 215.

[17] St. Alphonsus, *Theol. mor.* l. 3, n. 527, calls this rule confused and obscure.

81. Scholion. On The Gravity Of Theft To Be Cautiously Weighed. In weighing the quantity absolutely or relatively grave, the circumstances of times and places must be attended to. Whence, for example, the quantity assigned by authors of past centuries is too small in our times, since the value of money is now greatly diminished. Similarly the value of money is much less in great industrial cities than in distant rural

regions.[18] But let the confessor always be mindful of what St. Augustine said concerning the distinction between venial and mortal sin: "It is most difficult to discover, most dangerous to define." Whence Billuart wisely warns:[19] "Therefore let directors of souls not presume to resolve individual and singular cases with certainty: this is mortal, this is venial, unless this is openly evident.... And when they are questioned by penitents about that matter, let them prudently decline an absolute response, and let them instill in them horror of all sins, even venial ones."

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[18] Cf. Waffelaert, *De iust.* II, n. 215, where there is a long computation of the difference of value according to diverse times.

[19] *De iure et iust.* diss. 9, a. 3.

Article II. On Certain Thefts In Particular

82. The rules given above for discerning the gravity of theft (or rather the grave obligation of restitution in certain thefts) must be somewhat tempered, either because among the small things taken away there were many intervals, or because the owner is not judged to be so unwilling, or because the thing was not so much another's. Whence some things remain to be said: 1. on petty thefts; 2. on domestic thefts; 3. on thefts in public things.

§ 1. On Petty Thefts In General

Petty thefts are called thefts of lighter matter repeated rather often. Of themselves these petty thefts are venial sins; but they become gravely evil 1. from an evil intention and 2. from frequent repetition.

1. From an evil intention, indeed, if someone intends by many small thefts at last to obtain a notable quantity.

For example, if a servant intends to steal from his master 100 francs, and, lest he be detected, executes this proposal not once, but 50 times through the time of one year. This evil intention effects that the servant immediately sins mortally as soon as he gives consent to this proposal. But in each instance, when he steals 2 francs, he at least implicitly renews his evil intention and therefore sins mortally. Nevertheless he is not strictly bound in the confessional to say that he intended a theft of 100 francs and executed this in 50 instances, but it suffices if he confesses simply: I stole 100 francs; or, I had the intention of stealing 100 francs, and I did this according to such a quantity. The reason is that all those petty thefts coalesce into one moral act, unless perhaps the intention was at times revoked. For then there would be several sins.[20]

2. From frequent repetition of petty thefts, even if an explicit intention of obtaining a grave quantity did not precede, there arises a grave sin of injustice and a grave obligation of restoring, provided the following three conditions are present: a) that between individual petty thefts there not be a notable interval; b) that the individual petty thefts have not been revoked or restored; c) that the total matter of all the united petty thefts be grave.

Therefore it is required a) that between individual petty thefts there not exist a notable interval, such as a time of 2 months is judged to be, if there is question of matter which, although it is not grave, nevertheless almost approaches grave matter. Thus St. Alphonsus.[21] Whence, for example, if someone takes 10 francs from a rich man today and after two months again 10 francs and so thereafter, these petty thefts do not coalesce on account of the notable interval interposed between two petty thefts. Nevertheless I think that in practice such petty thefts repeated rather often at length sometime coalesce, because it is scarcely possible that from the beginning there is lacking an intention of arriving at a considerable sum. But if there is question of truly very

small thefts, for example of half a franc, those do not coalesce even after a shorter interval, as for example after fifteen days.[22] The reason for all these things is that according to the common estimation of men those petty thefts do not coalesce if so great an interval exists between the individual ones; and besides, because then grave matter will either never be present or not except after a long time. For example, a tailor retains only every two months a fragment of cloth, but ordinarily observes strict justice. Perhaps after 10 years all those fragments taken together (*resegmina*) will constitute grave matter. No one surely will say that between the first fragment and the last there still exists a moral union, and consequently that the tailor is bound to restitution under grave sin.

Then it is required b) that the individual petty thefts have not been revoked or restored. This is clear, because petty thefts revoked or restored, since in the being of morals they now do not exist, cannot coalesce with following ones.

Lastly it is required c) that the total matter of all the united petty thefts be grave. But commonly moral theologians opine that in petty thefts there is required a greater quantity than in theft which was committed once and all at once; namely, there is required a quantity greater by half, if the petty thefts were done from the same owner; but if something has been taken from several owners, there is required a quantity twice greater[23] or (if there are many owners) absolutely grave, namely 100 francs. The reason is clear from the things said above. For the gravity of theft must be weighed from the objective damage which has been inflicted upon the legitimate owner. Moreover the legitimate owner from whom some sum has been taken over a long space of time does not suffer so great a damage as he would suffer if this happened all at once and one time. But if there are diverse and many owners, still less damage has been caused to each one, and consequently only absolutely grave matter is deservedly assigned as inducing a grave obligation of restitution. If, for example, a tailor, working for some sufficiently rich clothing merchant, unjustly retains every week certain fragments of cloth at the price of 2 francs, he is not bound under grave sin to restitution unless the value of all the fragments has a quantity greater by half, i.e. 20 + 10 = 30 francs. But if those fragments pertain to several owners, a quantity twice greater (or absolutely grave) will be required, namely 100 francs. - After grave matter has coalesced from petty thefts, a grave obligation of restitution arises, as is clear from proposition 38 condemned by Innocent XI: "No one is bound under penalty of mortal sin to restore what has been taken away through a few thefts, however great the total sum may be."[24]

In repeated petty thefts, the individual takings away considered separately are indeed only venial sins. But since the following petty theft is always an approval (at least implicit) of the preceding one, at length sometime it happens that the last petty theft, although light in itself, is an implicit approval of the taking away of grave matter and consequently constitutes a grave sin. But he who, after he has taken away grave matter by petty thefts, continues stealing, sins mortally as often as he attends to the matter already stolen and renews the intention of retaining it with the others. Thus the common opinion.[25] But in practice it suffices if the confessor knows the sum taken away by petty thefts and perhaps the time during which the petty thefts were done.

Almost the whole doctrine concerning petty thefts can be comprehended in this phrase:

Petty thefts constitute grave sin if they were perpetrated either with the intention of arriving at grave matter, or if, without a notable interval interposed, they have gathered grave matter.

Note. Petty thefts are often perpetrated in domestic matters,[26] or also by merchants and workers, for example, by innkeepers who mix water with wine, by farmers adulterating milk, by workmen subtracting small materials furnished to them.[27] In practice, on account of general customs perhaps to the contrary or on

account of the consent of the owner in some way presumed, sometimes the obligation of restitution is not to be urged so strongly; nevertheless one must insist that those petty thefts cease. Besides, a longer discussion concerning merchants adulterating wares or secretly diminishing measure will return below, where purchase and sale are treated.

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[20] Cf. above I, n. 376, concerning the numerical distinction of sins.

[21] *Theol. mor.* l. 3, n. 530.

[22] Noldin, *De praeceptis* n. 422, thinks that already after a week those very small petty thefts do not coalesce.

[23] Thus St. Alphonsus, l. c.

[24] Denz. n. 1188.

[25] Cf. Billuart, *De iure et iust.* diss. 11, a. 4; Lehmkuhl, *Theol. mor.* I, n. 1117.

[26] Concerning which below, n. 83.

[27] Cf. below concerning the contract of purchase (n. 279).

§ 2. On Domestic Petty Thefts

83. Petty thefts are especially frequent in domestic matters, and not rarely are perpetrated by wives, children of the family, servants. The head of household is not customarily so unwilling against such petty thefts as if they were perpetrated by outsiders; indeed sometimes he is not unwilling against the taking away itself, but only against the clandestine mode of taking away. For he himself would have given the thing taken away, if a suitable petition had been presented to him. All theologians admit that in domestic petty thefts a greater quantity is ordinarily required for inducing an obligation of restitution. But a general rule which suffers no exceptions cannot be established in this matter. The following norms, however, can be held as directive:

1. In ordinary food and drink taken for one's own use, petty thefts never attain grave matter.[28]

The reason is that the head of household is bound to nourish all his domestics suitably. But if he does not do this, the domestics have the right of taking that which the head of household unjustly denies. Yet also in the case in which suitable nourishment is provided, the head of household is not judged to be gravely unwilling if the domestics take something more, provided nevertheless that these foods a) are not handed over or sold to others, and b) there is not question of very precious foods. Certainly if there is question of very precious foods, for example Champagne wine, then the head of household is customarily gravely unwilling that this be consumed by his servants. But even in that case I would not oblige a wife or children of the family to restitution, because then also the head of household is judged to be unwilling more concerning the clandestine mode of taking away and the other evil effects following from it than concerning the taking away itself. - But when foods are given or sold by domestics to outsiders, the obligation of restitution can more easily be present. A wife indeed can lawfully give these things as alms, and children also to some extent; but servants cannot distribute them, and a fortiori cannot sell them, except those things which otherwise would certainly perish.

Concerning petty thefts in paternal tobacco made by children of the family, almost the same thing must be said as concerning petty thefts in food and drink. But the master ordinarily is gravely unwilling that servants should make petty thefts of this kind in tobacco; whence grave matter and the obligation of restitution can coalesce.

2. Wives are rarely bound to restitution on account of other petty thefts committed. For a wife is not a servant, but a companion of her husband, and consequently has some disposition over common goods. Therefore the husband is not gravely unwilling concerning the taking away itself of the thing, but rather concerning the clandestine mode of taking away. If a wife has taken certain things from her own goods, she is never bound to restitution, even if she acted against the will of her husband, to whom pertains only their administration.[29] There is almost only one case in which restitution would be necessary: if a wife, altogether unreasonably against the will of her husband, had gradually expended a notable sum of common money, for example by buying entirely superfluous ornaments.

3. Children of the family perpetrating domestic petty thefts are obliged to restitution if, all circumstances considered, the parents truly are gravely unwilling both as to the substance and as to the mode of the taking away.

In practice it is often most difficult to determine whether there is a grave obligation of restitution. If the parents are wealthy and spend many things profusely in the education of the offspring, it can more easily be presumed that they are not gravely unwilling if a son lives somewhat more splendidly and secretly spends a moderate sum taken from his father. But if the parents are not so rich, but sweat in the education of numerous offspring; if especially from the repeated petty thefts of one son his brothers and sisters suffer notable damage, then a stricter judgment must be brought. In this case the words of Proverbs can be applied: "He who withdraws something from his father and from his mother, and says this is not sin, is a partner of a murderer."[30] Hence Billuart rightly says[31] that children of the family are gravely to be blamed and liable to restitution, not only while they steal monies or movable goods from their parents, retain the price of merchandise sold or at least part of it, contract debts to be paid by the parents, but also "while, having been sent to studies or to learn some art, they expend monies handed over to them for buying books, for paying board, etc. ... in drinking bouts, fornications, games, and other illicit and vain things."

All theologians indeed agree in asserting that petty thefts of children of the family coalesce to grave matter, but they wholly disagree in determining the gravity of matter. While Bannez teaches that grave matter is present if a son has stolen yearly 50 gold pieces (about 250 francs) from a rich father, Lessius, Navarre, and others maintain that two or three gold pieces already constitute grave matter.[32] Modern theologians commonly assert that in thefts of children of the family, for grave sin there is required matter twice greater than in thefts of outsiders. - But since in practice children of the family who have committed petty thefts very rarely can restore, let the confessor prudently induce those penitents to ask pardon from their parents. For thus those children of the family are salutarily humbled and future sins are guarded against.

4. Servants perpetrating domestic petty thefts are to be judged more severely than wives and children of the family, because the consent of the legitimate owner can much more rarely be presumed. Unless there is question of food and drink consumed by the servants themselves,[33] or unless the presumed permission of the master is present, petty thefts of servants coalesce just as if they were committed by outsiders. For the master is not less but rather more unwilling that a servant, to whom he has committed the care of the domestic matter, should steal something for himself, than that an outsider should do the same; because thus from the infidelity of servants there threatens him a greater danger of grave damage.

What has been said concerning the petty thefts of servants is also valid concerning the petty thefts of workers in the workshops of the owner. But for discerning the obligation of restitution, it is necessary to attend above all to two things: 1. to the damage caused in reality, 2. to the customs perhaps existing in some workshop. For if the proprietor of the workshop in some way knows the custom of petty thefts perpetrated by the workers

and does not strenuously contradict it, rarely is there a grave obligation of restitution. Nevertheless workers are seriously to be deterred from petty thefts of this kind.

[28] Thus also Billuart, *De iur. et iust.* diss. 11, a. 5; D'Annibale, *Summula theol. mor.* II, n. 252.

[29] Cf. the things said above, n. 15 sqq., concerning the dominion of wives.

[30] Prov. 28, 24.

[31] *De iure et iust.* diss. 11, a. 5.

[32] Cf. S. Alph., *Theol. mor.* l. 3, n. 543.

[33] Cf. above under n. 83, 1.

§ 3. On Theft In Public Things, Or On Peculate

84. A special difficulty arises for the confessor if he must judge concerning thefts committed to the detriment not of some private man, but of a community or state. For some penitents indeed abhor theft of a private good, but they do not think it gravely illicit, for example, to cut wood in public forests and there to gather grasses and other fruits. Even the old Moralists[34] proposed more benign opinions concerning these thefts, because at that time forests abounded and wood was of small price, both on account of abundance and on account of the difficulty of transporting it to distant regions. But in modern times the matter has been entirely changed. Forests have been diminished, wood is precious. When there is question of thefts of those public goods, the confessor can apply the following norms:

1. Civil laws prohibiting dry branches, grass, fungi, clusters, and other wild fruits from being gathered in public forests are commonly only penal laws.[35] For these things, unless they are gathered, are accustomed to rot in the forests and to be of almost no utility. Whence commonly inhabitants who, in neighboring public forests, gather those things without other damage inflicted are not to be disturbed, especially if they are poor. Yet if the state or treasury is accustomed to sell even those wild things, it must be said otherwise.

2. Civil laws prohibiting the cutting of the trees themselves oblige directly in conscience and are not merely penal laws. Whence he who steals a notable quantity of trees from a public forest sins gravely and is bound to restitution. But a notable quantity is judged to be matter absolutely grave, namely a value of about 100 francs, because the state or treasury possessing those public goods is thought to be very rich. But in computing this value, the trees must be estimated as they grow in the forests, and not as they stand for sale among merchants. Whence someone is not yet bound under grave sin to restitution if, for example, he has taken away a tree which is worth 20 francs in the forest, but after cutting and transportation all the way to the merchant's emporium is worth 200 francs. Those evildoers are to be judged more severely who, on account of futile reasons, uproot younger trees and plants in public forests. Nevertheless these are rather damagers than thieves.

3. Thefts in those public things are rarely perpetrated one time in a notable quantity, but are customarily done separately. Therefore then the rules given above concerning petty thefts must be applied. If, therefore, someone does not have the intention of stealing grave matter, and between individual petty thefts there is some notable interval, the thefts do not coalesce nor do they induce a grave obligation of restitution.

[34] Cf. S. Alph., *Theol. mor.* l. 3, n. 529.

[35] Thus also Noldin, *De praeceptis* n. 418.

85. Scholion. On The Defrauded Price Of A Public Vehicle. It can be held as almost a species of theft in public things, if someone having a ticket of third class is conveyed in second or first class on the railway without due permission. He who corrupts officials for acting thus sins and is bound to restitution; but otherwise it will not easily be a grave sin, nor an obligation of restitution. The reason is that the owner of the railway suffers almost no damage through this mode of acting, nor does he seem to be so gravely unwilling; indeed sometimes he connives in this matter. There is indeed cessant gain, but greater expenses do not arise, whether the vehicles of the higher class are empty or occupied. Nevertheless restitution would have to be made if (in an unusual case), on account of the occupied place of the higher class, new vehicles had to be added. For then a damage not so negligible would arise for the railway treasury. - But if someone is conveyed on the railway and other public vehicles without any ticket at all having been bought, he seems to be obliged to restitution. For not only is this judged to be something base according to the common estimation of men, but it is also a damaging and evident theft, because then the legitimate price of transportation is furtively taken away from the proprietors of those public carriages. Nor let anyone say that the vehicles must run whether they are empty or occupied, and consequently no damage arises from furtive occupation. For, although this is true, nevertheless the proprietors are reasonably and gravely unwilling that someone use those vehicles without any price paid; but they are not so gravely unwilling that someone having a ticket of a lower class use a higher class, since they sometimes tacitly or expressly permit this.

Article III. On Causes Excusing The Taking Away Of Another's Thing

Two causes render legitimate the taking away of another's thing, namely 1. the extreme necessity of the one taking it away and 2. right occult compensation. For in these cases the owner is no longer reasonably unwilling.

§ 1. On Extreme Necessity As An Excusing Cause

86. Principle. In extreme necessity it is lawful to take from the goods of another only so much as is enough to free oneself from such necessity. Thus all authors.[36]

The reason is that in extreme necessity all earthly goods again become common. For God gave the earth to be inhabited and goods to be enjoyed by all men. Therefore each man has the right that he be able to live from earthly goods and, in an extreme case, to take for himself those things which are altogether necessary. This principle, however, needs some explanation:

a) Neither in common necessity, nor in grave necessity, but in extreme necessity alone is it lawful to take away the goods of another.

The reason is that otherwise not only all private ownership but also public security would be greatly endangered, since a wide gate would be opened to innumerable thefts. Hence common poor beggars cannot licitly take another's thing for themselves, when the owner is unwilling. Innocent XI proscribed the proposition: "It is permitted to steal not only in extreme necessity, but also in grave."[37] Certainly the word "to steal" in the condemned proposition is not to be taken in the formal sense (because never, not even in extreme necessity, is it lawful to steal or to take away another's thing unjustly), but in the material sense, i.e., for "physically to take another's thing." Speaking in this material sense, even the Angelic Doctor asks: "Whether it is lawful for someone, on account of necessity, to steal?" And he responds: "If, however, the necessity is so evident and urgent that it is manifest that the present necessity must be relieved from things at hand, for instance when danger threatens a person and otherwise he cannot be helped, then someone can licitly relieve

his necessity from the things of others, whether they are taken openly or secretly; nor does this properly have the nature of theft or robbery."[38]

Authors do not agree what necessity is extreme or quasi-extreme; now, however, there is rather common enumeration under it not only of proximate danger of life, but also danger of losing a principal member or a sense of the body (or chastity). Thus Bannez, cited by Lugo, and St. Alphonsus.[39]

Theologians rightly teach with St. Thomas[40] that, in extreme necessity not only one's own but also one's neighbor's, it is lawful to take away what is necessary. Thus, e.g., a mother who does not have nourishment for a child about to perish from hunger can take away another's milk.

b) It is not lawful to take more than is enough to free oneself (or another) from such necessity.

If therefore, e.g., it suffices to borrow another's thing, it is not lawful to take it into ownership. Similarly, when the necessity has passed, the thing taken away must be restored, if it still exists. But what is to be done if, after the extreme necessity has passed and after the thing has been consumed in such necessity, the man unexpectedly becomes capable of restoring the thing taken away? Certainly it is fitting that he compensate the thing taken away, but he is not strictly obliged to this. For a man living in extreme necessity truly makes his own the other person's thing taken away, and therefore is never bound to restore it. Thus also Billuart,[41] Noldin,[42] and others. For the rest, this case seems to be rather theoretical than practical. For if a man has overcome extreme necessity, almost always he had some hope of afterward compensating the thing taken away. But with such hope existing, the man is truly bound to make compensation from the goods afterward acquired.

c) Even in extreme necessity it is not lawful to take from another a thing, if from the taking away that other person also is going to fall into extreme necessity.

The reason is that, in an equal cause, "the condition of the possessor is better." Hence, e.g., if two fall into the sea, one of whom, and perhaps the weaker, has an air-belt, the other cannot take away this belt to save himself, because with the belt removed the first possessor is thrust into proximate danger of death.

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[36] Civil codes also are accustomed expressly to concede this license, e.g., German Code 229 and 904; Swiss Code of Obligations, art. 52.

[37] Denz. n. 1186. On the sense of this condemned proposition, cf. Dominic Viva and Ballerini-Palmieri, *De furto* n. 22 sq.

[38] *S. theol.* 2, 2, q. 66, a. 7; cf. also Cajetan's Commentary on this place.

[39] *Theol. mor.* l. 3, n. 520.

[40] L. c. ad 3.

[41] *De iure et iust.* diss. 11, a. 6.

[42] *De praeceptis* n. 425.

87. Scholion. On Great Goods Of Another To Be Taken Away In Extreme Necessity. We have already said above (I, n. 592) that in extreme necessity a poor person must be aided even with great inconvenience, provided, however, that it is not a question of great and extraordinary expenses to be made. But if someone does not satisfy this obligation, he does not sin against (commutative) justice, but only against charity.[43] By parity, it can be asked whether one placed in extreme necessity can take away by stealth from a rich man a great sum of money in order to free himself from such necessity. Theologians do not agree. Lacroix and Concina deny; Sporer and Lugo, cited by St. Alphonsus,[44] affirm; and St. Alphonsus asserts: "In the case in

which a poor man is in extreme necessity of some thing of great value, he can justly accept it, because he has a right to seize it. Not therefore, however, is the rich man bound to give, since he is bound only from charity, which does not bind with so great an inconvenience." Perhaps the response is more rightly given with a distinction:

1. A poor man living in extreme necessity is not bound to take away by stealth a great sum of money even for preserving life. The reason is that no one is bound to employ extraordinary means for saving life.[45]
2. A poor man living in proximate extreme necessity can take away by stealth even a great sum of money for preserving life. Thus, e.g., the guard of some banking institution (commonly, bank), to whom a robber threatens death unless the key of the safe containing a great sum of another's money is handed over, is placed in proximate extreme necessity, and therefore he can hand over the key, and even another's money, to save his life. The reason is that a) he can value his own life more highly than money committed to him; b) the civil laws also are accustomed to permit this.
3. A poor man living in more remote extreme necessity probably cannot take a great sum of another's money. Thus, e.g., a very poor father of a family suffering from pulmonary consumption, to whom a physician has said with moral certainty that he is certainly and shortly going to die unless he immediately sets out for a healthier region, nevertheless does not seem licitly to take away by stealth a sum, e.g., of 1000 francs, from some rich man so that he may be able to set out and thus save his life. The reason is that a) otherwise an occasion would be provided for many illusions and disorders, and social peace would be disturbed not a little; b) the civil laws also gravely prohibit this.

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[43] Thus at least according to the more probable opinion (cf. St. Alphonsus, l. c. n. 520, quaer. 6; see above I, n. 589). Leo XIII indeed says (*Rerum novarum*, May 15, 1891), speaking of the obligation of giving alms: "Those offices are not of justice, except in extreme things, but of Christian charity." But the Supreme Pontiff seems to take the word justice not for commutative justice, from the violation of which the obligation of restitution arises, but for general or legal justice. Cf. *S. theol.* 2, 2, q. 118, a. 4 ad 2. But the owner seems to sin against commutative justice who prevents a poor man laboring in proximate extreme necessity from occupying, or from having occupied, the thing necessary. Cf. St. Alphonsus, l. c.

[44] L. c. quaer. 3.

[45] Cf. above, concerning the precept of charity toward oneself (I, n. 567).

§ 2. On Occult Compensation

Notion. If someone cannot conveniently vindicate publicly his own strict right, whether because of fear or because of some other moral inability, occult compensation comes into use; this can be defined as the recovery of one's own thing through the occult occupation of another's thing. Strictly speaking, occult compensation is had if someone secretly procures for himself an equivalent price for a thing or labor handed over; nevertheless, in a broader sense, the recovery of one's own thing itself, unjustly detained by another, can also be called occult compensation. We take compensation in both senses.

88. Principle. Occult compensation, clothed with due conditions, is indeed a) licit, but b) rarely to be exercised, and c) even more rarely to be counseled by a confessor.

It is explained and proved. a) Occult compensation clothed with due conditions is licit. For if those conditions are present, concerning which there will presently be discussion, by occult compensation neither

the right of the neighbor nor social order is injured, and nothing else is done except just defense against the injury of another.

b) Occult compensation is rarely to be exercised, because it is full of dangers of illusion and disturbance. Now it is not lawful to expose oneself to dangers except rarely and when true necessity demands it.

c) Occult compensation is more rarely to be counseled by a confessor; for although it is licit in the forum of conscience, it is not usually recognized in the civil forum, but is punished as theft. Therefore the confessor who counsels it exposes himself to the danger of receiving punishment from a civil tribunal on account of instigation to theft. The Spanish Civil Code, however, a. 1195 sqq., in some way permits compensation.

Required Conditions. In order that occult compensation be licit, these conditions are required:[46]

1. that the debt be strict and certain;
2. that the debt cannot be recovered otherwise without notable inconvenience;
3. that damage to the debtor or to a third person be prevented.

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[46] Cf. Dominic Soto, *De iure et iust.* l. 5, q. 3, a. 3.

89. Therefore the first, and principal, condition, in order that occult compensation be licit, is that the debt be a) strict and b) certain. A strict debt arises from true ownership acquired. Hence if there is present only fittingness, or only an obligation of fidelity, but not a true obligation of commutative justice, it is not lawful to employ occult compensation; e.g., if a master liberally promised a gift but did not provide it, a servant cannot compensate himself secretly. Then it is required that the debt be morally certain. A twofold certitude is distinguished: of right and of fact. Certitude of the fact founding the right is wholly required; e.g., the fact of donation, purchase, etc., must be certain. According to St. Alphonsus,[47] however, in three cases probability of right is enough, and certain right is not required, "namely, when reputation is compensated with money; infamy with infamy given; and a legacy left in a non-solemn testament." The last case is explained a little more broadly, for the first two can very rarely be brought into practice.[48] A testament is present which is not clothed with legal form and therefore is invalid in the external forum. In this testament several legacies are assigned, which, if they were expressed in due form, would give the legatees a certain right; now, however, they give them only a probable right, since several grave theologians teach that an informal testament is invalid even in the forum of conscience. Therefore in that case there is certitude of fact, namely, the testament certainly exists; but there exists only a probable and not a certain right to the legacies designated in the testament. Nevertheless, according to St. Alphonsus and other authors, in that case (before the sentence of a judge) the legatee can licitly procure the legacies for himself by occult compensation. In practice this case cannot be solved except by attending to modern civil codes.[49] But almost never is it lawful to exercise compensation with a probable right, unless from the counsel of a prudent confessor or of another expert and God-fearing man, because otherwise there is grave danger of hallucination in one's own cause.

The second condition for licit occult compensation is the moral impossibility of otherwise recovering one's own thing. For the order of law and the common good demand that everyone try to recover his own thing by the ordinary way,[50] and only if he cannot seek it without notable difficulty, e.g., without quarrels, expenses, or other grave inconveniences, is it lawful to leave this ordinary way by secretly compensating himself. For the rest, this condition obliges only under light sin.

The third condition requires that damage to the debtor or to a third person be prevented. From occult compensation manifold damage can arise; e.g., the debtor erroneously thinks that he still ought to pay, and therefore pays twice; a third person can come under suspicion of theft. It is plain that the occult compensator ought to avoid these damages, insofar as is possible. For charity demands this.

[47] *Theol. mor.* l. 3, n. 521.

[48] Cf. Concina, *De iure et iust.* l. 2, diss. 4, c. 16, n. 43.

[49] Cf. below n. 277.

[50] Cf. *S. theol.* 2, 2, q. 66, a. 5 ad 3.

90. Resolutions. 1. Servants, workers, craftsmen, officials, etc., sometimes say that they compensate themselves secretly because they think they do not receive a sufficient salary; but rarely is this compensation licit, because often the three conditions recounted above for the liceity of occult compensation are lacking. Especially the first condition is usually lacking, namely, servants do not have a strict and certain right to compensation. For this reason Innocent XI proscribed the proposition: "Domestic male and female servants can secretly take from their masters for compensating their labor, which they judge greater than the salary which they receive."[51] This proposition indeed seems to have been condemned because it is too vague and can easily be understood in a false sense; but servants can licitly compensate themselves a) if they are forced to labors not stipulated in the contract; b) if they are forced to a salary wholly insufficient and unjust;[52] c) if they are forced to repair damage which they caused without fault, e.g., by breaking without fault some precious vase (unless, however, even this repair was stipulated in the contract).

2. Occult compensation is licit if someone has been condemned by a judge wholly unjustly, i.e., if the judge committed an error of fact.

3. Occult compensation is licit if adult children are forced to work in the paternal home and if, according to civil rights, they have a right to a fitting salary, which nevertheless is denied to them. Not all laws (e.g., German law, French law) concede a salary to adult children in these cases, and therefore occult compensation then is not lawful. Swiss law, however,[53] concedes a salary.

4. When merchants can secretly compensate themselves by lessening weight or measure will be said below, n. 293.

[51] Denz. n. 1187.

[52] Cf. St. Alphonsus, l. c. n. 622.

[53] Art. 633.

Chapter III. On Unjust Damaging

We divide this chapter into four articles: 1. on unjust damaging in general; 2. on cooperative unjust damaging; 3. on unjust damaging by bodily deeds; 4. on unjust damaging by words.

Article I. On Unjust Damaging In General

Damaging taken broadly includes also theft and robbery; for the thief and the robber cause damage to a neighbor, and St. Thomas says: "Whoever damages someone seems to take away from him that in which he

damages him";[1] nevertheless, according to the stricter acceptance and the one commonly used today, damaging is distinguished from theft and can be defined:

[1] Cf. *S. theol.* 2, 2, q. 62, a. 4.

91. Definition. Unjust damaging is an action by which someone causes damage to another, without himself taking material profit from it. Therefore the damager causes damage to another and is not himself enriched; but the thief causes damage to another and is himself enriched. Hence, e.g., he who burns another's garment is a damager; but he who takes another's garment away for himself is a thief. Other things being equal, damaging is usually a graver sin than theft, because it often proceeds from hatred of neighbor, whereas theft is usually caused by disordered concupiscence of money, or by the neediness of the one stealing, and by other motives which are not as gravely sinful as hatred of neighbor.

92. Divisions. 1. By reason of the cause, damaging is divided into solitary and cooperative, according as the damager causes damage either by himself alone or with others helping.

Cooperative damaging is worse than solitary damaging, because in it not only justice but also charity toward the neighbor is injured by scandal or cooperation in evil. We shall treat cooperative damaging specially in the following article.

2. By reason of the object, damaging can be a) in supernatural goods, b) in natural goods, whether bodily or spiritual.

The worst damaging is in supernatural goods. Hence he who destroys sanctifying grace, faith, and other supernatural gifts in the soul of his neighbor sins most gravely. Enough has been said of this damaging above, I, n. 605 sqq., in the tract on scandal. But in natural goods damage can be inflicted upon a neighbor in two ways: either by the fact that the neighbor's thing is destroyed by an unjust action or omission (e.g., the neighbor's garment is burned either intentionally or from culpable negligence), or by the fact that the neighbor is unjustly kept from the obtaining of a due good (e.g., someone unjustly induces a father to exclude his son from the inheritance). The natural goods in which unjust damaging can occur are many, e.g., reputation, honor, body, life, fortune, etc.; concerning all of these, something will be said below.

3. By reason of the mode (or also of morality), damaging is either purely material or formal. Formal damaging is called that which is joined with formal sin against commutative justice, or, as they say, which proceeds from theological fault. Thus, e.g., he who knowingly and willingly burns another's house unjustly commits formal damaging. Material damaging is that which in fact causes damage, but involuntarily and therefore without moral fault of the damager. E.g., he who fired a gun wishing to kill a hare and, wholly by chance and without any caution having been neglected, wounds a hidden man, has committed material damaging, but has not sinned formally against justice. This material damaging is indeed sometimes joined with so-called juridical fault, which is nothing other than the omission of that diligence which positive law requires for preventing damage.

Juridical fault is customarily subdivided by authors into broad, light, and very light. Broad juridical fault consists in the omission even of that diligence which ordinarily and moderately prudent and diligent men are accustomed to employ in their operations. Light juridical fault is the omission of diligence which more prudent and more diligent men are accustomed to employ. Very light juridical fault is the omission of diligence which only the most diligent and most careful persons are accustomed to employ in their actions. This

threefold subdivision of juridical fault is not found expressed in modern civil codes, which are not accustomed to distinguish except between grave and light negligence.[2] Juridical fault can be present (although very rarely) without any theological fault; then it is called merely juridical fault, and the damaging caused from it is purely material. Ordinarily, however, juridical fault is joined with theological fault more or less grave, because in reality it is a sin not to employ in our actions that diligence which positive law justly requires.

[2] Gross and slight negligence. The German Civil Code § 276 establishes: "He acts negligently who leaves out of account the care required in dealings," and § 827: "Whoever, in a state of unconsciousness, or in a state of morbid disturbance of mental activity excluding free determination of the will, causes damage to another, is not responsible for the damage." The Swiss Code has similar things, a. 41 sqq.; the French Code, a. 1382/3; the Italian Code, a. 1153; the Spanish Code, a. 1902 sqq., following in this matter the old Roman law. (Lex Aquilia.)

93. Principle 1. Unjust damaging is not only from its kind a grave sin, but also induces the obligation of restitution, if this threefold condition is present, namely, if it is truly, efficaciously, and formally unjust, or, as others say, if it is unjust, effective of damage, and theologically culpable.

It is explained and proved. That (formal) damaging is from its kind a mortal sin is plain of itself. For it injures virtues obliging gravely, namely charity and justice. But in order that from damaging there truly arise an obligation of restitution, three conditions are required:

94. 1. The damaging action must be truly unjust, i.e., it must injure commutative justice or the strict right of another, whether it is a right in a thing or a right to a thing. Indeed a damaging action can be gravely sinful without inducing an obligation of restitution. E.g., he who from hatred does not save the burning house of an enemy, although he easily can, sins gravely against charity, but is not bound to restore, because the enemy cannot in justice demand that his house be saved by another private man. Therefore it is altogether required that the strict right of the neighbor be injured. Hence the following cases are easily solved:

Resolutions. a) He who by importunate prayers, persuasions, etc., induces a master not to give a stipulated salary to a servant is bound to restitution; for he has injured the servant's strict right to the stipulated salary.

b) He who by prayers, persuasions, etc., induces a rich man not to give alms to a determinate poor man is not bound to restitution. For the poor man (unless he is in extreme necessity) does not have a strict right to alms.

c) He who by detraction, calumny, force, fraud, etc., procured that a rich man not give alms to a determinate poor man is bound to restitution. For although the poor man does not have a strict right to alms, nevertheless he has a strict right not to be impeded from receiving alms by unjust means, such as detraction and calumny. The same holds of him who by fraud, e.g., by sending in a false hope of health, turns a dying man away from making a testament in favor of a third party.

d) He who by detraction, calumny, or other illicit means impedes someone from the obtaining of some good, the accepting or conferring of which is objectively bad, indeed sins on account of the illicit means employed, but is not bound to restitution. In this case the presence of sin is plain of itself, because "a good end does not justify bad means." That there does not exist an obligation of restitution can be perceived from this, that the man impeded from the obtaining of an illicit good indeed had a strict right that detraction, calumny, or other sinful means not be used against him, but he had absolutely no right to the obtaining of the good itself.[3] E.g., he who by fraud and a calumnious lie turns a young man away from giving money to a prostitute is not bound to restitution toward the prostitute. For the prostitute, although she has a right that a calumnious lie not be said about her, nevertheless has absolutely no right to receiving money from the lustful young man (at least before fornication has taken place).

[3] Cf. Billuart, *De iust.* diss. 8, a. 12.

95. 2. The damaging action must be efficaciously unjust. Or in other words, the action must be the true cause per se of the damage inflicted or actually following. The reason is that only he who is the true cause or author of that damage, whether by himself or through others induced to this, can be obligated to repair the damage. Hence a strict obligation of restitution does not arise if the action was a) good or indifferent in itself, although the intention of the agent was very bad; b) only a cause per accidens of the damage; c) an occasion of the damage; d) a condition without which not of the damage.

Resolutions. a) A judge condemning an accused man from hatred almost diabolical, but according to just laws, sins gravely against charity on account of his hatred; but because his action is not unjust, he is not bound to restitution.

b) An innkeeper offering wine to a drunken man, foreseeing that in drunkenness the man is going to have great damage, is not bound to repair this damage, because his action was not the cause per se, but only the cause per accidens, of that damage. If, however, the innkeeper directly intends this damage and therefore offers wine so that the man constituted in drunkenness may suffer that damage, then he truly acts unjustly and his action is the cause per se (at least instrumental) of the damage, and therefore he ought to repair the damage caused.

c) A theft committed by Peter gave occasion for suspicion of the crime to fall upon Paul, who from this suffered grave damage. Peter is not bound to restitution, because his theft is not the cause but the occasion of that suspicion. If, however, Peter deliberately directed suspicion of the theft upon Paul, by using, e.g., his garments or tools in the execution of the theft, by hiding the matter of the theft in Paul's room, etc., then he acted unjustly and is bound to restitution. For Paul has a strict right that no one deliberately cause him a wicked suspicion.[4] A wicked example inducing to damaging can also be held as an occasion and not as a true cause of damage.[5]

d) If someone returns a sword to a man prepared to kill another, he is indeed a condition without which not of this killing, but nevertheless he is not bound to restitution on account of the killing done, because he is not the cause per se of the damage inflicted.

[4] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 635.

[5] Cf. below n. 103.

96. 3. The damaging action must be formally unjust, or proceed from true theological fault.[6] The reason is obvious; for without true theological fault or sin admitted, the damaging action is not voluntary. Now an involuntary action imports no morality and no obligation. Moreover, the obligation of restitution arises either from another's thing accepted or from an unjust action. But neither has another's thing been accepted, because the damager has not been made richer, as is supposed, nor was his action unjust, since through defect of will it had no morality. Finally, restitution for the damager is a certain penalty. But penalty supposes fault. Therefore where there is no moral fault, there also is no moral obligation of restitution. From what has been said it appears that there is no obligation of restitution in the following cases:

Resolutions. a) A physician who, from inculpable error, gave a harmful remedy to a sick person neither sinned nor is bound to restitution.

b) A confessor who, from inculpable error, freed a penitent from the obligation of restitution neither sinned nor is bound to reparation of the damage.

c) A man who wholly by chance, without any negligence, kills another neither sinned nor is obligated to reparation of the material damage perhaps inflicted.

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[6] Hence Jhering said very truly: "Not the damage obliges to compensation for damage, but fault." So also the Lex Aquilia. D. lib. 9, tit. 2.

97. On The Gravity Of The Obligation Of Restoring. From grave theological fault there arises a grave obligation of restitution, if, however, the damaging was truly and efficaciously unjust. This is plain from what has been said. But if the theological fault was light, one must first see from what cause it is light: whether from smallness of matter, or from another cause.

If the fault was light from smallness of matter, i.e., from small damage inflicted, there is a light obligation of restitution. Thus all authors teach, at least modern authors. The reason is that all violated commutative justice demands reparation, which indeed must be measured both on the part of the matter and on the part of the fault. Now in the present case there is light matter and light fault. Therefore there is also a light obligation of restitution.

But if with light fault[7] grave damage has been caused, authors do not agree concerning the obligation of making restitution. There are four opinions:

1. He who from light fault caused grave damage is bound under mortal sin to reparation of the whole damage. Thus Henry of St. Ignatius[8] and a few others.
2. He is bound to reparation of the whole damage under light sin. Thus Vasquez[9] and in some way Billuart[10] and Waffelaert.[11]
3. He is bound to partial reparation of the damage, according to the condition of the fault and according to the prudent judgment of a man. Thus Bonacina[12] and Laymann.[13]
4. He is bound to nothing. Thus St. Alphonsus,[14] Lugo,[15] Lehmkuhl,[16] Noldin,[17] Gopfert,[18] and several others.

The first opinion is obsolete. Theoretically speaking, the second opinion seems better to us, because the obligation of restitution must be measured chiefly from the fault of the agent, while nevertheless connoting the damage really caused. Hence where there is no moral fault, there is no moral obligation of restitution; where there is grave fault, there also arises a grave obligation (provided that the damage caused is grave). Therefore it seems reasonable that, where grave damage has been caused with light fault, there should be a light obligation of repairing this damage. But the argument which is usually brought forward for the fourth opinion is by no means convincing. They say: Neither a grave nor a light obligation of restitution arises from light fault. Therefore no obligation exists. Not grave, because a grave obligation has no proportion with light fault; not light, because a light obligation has no proportion with a grave thing. But the response is: passing over the first part of the argumentation, concerning which no difficulty exists here, the other part is little probative. Cannot a light obligation be about grave matter? Can someone not oblige himself by vow under light sin to a grave thing, e.g., to a distant pilgrimage? Can a legislator not command a grave thing under light obligation? Then this fourth opinion equally conflicts with the common sense of men and with civil legislation. Here is a case: Today Peter with light fault burns Paul's cheap garment. He is bound under light sin to restitution of this light matter, which indeed even the authors of the fourth opinion teach rather commonly. Tomorrow Peter, with equal light fault, burns Paul's whole house. Now he is bound to nothing according to the fourth opinion, because a light obligation cannot turn upon so great a matter! Another case: Peter, a very

rich man, with light theological fault sets fire to the house of Paul, who is thus reduced to extreme poverty. According to the fourth opinion Peter can tranquilly enjoy his riches and ought to pay nothing; but Paul can beg and grieve over his burned house, yet he has no right against Peter! How great cruelty toward an innocent man, and how great laxity toward a culpable man! Do these things correspond to the sound estimation of men? The German Civil Code[19] also establishes that, according to equity, damage inflicted without any fault must be compensated, provided, however, that the one compensating is not thereby deprived of goods necessary for his state.

From all things said thus far it appears sufficiently that the fourth opinion is not theoretically true. Hence even its followers limit it to the case in which the lightness of fault has arisen from imperfection of the act.[20]

Resolutions. In practice, in individual cases, the circumstances both of the agent and of the damage inflicted must be carefully attended to, as is plain from the following examples:

a) He who from invincible error thinks that he is unjustly destroying the cheap glass of an enemy, but in reality destroys most precious crystal, is bound under light sin to repair the whole damage (if, however, he can). But he who from invincible error thinks that he is unjustly destroying a thing of grave value, e.g., 100 francs, which nevertheless in reality costs 1000 francs, more probably is bound to restore the value of 1000 francs. The reason is that in the first case there is light sin and therefore a light obligation of repairing the whole damage; but in the second case there is grave sin and therefore a grave obligation of repairing the whole damage actually caused. St. Alphonsus,[21] however, thinks that the opposite opinion is sufficiently probable.

b) He who from a certain light negligence causes another grave damage wholly unforeseen can be treated more mildly. For in daily life it is morally impossible that slight negligences of this kind be avoided. But if someone could and should have foreseen the grave damage of the neighbor and nevertheless is negligent, he sins gravely and therefore is obligated to restitution of the damage. E.g., a physician who foresees great damage to a sick person and nevertheless is truly negligent, sins gravely and is bound to restitution. But if this negligence is very small, the physician is bound to nothing, because it is too difficult for a physician daily to employ perfect diligence in all cases.

c) He who from a second-first movement of anger gravely wounds or kills another indeed cannot ordinarily be obligated in practice to repairing the whole damage (because then even civil tribunals admit attenuating circumstances), but nevertheless it does not seem to be equitable that absolutely no compensation be demanded. In this case the third opinion proposed above by Bonacina can well be applied.

d) He who committed several damagings which individually indeed are light, but joined together are grave, ought to restore under light sin if he inflicted the individual light damages upon different persons. The reason is that those individual damagings do not coalesce and in themselves are venial sins. But if he caused many light damages to the same person, he seems to be bound to restitution in the same way as if he had committed just as many small thefts against this person, whose right is injured in the same way by theft as by damaging. When small thefts coalesce into grave matter has been said above, n. 82 sqq.

Billuart excellently notes concerning this whole controversy: "For the rest, whatever there may be concerning the speculation of this question, the authors of whatever opinion commonly observe that it rarely happens in practice that grave damage is caused from venial fault; because, although venial inconsideration is frequent in subreptitious thoughts and internal movements of the soul, which often, easily, and subtly arise, and indeed about objects conforming to natural inclination, nevertheless it rarely happens in external works of grave

moment, because ordinarily they at once thrust their danger upon the mind and more strongly excite it to some consideration, or at least to confused cognition of the danger. Hence, unless it is certainly established that the inadvertence was venial, in practice it is to be held as mortal, namely, conformable to the damage, and the obligation of restoring under mortal sin is to be inculcated."[22] Concina has similar things, who judges this controversy very moderately and not rigidly.[23]

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[7] This light fault can occur in two ways: 1. from error or erroneous conscience, e.g., someone wants to destroy another's thing which he thinks is light, but which in reality is of great value; 2. from imperfection of the act, e.g., someone from slight but culpable inconsideration causes grave damage.

[8] *Ethica amoris* l. 9, c. 116.

[9] *De restit.* c. 2, § 2, dub. 2, n. 2.

[10] *De iure et iust.* diss. 8, a. 5.

[11] *Tract. de iust.* II, n. 266.

[12] *De restit.* disp. I, q. 1, n. 56.

[13] *Theol. mor.* lib. 3, tract. 3, p. 1, c. 6, n. 4.

[14] *Theol. mor.* l. 3, n. 552.

[15] *De iust. et iure*, disp. 8, n. 57 sqq.

[16] *Theol. mor.* I, n. 1153.

[17] *De praeceptis* n. 435.

[18] *Moraltheol.* II, 161.

[19] § 829.

[20] Cf. Noldin (*De praeceptis* n. 435) saying: "He who inflicted grave damage with fault (from imperfection of the act) that is light, according to the opinion practically to be followed is bound to nothing." But previously in n. 434 he said that the opinion which exempts from restitution him who inflicted grave damage with light fault, which was a perfectly human act, is indeed extrinsically probable, but is plainly destitute of internal probability.

[21] *Theol. mor.* l. 3, n. 615.

[22] *De iure et iust.* diss. 8, a. 5.

[23] *De iust. et iure* lib. 2; diss. 2, c. 5, n. 7.

98. Principle 2. From material damaging there does not arise an obligation of restitution except in two cases, namely 1) after the sentence of a judge; 2) if it has been freely stipulated so.

It is explained and proved. 1. Material damaging is caused from no moral fault, and therefore it cannot impose in conscience an obligation of restitution, since this is a penalty for fault committed. Nevertheless, laws are just which decree that, even after material damaging with juridical fault, there is an obligation of repairing the damage. For those laws favor all citizens equally; they render individual men more watchful, lest they inflict any damage upon others, and they forestall many cavillations and frauds. But these laws do not oblige in conscience except after the sentence of a judge, because restitution after damaging is a penalty; but generally all positive laws requiring some hard penalty, which consists in an action to be placed, do not oblige except after the condemnatory sentence of a judge.[24]

2. If a special explicit contract has preceded, obliging the other contracting party to restitution in any case whatever of damaging, such a contract is licit, and therefore even without theological fault the damage

caused must be repaired. Such contracts are often quasi-insurances. E.g., the possessor of a railway ought to restore the price of goods which were destroyed during transport, in whatever way finally this destruction occurred. But if the contract entered into is not so explicit, but rather implicit, e.g., in loan for use, in deposit, in the undertaking of some office, one must distinguish:

a) If the contract is for the sole utility of the recipient, as in loan for use, then the damager is bound to restitution even from light juridical fault, to which nevertheless in practice at least light theological fault is always joined. That from loan for use an obligation arises for the damager even when lightly culpable, Gregory IX already determined: "When someone has accepted a loan for use only for his own sake, he is held even for very slight fault, although a fortuitous case ... ought not be imputed to him."[25] For natural equity seems to demand that a thing lent to another be guarded with the greatest diligence. Hence, e.g., if someone loses a book lent for use even with light fault, he is bound to restore its price.

b) If the contract yields to the sole utility of the giver, the recipient is not held concerning damage except from broad juridical fault.[26] The reason is that in those contracts the recipient has nothing except a burden, and therefore it would be inequitable if, besides the burden of custody, he were still held to restitution from very slight fault. This case often occurs in a contract of deposit. Civil laws are accustomed to establish to what extent he who receives some deposit is held to repair all damages, e.g., a railway or innkeeper receiving the luggage of travelers. Those statutes seem to oblige in conscience even before the sentence of a judge.

c) If the contract yields to the utility of both contracting parties, or if only an implicit contract has intervened by reason of an office undertaken, the contracting party is held to repair damage arisen from broad juridical fault. The reason is that whenever a contract, whether explicit or implicit, has been entered into, the contracting party takes upon himself the burden of faithfully observing all clauses of the contract. Hence, e.g., he who, for a determinate price, has borrowed a horse from another, is bound to repair the damage which the horse has suffered from the broad fault of the borrower. A physician or confessor is bound to repair damages which have arisen from their broad fault. In practice this broad fault always includes theological fault more or less grave. Hence, e.g., a confessor who falsely freed a penitent from the obligation of restitution is bound according to his powers to repair the damage inflicted, because by force of the office undertaken he ought to judge rightly concerning the obligations of the penitent. A longer discussion concerning this matter will return below in the tract on penance.

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[24] Cf. above, concerning laws, I, n. 212.

[25] Cap. unicam, X 3, 15.

[26] Cf. *S. theol.* 2, 2, q. 62, a. 6.

99. Corollaries. From the two principles posited and explained, the following are still drawn out:

1. He who culpably placed a cause from which he foresaw that a determinate damage was going to follow is bound to repair this damage actually following, although he afterward tried to impede the cause. The reason is that by placing such a cause he damaged truly, formally, and efficaciously. But he who without fault placed a cause from which damage to the neighbor is going to follow is bound to prevent the effects of the cause insofar as possible. But if he does not do this, he implicitly approves the cause placed, becomes theologically culpable, and is held to reparation of the damage going to follow. Hence, e.g., a physician who inadvertently administered the wrong medicine ought, according to his powers, to prevent the effects; otherwise he is bound to reparation of the damage.[27]

2. He who, wishing to damage Peter, by error damages Paul, nevertheless is bound to restitution. The reason is that his action is truly, efficaciously, and formally unjust. Hence the opposite opinion of certain authors[28] must be rejected. The case which St. Alphonsus proposes is celebrated.[29] Someone wishes to set fire to the house of Titius, his enemy; he goes to the house which he thinks is Titius's, which nevertheless in reality is Caius's, and he sets fire to it. According to the opinion of some authors, the incendiary is held to no reparation, at least if he did not intend, even confusedly, to burn also the house of Caius. For, they say, formal injury is not present in that case, because the incendiary in no way wished to inflict damage upon Caius, who perhaps is his friend. With merit very many modern authors shrink from this opinion, since it conflicts too much with men's moral sense and has caused no small ill-will toward casuistic theology. For that incendiary intends and formally causes injury to the neighbor; but it is wholly per accidens that he errs concerning the person damaged.

Similarly, a like opinion proposed by Gury[30] is to be rejected; he thinks that there is no obligation of restitution if someone, moved by a spirit of vengeance, fired a bullet at a she-goat of his enemy, but instead of the unharmed she-goat struck and killed a cow of the same enemy. For although that damager did not wish by his act to kill this cow, nevertheless he wished to inflict grave damage upon his enemy. Therefore there is grave theological fault and grave damage caused; and therefore there is also a grave obligation of restitution.

3. He who has injured only distributive justice is not bound to restitution. But very often together with distributive justice commutative justice also is injured, and then certainly reparation of the damage must be made. An unjust distributor of public offices and duties is bound to restitution toward the community if he has chosen ministers altogether inept, but not if indeed he passed over the more worthy yet appointed worthy and suitable persons. Sometimes also he ought to repair the damage caused to the more worthy persons passed over, namely if a) candidates for some office are called together by way of onerous contract; b) if the supreme superior of the society has obliged the lower distributors, and indeed from commutative justice, to choose the best candidates. In practice there will rarely be an evident and certain obligation of reparation, if it is a question of lay offices and duties. But it is otherwise if it is a question of the conferring of ecclesiastical benefices. Concerning these the following things are commonly taught by authors:

a) It is always a grave sin knowingly to confer some ecclesiastical benefice upon an unworthy candidate.

b) If, after a more worthy candidate has been passed over, a benefice is conferred upon one less worthy, there is still sin; indeed, if it is a question of a benefice with care of souls, it is grave sin.[31]

c) When from the election of an unworthy or less worthy candidate grave damage comes to the benefice or community, the unjust collator is bound to repair this damage; on the other hand, he is bound to nothing from justice toward worthy or more worthy candidates passed over, because they do not yet have a strict right to the benefice proposed. The single exception is if, for obtaining a determinate vacant benefice, the so-called "concursus" has been made, as is customarily done in several regions for parishes and certain canonries. For then, according to the more probable and much more common opinion, commutative justice is injured also toward the more worthy candidate unjustly passed over. The reason is that the calling to a special concursus is a quasi-contract, according to which the collator promises and ought to confer the benefice upon the more worthy. Hence in the Council of Trent[32] it was decreed that one unjustly passed over has the right of appealing, by which he can vindicate for himself the benefice unjustly denied to him. And in reality such a candidate unjustly passed over often suffers no small material damage, because he does not receive the

revenues of the benefice iniquitously denied to him. There are nevertheless several authors (Dominic Soto,[33] Navarrus,[34] Martin Ledesma[35]) who deny the obligation of restitution. Concerning these two opinions St. Alphonsus[36] writes: "I do not dare to depart from the first opinion, common and much more probable. But neither do I dare to say that this second is improbable; because in reality it does not seem to be established that between the bishop and the competitors that pact intervenes which binds rigorously from commutative justice." Since in many regions there is no longer a properly so-called and special concursus for obtaining benefices, this question is not so practical. But if it is a question of a general concursus for an indeterminate and not-yet-vacant benefice or office, the superior does not injure the strict right of the candidates if, for some benefice or office subsequently becoming vacant, after passing over the more worthy, he chooses one less indeed but truly worthy. The reason is that the more worthy candidate does not have a strict right to some determinate benefice.

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[27] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 564.

[28] Lugo, *De iust. et iure* disp. 17, n. 78 or rather disp. 18, n. 86; Lacroix, *De consc.* l. 3, n. 200; St. Alphonsus, l. c. n. 629; Sporer, *De iust.* tr. 4, c. 2, n. 139; D'Annibale, *Summula* II, n. 232.

[29] L. c.

[30] *Comp. theol. mor.* I, 672.

[31] Cf. Council of Trent, sess. 24, c. 1 *de reform.*; prop. 47 condemned by Innocent XI (Denz. n. 1197); Code of Canon Law c. 459, § 1.

[32] Sess. 24, c. 1 *de reform.*

[33] *De iust. et iure* l. 4, q. 6, a. 3 ad 6, posterior conclusion.

[34] *Man.* c. 17, n. 24.

[35] *In IV sent.* 2, 4, q. 18, a. 2, dub. 9, concl. 2.

[36] *Theol. mor.* l. 4, n. 109; cf. *Elenchum quaest. reform.* q. 47.

Article II. On Cooperative Damaging

100. The things which have been said thus far regard the damaging action in itself and the agent himself, insofar as he acted either alone or principally. But it often happens that several persons cooperate for procuring one and the same damage. Therefore the question at once occurs: what and how great an obligation of restitution falls upon the individual cooperators in that case. Cooperation can be done in nine ways, according to those familiar little verses:

Command, counsel, consent, flatterer, recourse,

Participant, mute, not hindering, not manifesting.

The three latter modes are called negative cooperation, because it is done through omission of a due act; but the six former are called positive cooperation, because it is done through a positive act, whether physical or moral.

General Rule. Exactly the same two principles hold in cooperative damaging which were brought above concerning simple damaging, namely 1. from cooperation there does not arise an obligation of restitution unless it is truly, efficaciously, and formally unjust; 2. from material cooperation there does not arise an obligation of restitution unless a) after the condemnatory sentence of a judge; b) unless it has been freely stipulated so.

Some difficulty exists in the very application of these principles; hence concerning the individual modes of damaging cooperation the following things should be noted briefly.

§ 1. On Positive Cooperation

1. Command, Mandate

101. Notions. Strictly speaking, command is not the same as mandate, because command supposes authority, which induces someone to act, while mandate from free agreement commits to another an action to be exercised.[37] A father commands his son to do something; but a friend mandates some work to a friend. Mandate or command can be done either expressly, as if a father says to his son: do this; or virtually, as if a master signifies to his subjects that it would be pleasing to him if they did such a theft, or if he complains that no one avenges an injury inflicted upon him. In this way the killing of St. Thomas of Canterbury was imputed to Henry II, king of England.

In the present matter we take command and mandate promiscuously. The mandator or commander is the principal cause; but the mandatary or executor is the secondary or instrumental cause. Therefore damages following from an unjust action are also imputed principally to the mandator or commander.

Principle. He who efficaciously and formally commands or mandates a work injuring commutative justice is bound to restitution toward the person damaged, and sometimes also toward the mandatary.

The truth of this principle is plain both from what was said above concerning unjust damaging and from proposition 39 condemned by Innocent XI: "He who moves or induces another to inflict grave damage upon a third party is not bound to restitution of that damage inflicted."[38]

a) **Obligations of the mandator toward the person damaged.** The commander or mandator is bound to repair for the person damaged all damages which were caused by force of the mandate and were foreseen. The reason is that, according to the common adage, "what someone did through another, he himself is deemed to have done." But I have said that the commander or mandator is bound to repair damages foreseen and truly caused by force of the mandate. For if the mandatary exceeded the limits of the mandate, or if damages wholly unexpected occurred, then the commander or mandator is not obligated concerning those, since all those things are not voluntary to him and therefore are not to be imputed. Hence he who hired another to strike a third person is bound to repair the damage inflicted upon that third person. But if, beyond the mandate, that other not only struck the third person but killed him, the mandator is not bound to repair the damage arisen from the homicide.

When the mandator revokes his mandate and makes this known to the mandatary before execution of the mandate, then he is now held to nothing, even if the mandatary from his own malice inflicts damage; but if the revocation either did not become known to the mandatary or was made after execution of the mandate, the obligation of the mandator remains unchanged. But if a third person knowingly impeded this notification of the revoked mandate, that person and not the mandator is bound to restitution.

b) **Obligations of the mandator toward the mandatary or executor.** The mandator ought also to repair for the mandatary damages perhaps had in the execution of the mandate, if by force, fraud, or even abuse of his authority he coerced the mandatary, and foresaw this damage at least confusedly. Otherwise, however, he is held to nothing. The reason is that in the first case the mandator formally and efficaciously damaged the mandatary; but in the second case the mandatary acted as if of his own accord and therefore ought to bear the consequences of his action. Hence a master who by grave and unjust fear induced a maidservant to pronounce

a damaging perjury is bound to repair all damages which the maidservant will suffer from the perjury committed. But if the maidservant indeed perjured herself at the mandate of the master, but wholly freely, she herself and not the master is bound to bear the probably foreseen consequences of the perjury. Nevertheless, even in this case it is very fitting that the mandator take upon himself at least part of the damage.

Note. Ratification, taken in the strict sense for approval of an unjust action already done by another, is not equivalent to mandate or command; wherefore if someone ratifies damage which another perpetrated for his favor, but without his mandate, he indeed sins, but is not bound to restitution, because he is not the efficacious cause of the damage. Rule 10 of law in the Sixth: "There is no doubt that ratification is drawn back and compared to mandate," does not hold in this matter, but only in contracts and in certain canonical penalties.

[37] In the German language *iussio* is *Befehl*; mandate, however, *Auftrag*.

[38] Denz. n. 1189.

2. On The One Counseling

102. The one counseling damaging is he who by his persuasion morally moves another to inflict damage upon a third person.[39] The one counseling agrees with the mandator in this, that each impels another to do damage; but he differs in this, that the one counseling ordinarily is the secondary cause of the damage, while the mandator is the primary cause. For the executor of counsel ordinarily acts in his own name, while the executor of mandate acts in the name of another. From this it follows that the executor of counsel is primarily, but the one counseling only secondarily, bound to reparation of the damage inflicted.

Counsel can be given in diverse ways, but chiefly it is twofold: doctrinal and impulsive. Doctrinal counsel either convinces the reason that the action is licit or, all circumstances having been weighed, is to be done; or it instructs concerning suitable means for completing the action. Such doctrinal counsel, and false counsel at that, would be provided, e.g., by a confessor who persuaded a penitent that the procuring of abortion is licit and to be done. But impulsive counsel rather influences the will by exhortation, prayers, promises, etc. Impulsive counsel is called naked if it does not rest on intellectual motives; but it is called clothed if, together with persuasion, convincing motives or other means of acting also are supplied.

For judging the obligation of restitution arisen from counsel, nothing else is required except the application of the principle brought forward above, namely: counsel then obliges to reparation of the damage following, if it was truly, efficaciously, and formally against commutative justice.

[39] If someone by wicked counsel harms only the one himself who seeks counsel, he is not a cooperative damager, but a solitary one. Such counsel is not treated here, since what was already said above, n. 93, must be applied to it.

103. Corollaries. a) **The efficacy of counsel.** Counsel is not judged efficaciously damaging when it is given to him who is already altogether determined to inflict damage and is not moved by the counsel to perpetrate a greater evil. But if someone unjustly has persuaded not the substance itself of the damaging action, but the mode, time, or other circumstances, one must see whether this counsel efficaciously inflicted some damage.[40] If so, the obligation of repairing that damage is present; otherwise not. In practice it is often doubtful whether the counsel given truly efficaciously produced the damage perpetrated. This holds especially if plebeian women and others generally, whose insufficiency is known, have given harmful counsel. Therefore the grave obligation of repairing damage which the one taking counsel inflicted upon a third person is present rather rarely. Especially it is very doubtful whether he who by his example alone moves another to unjust damaging is bound to restitution. Valentia, Sanchez, Laymann, the Salmanticenses,[41] and Concina[42] deny, because a

wicked example is indeed the occasion, but not the cause, of damage; Billuart[43] and others affirm; but in the particular case one must see whether the example or scandal given truly and efficaciously flowed into the action of another. If so, the obligation of reparation is present; otherwise not. For the most part the influence of a bad example is doubtful, and therefore there is no obligation of reparation. Thus at least, if exhortatory words are not joined to the wicked example.

b) **Is it lawful to persuade a lesser evil to him who is already prepared for a greater evil?** Leaving aside the question concerning the morality of that counsel in other matters (concerning which see above I, n. 611, on the morality of human acts), in the present place we speak only of counsel of a lesser evil in the matter of commutative justice. But we answer with a distinction:

α) He who persuades a lesser evil to be inflicted upon the same person does not sin, nor is he bound to reparation of damage. Hence Reuben, persuading his brothers not to kill Joseph, but rather to cast him into the cistern, did not sin; he who persuades a robber prepared to kill a man not to kill, but only to take away his money, does not sin. Yet he who gives such counsel with a wicked spirit (for example, because the damager can more easily and securely cause the lesser evil) not only sins, but also is bound to restitution insofar as this circumstance harms the neighbor.

β) He who persuades that damage in goods of fortune be inflicted rather upon rich persons in general than upon a poor man likewise does not sin. In practice this case rarely occurs, because a damager altogether prepared to act is also accustomed to be determined as to the persons to be damaged. Hence he who by his counsel wishes to turn him away from an evil action ought to persuade him of something not general but special; but this is not lawful to persuade.

γ) He who persuades that the damager inflict damage rather upon rich Peter than upon poor Paul and perhaps a friend, sins and is bound to reparation of the damage. Thus the common and true opinion, because such a counselor is truly the unjust efficacious cause of the damage inflicted upon this determinate person. And this person is reasonably unwilling that damage has been inflicted upon him from that counsel.[44] Certain theologians,[45] however, even in this case excuse the counselor from sin and from reparation of the damage inflicted, because, they say, counsel of this kind is conformable to charity, and therefore the person damaged is indeed gravely unwilling against the damager, but not against the counselor. Tanquerey rightly says:[46] "This argument seems weak; for if the counsel had not been given, damage would not have been inflicted upon this determinate person; but this person is not bound to yield his right for avoiding a greater damage of another. Hence in practice the prior opinion seems to us to be followed."

c) **On the obligation toward the damager.** The one counseling a bad action ordinarily is held to nothing toward the damager, unless nevertheless a) he used deceit, fraud, or lies, and β) by his office he was bound to give right counsel. The reason is that he who executes the counsel received freely and knowingly damages. But no injury is done to one who knows and wills. But if the one executing the counsel was led into error by the lies and frauds of the counselor or by reverence toward the counselor's state and office, he truly suffered injustice and has the right to demand indemnity. This last case can occur especially in the office of advocate and confessor. An advocate or confessor giving false counsel, from which material damage follows either for the one accepting and executing the counsel or for a third person, sins, and if he does not revoke the counsel given according to his powers, he is obligated to reparation of all the damage. For anyone seeking counsel has a strict right of demanding that he who by office ought to give counsels have sufficient knowledge and employ moral diligence. He also who, not by reason of office, but as a merely private person, has given harmful

counsel, is bound at least from charity to revoke it; and this holds whether he gave the counsel in good faith or in bad faith. The reason is that everyone is bound at least from charity to prevent damage to the neighbor.

d) **On the necessary revocation.** He who vigorously revokes counsel given before the damage has been inflicted is not bound to reparation of the damage which, notwithstanding the revocation, the damager is going to inflict. Thus all teach, if the counsel was impulsive, naked, and not clothed. But if the counsel was supported by reasons and indicated means for execution of the work, simple revocation does not suffice, but the counselor is bound with all his strength to prevent the damage of the neighbor; and if he cannot turn the damager away from execution of the unjust action, he is bound to warn the person to be damaged, so that he may guard himself. But if the counselor has done all these things (especially if he gave the bad counsel in good faith), he is now held to nothing further, because he is not the theologically culpable cause of the damage. But if the counselor in bad faith gave the counsel which he now so vigorously revokes, he likewise seems to be free from repairing the damage inflicted, a) because then he truly did everything he could to prevent the damage of the neighbor, and β) because the damager is then judged to act no longer from force of the counsel received, but from his own malice. Certain authors, however, teach the contrary, e.g., Billuart,[47] Lugo.[48]

[40] Cf. Billuart, *De iure et iust.* diss. 8, a. 13, § 3.

[41] *Curs. theol. mor.* tr. 13, c. 1, n. 114.

[42] *De iust. et iur.* lib. 2, diss. 2, c. 9, n. 17.

[43] L. c. § 3, n. 5.

[44] Cf. Billuart, *De iure et iust.* diss. 8, a. 13, § 1, n. 6.

[45] Vasquez, Turrianus, Ballerini; Gopfert (*Moraltheol.* II, 164) calls this opinion sufficiently probable.

[46] *De iust.* c. 3, n. 522.

[47] *De iure et iust.* diss. 8, a. 13; cf. St. Alphonsus, *Theol. mor.* l. 3, n. 559.

[48] *De iust. et iur.* disp. 19, n. 37.

3. On The One Consenting

104. Consent is sometimes taken for the approval of some deed. Thus, e.g., an irreligious man, hearing that iniquitous laws have been passed against the Church, exclaims: This has been done well. I plainly consent. Such consent of itself in no way flows into the damage inflicted; nevertheless per accidens it can cause unjust damaging, because iniquitous legislators, seeing the consent of the people, are made more courageous in establishing wicked laws and do not revoke iniquitous laws already passed. In the present place we speak of consent which of itself damages; and then the one consenting is said to be he who by his external approval, vote, or sentence truly and efficaciously cooperates in damage to the neighbor, e.g., a juror,[49] who with others issues an unjust sentence; a deputy who by his vote with others establishes an iniquitous law (e.g., concerning ecclesiastical goods to be seized); an elector who with others chooses someone unworthy for an office or benefice.

Here again the general principle announced above must be applied, namely, the one consenting is bound to reparation of the damage if he has truly, efficaciously, and formally cooperated by his consent in the damage. From this principle the following corollaries flow:

[49] Commonly, *der Geschworene, le juré.*

105. a) He who was negligent in choosing deputies for "Parliament" is not obligated to reparation of the damage which arose from iniquitous laws which were established by the deputies, both because the vote of one elector has very little influence upon the election of a deputy and because electors cannot answer for all the laws which the elected deputies will establish. But nevertheless the faithful are to be diligently and prudently instructed that they uprightly exercise the right of suffrage, lest wicked deputies be elected. With merit someone called the carelessness and vain fear of those citizens who do not give their vote for good deputies an electoral sin. And this sin does not seem to be of lighter weight. Certainly if in our times Catholic men with united strength exercised the right of suffrage for electing good deputies, there would not be so many very wicked laws. For this reason it is especially displeasing to men devoted to Indifferentism and unhealthy Liberalism if priests diligently warn the faithful to exercise the right of suffrage duly; and therefore the enemies of religion continually stir up complaints against such priests, as if they were inserting themselves into political matters. And therefore in this matter there is need of great prudence, lest priests be accused either in public newspapers or in a lay tribunal.

b) Deputies in public assemblies who either α) from agreement (i.e., who belong to the same parties, or are of the same "faction") or β) by secret votes[50] or γ) by other modes have efficaciously established an iniquitous law, are held under grave sin to reparation of the material damage caused. In practice a twofold difficulty can arise, namely, whether the vote of one or another deputy truly flowed efficaciously into the establishing of the iniquitous law, and then how much damage has arisen from the law established. Often each difficulty, and especially the second, cannot be solved with certainty. But if it is not certainly established concerning the efficacious influence of the vote, the obligation of repairing the damage cannot be imposed. Since almost always it is a question of laws injuring ecclesiastical goods, upon a deputy who has so sinned and now desires to do penance, after absolution from censures perhaps incurred, there is suitably imposed a fitting alms to be given to the Church, unless the confessor wishes, for greater security, to consult the Sacred Penitentiary.

c) He who either culpably or in good faith gave consent for inflicting damage is bound to revoke it. But if he did this before the damage was inflicted, he is obligated to nothing beyond; but if he did not do this, he is held concerning the repairing of the damage.

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[50] The same seems to hold also in public votes; and not only when public votes are given simultaneously, e.g., if deputies rise together or raise the hand as a sign of voting, but also in successive votes. For a sufficient reason is not brought forward why the earlier voters ought to be in a worse condition than the later ones. Cf. Billuart, *De iure et iust.* diss. 8, a. 13, § 4.

4. On The Flatterer

106. A flatterer or adulator is said to be he who, by praising, blaming, flattering, moves another to damaging.

Thus, e.g., he is a flatterer who mocks the patience of the injured person; who exaggerates the injury inflicted, saying repeatedly that things of this kind are not to be borne by a noble man; who describes the vileness of the offender, etc., and does all these things to instigate another to revenge. Likewise he is a flatterer who proclaims the utility of theft or damaging. Therefore he who by these or similar modes truly, efficaciously, and formally moves another to unjust damaging is bound to restitution. Nor is it necessary that he directly intend the damage; it is enough that he indirectly wills it, foreseeing that it will follow from his flattery. The things said above concerning the one counseling hold also concerning the flatterer, since he is nothing other than one counseling in a particular mode, namely by flattering, etc.; hence the flatterer is subject to the same obligations as the counselor, provided nevertheless that he truly flowed efficaciously into the damage of another.

Sometimes he who approves or praises an unjust work done is called a flatterer. It is plain that approval of this kind does not induce the obligation of repairing damage, unless nevertheless from it the damager was induced to new injuries or was instigated not to repair the injury already done.

5. On The One Providing Recourse

107. The one providing recourse, or receiving, is he who provides refuge to an evildoer or thief as such,[51] either a) so that he may escape safely from those pursuing, or b) so that he may be able to deposit stolen goods. I have said as such, because if he receives and favors him not as a thief or evildoer, but as a friend, or kinsman, or one worthy of mercy, he is not a receiver or one providing recourse. By deserved right receivers of evildoers of this kind are punished gravely by civil law; for they often cause greater damage than the evildoers or thieves themselves.[52] But in the forum of conscience receivers are held to repairing damages, insofar as a) they render evildoers more secure for doing injuries, and b) they are the cause why the goods taken away are not restored. Receivers of this kind are especially several so-called "dealers in antiquities"[53] and dealers in old things,[54] who knowingly buy from servants, sons of families, and other men things taken away by theft. As to the mode of restitution, these receivers are to be treated like possessors in bad faith, or sometimes (if the thing bought is not certainly taken away by theft) like possessors in doubtful faith.[55]

The one providing recourse not rarely also participates in the thing unjustly taken away. But then he is held to restitution not only as one providing recourse, but also as one participating in the prey; concerning this there will immediately be discussion.

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[51] Commonly *Hehler*, *receleur*, receiver of stolen goods.

[52] Hence the common adage: "Without a receiver, no thief!" "If there were no receiver, there would be no thief."

[53] *Altertumshändler*, *antiquaire*.

[54] *Althändler*, *Trödler*, *brocanteur*.

[55] Cf. below n. 216 sqq.

6. On The Participant

108. The participant is twofold: a) a participant in the prey, who receives part of a thing unjustly taken away; b) a participant in the action, who helps another damager in an unjust action, e.g., by providing tools to a thief, by keeping watch, etc.

a) The participant in the prey ought to restore all those things which he himself received from the thief, unjustly taken away. Therefore he is to be treated as a possessor in bad, doubtful, or good faith.[56]

b) The participant in an unjust action ought to repair the damages of which his own action is the efficacious and culpable cause. But it is altogether required that theological fault have been present; otherwise the obligation of restitution does not arise, and this especially if the cooperation was only material.[57] For the participant is excused from reparation of the damage caused, provided that the required conditions are present, namely 1. that the act not be intrinsically evil; 2. that it be elicited from a relatively grave cause; 3. that the good effect intended by the cooperator arise immediately from a good or at least indifferent cause.

In practice the quantity of reparation to be made is often determined with difficulty. Let this be the general rule: if the cooperation was so necessary that without it the damaging action would have been impossible, then the cooperator is held to repair the whole damage (in solidum).[58] But if even without the cooperation the

damage would have been caused, the cooperator is held to repairing only a part of the damage, and indeed according to the quantity of influence.

Authors are accustomed here to raise the question whether those are excused from fault and restitution who, on account of fear of grave detriment, cooperate in an unjust damaging action. The solution of this question cannot be given otherwise than by recurring to the principles concerning the indirect voluntary. But difficulty exists in the right application of those principles. Authors teach rather commonly: 1. that it is never lawful immediately and positively to cooperate in the unjust killing of another; 2. that it is never lawful immediately to cooperate in the unjust grave wounding of another. But if it is a question of damaging in goods of fortune, then authors do not agree. All indeed concede that remote cooperation in damaging is licit, provided that a proportionately grave cause is present. Thus, e.g., on account of fear of death or of another very grave evil, it is lawful to hold a ladder for a thief climbing up, to hand over to him the keys for opening a chest, to carry away prey already taken, and similar things.[59] Billuart[60] and the Salmanticenses[61] teach that proximate cooperation in unjust damaging is illicit and intrinsically evil; on the other hand, St. Antoninus,[62] Sporer,[63] St. Alphonsus,[64] Lehmkuhl,[65] and several others teach that from a very grave cause, e.g., fear of death, it is licit, and indeed rightly. For the taking away or damaging of another's thing is not unjust except insofar as the owner is reasonably unwilling. But the owner is not reasonably unwilling if I, placed in very grave necessity, cause him damage in fortune, especially if I have the intention of repairing this damage according to my powers.[66] Cf. the things said above, n. 87, concerning great goods of another to be taken away in extreme necessity.

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[56] Cf. below n. 209 sqq.

[57] Cf. the things said above (I, n. 52 and 618) concerning the indirect voluntary and cooperation.

[58] What restitution *in solidum* is, cf. below n. 223.

[59] Cf. Billuart, *De iure et iust.* diss. 8, a. 13, § 6, dico 2.

[60] L. c. dico 1.

[61] *Curs. Theol. mor.* tr. 21 *de praec. decal.* c. 8, n. 75, where the opposite opinion previously exhibited is revoked.

[62] *Summ. theol.* P. 2, tit. 1, c. 12.

[63] *De iust.* tr. 4, c. 3, n. 41 and 42.

[64] *Theol. mor.* l. 3, n. 571.

[65] *Theol. mor.* I, n. 1205.

[66] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 571.

§ 2. On Negative Cooperation

109. Notions. Negative cooperators are those who do not impede damage to the neighbor, although they are held to this from justice. Three modes of this cooperation are assigned, which indeed are materially, but not formally, diverse, namely "mute, not hindering, not manifesting."

a) He is called mute who does not speak before the damaging, and does not forewarn the person to be damaged, when he is held to this from office or contract; e.g., a guard who, when a thief is coming, does not shout and does not warn the owner.[67]

b) He is not hindering who, while damage is being inflicted, does not oppose it, although he is held to this from justice; e.g., a forest guard who does not prevent wood from being cut unjustly.

c) He is called not manifesting who, after damage has been inflicted, does not denounce the damager either to the injured owner or to a superior, although from office he is held to this; e.g., the same forest guard, who indeed knows well the thieves of the wood, but does not denounce them to the public authority.

Principle. Those who from commutative justice are held to impede damage, and do not impede it when they can without grave inconvenience, are held to repair the damage inflicted.[68]

The reason is that in this culpable omission all the conditions of unjust damaging are had; for it is truly, efficaciously, and formally unjust. But it is said: "who from commutative justice are held to impede damage"; for if there is only an obligation of charity, obedience, or another virtue, there is indeed sin, but no obligation of reparation arises. Now those ought to impede damage from commutative justice who have obliged themselves to this by some explicit or implicit contract. An implicit contract is had in the free undertaking of any duty or office. Then it is said: "when they can without grave inconvenience"; for no one is judged to oblige himself to preventing the damage of another with great inconvenience of his own, unless this is contained explicitly in the contract.

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[67] Billuart, l. c. § 7, explains the three negative modes otherwise, saying: "The mute omits verbal labor toward the damager; the one not hindering, bodily labor toward the same; the one not manifesting, verbal labor toward magistrates or toward owners damaged or to be damaged."

[68] Cf. St. Thomas, *S. theol.* 2, 2, q. 62, a. 7; IV dist. 15, q. 1, a. 5, solut. 3.

110. Corollaries. 1. A confessor who, even from culpable negligence, omits to warn a penitent concerning restitution to be made, of himself is not held to reparation of the damage which arises from this silence for the legitimate owner. The reason is that the confessor by force of his office is not constituted for protecting the temporal goods either of his penitent or of others. Nevertheless such a confessor administers the sacrament badly and therefore sins; indeed, if his silence is equivalent to positive approval, and especially if the penitent expressly asked concerning the obligation of restitution, then the confessor is the efficacious cause of the damage and is bound to restitution.[69]

2. A servant who does not avert damage from the master's goods specially committed to him is bound to restitution. But when it is a question of other goods of the master not specially committed to his care, many think that servants from justice ought to impede damage which is inflicted by outsiders, but not damage which is inflicted by a domestic person, e.g., by sons of the family or by a fellow servant.[70] Others, however, probably deny both and acknowledge only an obligation of charity. Yet this obligation of charity can easily be grave both toward the master and toward the evildoer; servants maintaining deep silence concerning the thefts of sons of families should be mindful of this obligation.

3. Parents or superiors who freely permit sons or subjects to inflict damage upon a neighbor indeed sin, but are not bound to reparation of the damage. The reason is that the quality of parent or superior of itself is not sufficient that someone be constituted as a kind of sponsor for the damages of subjects. Nevertheless parents and superiors ought to repair damage of this kind, 1) if the sentence of a civil judge has condemned them on account of juridical fault committed, for such a sentence is just; 2) if that silence is rather to be compared to positive influence and is held as counsel or excitation; 3) if the damage inflicted was by a child before the use of reason, i.e., before the first seven-year period was completed, because if parents or superiors culpably do not impede such damage, they injure commutative justice.

4. Guards of customs, forests, fields, etc., are bound to reparation of notable damage inflicted, if they permit the damagers to go away unpunished; but if it is a question of damages of lesser moment, they ought not to exercise the greatest rigor toward the damagers, both because otherwise they would procure greater inconveniences for themselves and others, and because this is the reasonably presumed will of the injured owner.

5. He who has accepted money from a thief or other damager for desisting from denunciation[71] is certainly bound to reparation, if from office he ought to denounce; he is also certainly bound to return money perhaps coming from the theft itself. But outside these cases it is controverted. Some deny,[72] because then justice is not injured, but only charity; others affirm,[73] because to accept money and be silent in this case is nothing other than to provide help and security to the thief. The second opinion seems truer, if the money is provided before the theft or damage is to be committed; on the other hand, the first opinion is truer and safe in practice, if the money is provided to him who, after the theft or damage has been perpetrated, learned this by chance. But always (although he does not sin against justice) he who receives money for concealing the theft or damage caused acts badly, because it is a disgraceful contract, and because he exposes himself to great infamy and dangers, if his foul mode of acting is discovered.

[69] St. Alphonsus, *Theol. mor.* l. 3, n. 528.

[70] St. Alphonsus, l. c. n. 344.

[71] Commonly *Schweigegeld*, hush-money, *pot de vin*.

[72] Lugo, *De iust. et iure* disp. 19, n. 102; Lehmkuhl, *Theol. mor.* I, n. 1208; Génicot, *Theol. mor.* I, n. 574, Quaer. V.

[73] Tanquerey, *De virt. iust.* n. 541; Crolly, *De iure et iust.* III, n. 703.

Article III. On Unjust Damaging By Deeds In The Goods Of The Human Body

111. Preliminary Note. Since we have spoken of damaging in general, now one must deal in particular with some damagings in which a special difficulty is found. Following the footsteps of the Angelic Doctor,[74] we shall first treat of injuries committed by deeds, and then of injuries committed by words. By deeds injury can occur in three ways: 1. by directly injuring the very person of the neighbor; 2. by indirectly injuring the neighbor, namely in another person intimately joined to him; 3. by injuring the proper things of the neighbor. Enough has already been said above concerning this third injury, under damaging in general. Injury of the very person of the neighbor is prohibited by the fifth precept of the Decalogue: "You shall not kill"; by these words there is forbidden primarily every unjust homicide, that is, suicide and the unjust killing of the neighbor, and secondarily whatever injures one's own or another's body in an undue mode. But the neighbor is injured indirectly in a person intimately joined with him through adultery and deflowering. Therefore the order of things to be said is the following: 1. on injury against one's own body; 2. on injuries against the body of the neighbor; 3. on injury arisen from deflowering and adultery.

[74] Cf. *S. theol.* 2, 2, q. 64 sqq.

§ 1. On Injury Against One's Own Body

Above, n. 6, when there was discussion concerning the object of ownership, it was proved that useful ownership of his body indeed belongs to man, but not absolute ownership. For man is, as it were, the steward of God, and therefore he commits injury toward God if he abuses his body or destroys it. But strictly speaking

the suicide does not commit injury against his own body, since injury is always toward another and not toward oneself. Suicide (and the same holds of every homicide) is either direct or indirect. It is called direct when it is directly both intended and follows from an action freely placed. But it is called indirect when it is not intended, but is foreseen as going to follow from an action placed, which nevertheless does not directly cause death but only induces a most grave danger of death. Therefore in direct suicide (say the same of homicide and the procuring of abortion) the end both of the work and of the worker is death to be inflicted; but in indirect suicide neither the end of the work nor the end of the worker is death.

112. Principle 1. Direct suicide, done by private authority, is always a most grave sin.

Thus all Catholics teach against the Stoics, Epicureans, and several modern non-Catholics.

Proof. The sin of suicide is most strictly prohibited by law a) divine, b) natural, c) ecclesiastical.

a) In the fifth precept of the Decalogue divine law inculcates: "You shall not kill."

b) By a threefold reason direct suicide injures natural right itself;[75] for it is against charity toward oneself, violates the rights of the human community, and violates the rights of God himself. Therefore suicide first injures charity toward oneself. For each person ought to love himself, and from this love there arises the most vehement inclination of preserving oneself and resisting death. Hence suicide is something unnatural and injuring charity toward oneself. Moreover, it does injury to human society. For every man ought to be a useful member of human society. But by departing from life by his own motion, a man can now bring no utility to society. Therefore he commits injury. Finally, suicide is very injurious to God, who gave life to man and continually conserves it, and therefore is the perfect owner of every human life. Wherefore St. Paul says very well: "For none of us lives to himself, and no one dies to himself. For whether we live, we live to the Lord; or whether we die, we die to the Lord. Therefore whether we live or whether we die, we are the Lord's."[76] But he who destroys his own life by suicide destroys the property of God and therefore inflicts grave injury upon God;[77] to him alone belongs the authoritative judgment of life and death, according to that saying: "You are, O Lord, he who has power of life and death."[78]

c) Suicide is gravely prohibited by ecclesiastical law, which, as a penalty for so great a crime, forbids the body of a suicide to be buried in a sacred place or Mass or other liturgical suffrages to be celebrated for him.[79] But these ecclesiastical penalties are not incurred a) if the suicide was committed from madness or another cause impeding the use of reason; b) if the suicide gave signs of repentance before he expired; c) if the crime was wholly occult, lest the reputation of the survivors be violated; d) if there was doubt whether death arose from suicide, or whether the suicide was committed from madness. He who attempted suicide is irregular,[80] is barred from legitimate ecclesiastical acts, and incurs other penalties if he is a cleric.[81]

But it is said that suicide done by private authority is a most grave sin. For either from divine authority or sometimes from public authority suicide would be lawful. It is plain that God can command suicide to some man; for he himself is the supreme owner of life and death. But whether in reality God ever gave such a precept is not certainly established. For the deeds which are read in the lives of the saints (e.g., St. Apollonia, St. Pelagia, St. Sophronia) do not certainly prove that a divine precept was present. Those saints most certainly had the best intention, but through invincible ignorance they could have done something which objectively was illicit.[82]

But could someone kill himself by command of public authority? E.g., can someone justly condemned to death by poison or hanging himself take the poison or hang himself? This case occurred in the East, and Socrates, condemned to death, is said to have obeyed the law of the republic and himself taken poison.[83] Billuart[84] and

St. Alphonsus[85] deny (and call their opinion the more common), but it is not certainly established that this is intrinsically evil; wherefore it would be lawful for one justly condemned to death to employ this mode of dying when the supreme judge commands it. "For if the accused can open his mouth so that poison may be poured into it, so also he can draw it up with his hands, and so also he can transfix himself with a sword. For then the judge constitutes the accused as executioner of himself." Yet this is cruel and not very becoming.

Scholion. On The Principal Causes Of Suicide. In our times suicides become more frequent from day to day. The fundamental cause of this mournful experience seems to be the defect of faith creeping in more and more. For it is impossible that a man well conscious of the punishments of Gehenna (which he will certainly suffer through all eternity if with full advertence and deliberation he commits suicide) would not prefer to tolerate all the pains of this world rather than commit suicide. Hence suicides also happen much more frequently among unbelievers than among Catholics.[86] Another cause of suicides is books and theaters, in which suicide is very often glorified and therefore commended. Priests should not omit to deter the people from the enormous crime of suicide.

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[75] St. Thomas, *S. theol.* 2, 2, q. 64, a. 5.

[76] Rom. 14, 7 sq.

[77] Cf. *S. theol.* 2, 2, q. 64, a. 5, where also the excuses which are sometimes brought forward for suicide are refuted.

[78] Wis. 16, 13.

[79] *Rit. Rom.* tit. 6, c. 2, n. 3. Code of Canon Law c. 1240, 3.

[80] Code of Canon Law c. 985, 4.

[81] L. c. 2350, § 2.

[82] Cf. Lessius l. 2, c. 9, n. 23, cited by Noldin, *De praeceptis* n. 327.

[83] Cf. Plato, *Phaedo* (LVII): τι χρή ποιεῖν.

[84] *De iust.* diss. 14, a. 4, dico 4.

[85] *Theol. mor.* l. 3, n. 369.

[86] Paulsen rightly says: "Suicide is, as a rule, the unbeautiful end of an unbeautiful life" (*System der Ethik* II, 120).

113. Principle 2. Indirect suicide is not licit unless a proportionately grave cause is present.

It is explained. An action indirectly causing death is not intrinsically evil, and therefore, when a proportionately grave cause comes in, it is licit in the same way in which an indirectly voluntary evil is permitted. But what is a proportionately grave cause must be prudently estimated in individual cases. The nearer and more certainly the action is going to induce death, the greater the cause required. Among causes permitting indirect suicide are enumerated the public good and the spiritual good. For it is certain that a man can and ought to expose his life to the greatest danger if the public good demands this. Thus soldiers with evident danger of life ought to fight in battle; pastors ought to administer the sacraments, even if on account of a raging epidemic they expose themselves to mortal contagion. The spiritual good also, and notably the good of virtue, is an excusing cause. Hence missionaries laudably set out into foreign and unhealthy regions with manifest danger of death; religious sisters can serve the sick laboring under plague. If the danger of death is not so proximate, even a lighter cause can excuse. Hence it is lawful, e.g., for workers to blow glass, to gild metals, to work in sulfur mines, etc., with danger of notably shortening life. Nevertheless he always sins who from a futile reason exposes or abbreviates his life, e.g., men who from vainglory fight in a duel, some tightrope walkers, those prolonging a fast for a very long time (for the sake of mere experiment or wager).

Likewise those who hasten death for themselves by gluttony, by immoderate passions, by morphinism; those who undertake altogether unusual labors without sufficient reason; those who refuse to take even ordinary remedies for preserving or recovering health.[87]

[87] Cf. Billuart, *De iure et iust.* diss. 10, a. 3.

114. Authors raise two questions here: 1. Is it lawful to kill oneself in order to avoid a certain and harsher death? St. Alphonsus responds:[88] "Directly to kill oneself is never lawful ... it is lawful to kill oneself indirectly: for instance, if someone throws himself out through a window in order to escape a fire; especially if there is some hope of escaping death. Thus teach Busenbaum, Lugo with Lessius, Continuator Tournely, and Sporer. And Elbel permits this even to accused persons detained in prison, for escaping a certain sentence of death, or even perpetual prison." Whatever may be the case concerning this indirect killing, which seems to be licit, since there it is not a question of death itself to be inflicted upon oneself, but rather of exposing oneself to the greatest danger of death, nevertheless the opinion defended by Elbel does not seem able to be sustained, unless it is a question only of undergoing the danger of death, but not of certain death itself. Otherwise those suicides which happen rather often, which evildoers condemned to perpetual labor in prisons commit, would also be licit. And indeed no one will sanely say this. For the rest, from the very words of Elbel it appears that he speaks only of danger of death. For he says: "Even in these circumstances they [soldiers] do not intend to kill themselves, but only by flight to seek liberation from the squalor of perpetual prison, which to many seems, not without merit, more intolerable than death itself; therefore if death follows from such flight besides their intention, they must by no means be judged to have intended it, but rather to have held themselves permissively in order to it."[89]

[88] *Theol. mor.* l. 3, n. 367.

[89] *De homicid.* n. 16, ed. Bierbaum.

115. 2. Can a virgin choose death rather than her own violation? a) It is certain that a virgin cannot directly kill herself in order to avoid violation, e.g., by transfixing her heart with a sword. It is also the express opinion of St. Thomas,[90] saying: "Similarly, it is also not lawful for a woman to kill herself, lest she be corrupted by another; because she ought not to commit in herself the greatest crime, which is the killing of herself, in order to avoid the lesser crime of another; for it is not the crime of a woman violated by force, if consent is absent, because the body is not stained except from consent of the mind, as Lucia said." Hence the things which are had in the Decree of Gratian[91] from St. Jerome,[92] "In persecutions it is not lawful to perish by one's own hand, apart from where chastity is endangered, but to submit the neck to the one striking," are either to be piously explained or to be abandoned. Then b) it is also certain that a virgin in that case can flee with evident danger of death, e.g., by throwing herself from a high window; but c) it is not certain whether a virgin ought rather to allow herself to be killed than violated, e.g., when the aggressor threatens her with death unless she permits intercourse. Several authors affirm,[93] because, since the woman can impede intercourse, if she rests induced by fear, then her cooperation becomes truly moral and voluntary. Other theologians[94] deny, provided that the virgin bears herself merely passively and the danger of consent is absent. The reason is that in that case the violation is something merely physical; and just as a virgin can, for recovering health, permit physical violation through a surgical operation, so at least on account of the most eminent danger of death she can permit that violation through extorted intercourse. Certainly in the second case the virgin provides material and proximate cooperation in the sin of the aggressor, and therefore a much greater cause is required than in the case of a surgical operation; but nevertheless that aggressor is already in

heart guilty of deflowering before the external work perpetrated, and besides he would become guilty of both internal and external homicide if the virgin did not bear herself permissively. Therefore the merely passive permission of the virgin helps rather than harms the soul of the aggressor. St. Augustine[95] also seems to favor this opinion.

[90] *S. theol.* 2, 2, q. 64, a. 5 ad 3.

[91] c. 11, C 23, Q. 5.

[92] Comm. in Jonah l. 1, n. 402 (Migne, *Patr. lat.* 25, 1129).

[93] Lugo, Salmanticenses, Azor, Bonacina, etc., cited by St. Alphonsus, l. c. n. 368.

[94] Navarrus, Toletus, Soto, Schindler.

[95] *De civ. Dei* l. 1, c. 18.

116. On Self-Mutilation. By almost the same right by which suicide is prohibited, mutilation of oneself is also prohibited. For just as man does not have full ownership of his life, so neither can he dispose concerning his members except for the uses determined by God. But because the parts are for the sake of the whole, it is lawful to cut off a member if this is necessary for saving the whole bodily life. Thus all theologians teach with St. Thomas.[96] Therefore it is lawful to submit oneself to surgical operations when they are truly useful or necessary for preserving health. Moreover, it is lawful to cut off a bound hand, if this is necessary for taking flight and thus for escaping death.[97] But for other ends mutilation cannot be done licitly, because God never, either explicitly or implicitly, conceded such a right to men. Hence it is not lawful for an adolescent to mutilate himself in order to escape military service, nor for a poor man in order to obtain greater alms, nor to do emasculation or castration for preserving chastity, as Origen is narrated to have done.[98] Hence deservedly the Church has established the penalty of irregularity against those who have castrated themselves or have otherwise mutilated themselves or others.[99]

On Artificial Sterilization. In former times castration of boys came into use for preserving a boyish voice. This castration indeed was held licit by some authors, if danger of life was absent and it was not done to boys unwilling.[100] There is no leisure to refute this opinion and practice, today deservedly obsolete. In our times the so-called artificial sterilization rages more and more from day to day; it can very easily be obtained not only by vasectomy but also by Roentgen rays (X-rays); but it is usually employed for recovering health, for avoiding generation, and for other ends. But since this sterilization is true bodily mutilation (of the ovaries or testicles), it is not morally licit unless for curing diseased organs and for obtaining the health of the whole body. Therefore it is not lawful to employ it, e.g., for preventing the generation of numerous offspring, for preventing a man altogether depraved from transmitting his very bad habits into offspring by generating.[101]

[96] *S. theol.* 2, 2, q. 65, a. 1.

[97] Several authors (Lugo, Lessius, Molina, Salmanticenses, Billuart, Lehmkuhl, Marc, Aertnys) more probably think that someone can mutilate himself in order to avoid death unjustly threatened by a tyrant. Wherefore if, e.g., a husband says to an adulterer caught in the act: either castrate yourself or I shall kill you, the adulterer could castrate himself in order to avoid the death threatened by the husband. I am unable to grasp how that opinion is probable, since such mutilation is manifest and proximate cooperation in the sin of another.

[98] Cf. *S. theol.* 2, 2, q. 65, a. 1 ad 3.

[99] Code of Canon Law c. 985, 5.

[100] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 374.

[101] Pius XI, encyclical *Casti connubii*, Dec. 31, 1930 (*Act. Ap. Sed.* XXII, 230), and S. C. S. Off., Mar. 21, 1931 (*Act. Ap. Sed.* XXIII, 118).

117. Scholion. The desire of death can be something 1. licit; 2. illicit; 3. imperfect. This desire is licit if it arises from a good motive, namely because someone desires to be joined with God, to be no longer able to sin, etc. In this sense St. Paul teaches that it is much better to have the desire to be dissolved and to be with Christ than to remain in the flesh.[102] But it is illicit if it arises from a wicked motive, e.g., if someone with rebellion against the divine will wishes death for himself, if someone from impatience now no longer wishes to tolerate this life. Rarely, however, is this desire of death gravely illicit, because often it is not so voluntary and serious. Finally, the desire of death is something morally imperfect if someone so abhors some earthly evil, for example grave illness, incarceration, a very hard state of life, etc., that he prefers bodily death rather than to sustain that evil. Although such a desire is not gravely sinful, because already in Sacred Scripture it is said: "Death is better than a bitter life,"[103] nevertheless it is something imperfect and a venial sin, because by patiently tolerating such very grave evils of earthly life a man will have a precious reward in heaven, which he loses by desiring death.

There are some men who, even in the ordinary distresses of this life, often exclaim: Would that I were dead! Would that I were in the tomb! etc. Exclamations of this kind certainly are to be avoided and are objectively illicit, but often they are semi-deliberate acts and not seriously willed; hence they are either no sin or a venial sin.

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[102] Cf. Phil. 1, 23-24.

[103] Eccli. 30, 17.

§ 2. On Injury Against The Body Of The Neighbor

Preliminary Note. Injury against the body of the neighbor can be committed in many ways, e.g., by injuring his health; but especially this is done by killing him, or homicide. Homicide is the same as the killing of a neighboring man. But the neighbor can either injure the common good, and then he is an evildoer to be punished, or cause great bodily injury to a private person, and then he is an aggressor to be repelled, or finally be altogether innocent. Therefore we shall treat 1. of the killing of an evildoer, 2. of the killing of an aggressor, where there will also be discussion 3. of dueling and 4. of war, and finally 5. of the killing of an innocent person, where there will also be treatment 6. of craniotomy and 7. of abortion.

1. On The Killing Of An Evildoer Or On Bloody Punishment

118. Principle. Public authority, and it alone, has the right of killing those who have committed most grave crimes.

Proof. The reason is that the death penalty is a necessary means for preserving the common good. For unless great evildoers could be killed by public authority, they would always become more arrogant and would greatly diminish public peace and security. Therefore in Sacred Scripture also we read that this power was conferred upon public authority,[104] and we find its use among all peoples. Thus, e.g., among the Israelites it was established: "He who strikes a man, wishing to kill, let him die by death." "He who has cursed his father or his mother, let him die by death."[105] But no one except public authority can inflict the death penalty, because evildoers can be licitly killed only on account of the common good. Therefore he alone who by office ought to procure the common good, i.e., the superior of the community, can punish someone by death. The Angelic Doctor writes to the point: "To kill an evildoer is lawful insofar as it is ordered to the safety of the whole community, and therefore it belongs only to him to whom the care of preserving the community is committed; just as it belongs to a physician to cut off a putrid member when the care of the whole body has been

committed to him. But the care of the common good is committed to princes having public authority; and therefore it is lawful for them alone to kill evildoers, not for private persons."[106]

Those private men act illicitly who kill certain evildoers immediately after the crime committed by their own authority, which practice is commonly called Lynch justice, lynching. Thus at least objectively speaking, because perhaps several so acting are in good faith.

Soldiers and guards appointed for capturing or guarding an accused man cannot indeed kill him when he is taking flight, but they can fire a gun at the legs of the one fleeing, so that he can be captured. But if in this way the fleeing man is accidentally killed, the guards have not sinned. For the rest, guards, watchmen, and soldiers are accustomed to have special instructions how in individual cases they ought to act. They are not to be disturbed in conscience if they act according to these instructions.

Things To Be Provided Before A Sentence Of Death. No one can licitly be condemned to death by supreme authority unless, after judgment, moral certitude has been had concerning the most grave crime committed.

Therefore in order that the death penalty can be licitly inflicted, there is required a) a most grave crime; b) moral certitude that this crime has been perpetrated. The crimes which are punished by the death penalty by modern criminal codes are few, e.g., voluntary homicide, treason, certain crimes during war. It is not indeed required for the liceity of the death sentence that the accused have confessed his crime in court, but it is altogether necessary that moral certitude concerning the crime perpetrated be had, because otherwise an injury could be done which afterward would be irreparable.

Before execution of the sentence of death, time must be conceded to the accused for reconciling himself with God according to the prescriptions of religion.

Several criminal codes rightly establish that no pregnant woman can be punished by death, but that birth must first be awaited.

In ancient times civil law permitted that a husband could kill an adulterer caught in the very act. But since certain theologians extended this permission of civil law even to the killing of the wife, proposition 19 was condemned by Alexander VII: "A husband does not sin when he kills by his own authority a wife detected in adultery."[107] St. Thomas had already solved this question: "Civil law reckons as licit, as it were, that he kills her [namely, the wife] in the act itself [of adultery], not as commanding, but as not inflicting the penalty of homicide, on account of the greatest incitement which a man has in such a deed to the killing of his wife. But the Church in this is not bound by human laws.... And therefore in no case is it lawful for a man to kill his wife by his own authority."[108]

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[104] Cf. Ex. 22, 18 and Rom. 13, 4.

[105] Ex. 21, 12 sqq.

[106] *S. theol.* 2, 2, q. 64, a. 3. Similar things are had there a. 2 and 7; q. 65, a. 1 and ad 2; q. 108, a. 3 ad 1; *De malo* q. 1, a. 5 ad 12; *Contra gent.* 3, 146. But always the same reason is brought forward by the Angelic Doctor for the liceity of the death penalty, namely, the necessity of the common good.

[107] Denz. n. 1119.

[108] 4 dist. 37, Q. 2, a. 1.

119. Punitive Beating. The things just said concerning the death penalty to be inflicted upon evildoers hold also, with due proportion observed, concerning mutilation and beating. In ancient times, and also in the Old

Testament, certain crimes were punished by mutilation of members, e.g., by cutting off the hand, gouging out the eyes, etc.[109] Although these penalties were very harsh and today are no longer in use, nevertheless they could be licit and just. For he who has the power of killing has, a fortiori, the power of mutilating. It is never lawful for a private man to mutilate another without his legitimate consent. Hence not even physicians can perform a surgical operation without the explicit and licit consent of the sick person; this consent, in persons lacking the use of reason and in persons bound by a religious vow, can be supplied by legitimate superiors.

Not only supreme power, but also another legitimate superior can moderately beat delinquent subjects. For to whomever the right of punishing belongs, to him is also conceded the power of moderately beating the delinquent. Hence nothing prevents parents and teachers from punishing disobedient children moderately and discreetly with blows. Nevertheless, that in these things action must be taken with great justice, prudence, and moderation is plain of itself. But it is lawful for no private man to beat another private man not subject to him, unless nevertheless it is a question of just defense. The reason is that it does not belong to a private man to punish another equal to himself. Yet often it is lawful for a private man moderately to beat unruly and damaging children, both because the permission of the parents can deservedly be supposed, and because otherwise there is almost no other remedy at hand for restraining them from damaging.

Scholion. On Adversaries Of The Death Penalty. The Waldenses, Anabaptists, Jeremy Bentham, Cesare Beccaria, Chr. Lucas, Spedalieri, and others denied the power of punishing evildoers by death, and in fact in certain regions the death penalty was abolished, but after a few years often was restored (e.g., in several districts of Switzerland and of the United States of North America). For sad experience has proved that evildoers cannot be sufficiently restrained by fear of prison. Hence the death penalty must be held as a salutary and efficacious remedy for preventing enormous crimes and for preserving peace in the republic. There is no leisure to solve the objections which are usually brought forward by adversaries of the death penalty.[110]

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[109] Cf. Ex. 21, 24; Lev. 24, 20; Deut. 19, 21.

[110] See Cathrein, *Moralphil.* II, 677 sqq.

2. On The Killing Of An Unjust Aggressor Or On Bloody Defense

120. Principle. It is lawful to defend oneself, even by the killing of an unjust aggressor, if this is necessary a) for preserving one's own life; b) for preserving the life of the neighbor, and especially of a connected person; c) for protecting the integrity of members and other goods of great value.

The ancient authors briefly announced this principle: It is lawful to kill an unjust aggressor with the moderation of blameless defense.[111]

Proof. The reason is that everyone by natural right itself can defend himself and his own; and in these cases the killing of the aggressor is not directly intended, but the preservation of a very great good, which the aggressor unjustly attacks. Therefore all the conditions are had which are required for placing a cause from which a double effect follows, the one good, the other bad, namely preservation of one's own life and destruction of another's life. For 1. the intention is good, 2. a proportionately grave cause is had, 3. the action placed is not evil in itself, since it is defensive of one's own life. Therefore he acts licitly who defends himself, even with the killing of the unjust aggressor. Thus positive laws establish;[112] thus almost all theologians teach, with a few contradicting, e.g., Gerson, Noris, Henry of St. Ignatius. Let St. Thomas alone be heard:[113] "According to the laws it is lawful to repel force with the moderation of blameless defense. Nor is it necessary

for salvation that a man omit an act of moderate defense in order to avoid the killing of another, because a man is more bound to provide for his own life than for another's life."

The principle is explained. It is said 1. to everyone it is lawful; therefore such defense is a morally licit act and not only not punishable, as some jurists wish; nevertheless (at least generally) no one is bound to choose this mode of defense. For to kill another man is something very harsh and horrible. Moreover, generally no private man is bound to employ so harsh a means for conserving his own life, unless nevertheless he himself is very necessary to the common good. Thus, e.g., there can exist an obligation of killing an aggressor if the one attacked is a father, wife, or bishop. For then the obligation of piety and charity comes in. Certainly those who are held to the defense of others by office, as soldiers and the public police, are also bound under grave sin to kill unjust aggressors if otherwise the life of others cannot be preserved.

It is said 2. an unjust aggressor; because if the aggressor acts justly, it is not licit to kill him; as if a guard or minister of justice, from legitimate authority, draws one juridically condemned to the punishment of death, it is not lawful to repel force with force and to kill that guard or minister. This is plain of itself. Likewise, he who is justly detained in prison cannot kill the prison guard in order to acquire his own liberty. But it is not required that the aggressor be formally unjust, or that he act from theological fault; it is enough that he is trying actually to inflict a grave material injury upon me. Hence even one drunk, mad, furious, etc., threatening death to me can be killed, if otherwise his action cannot be impeded. But whether the aggressor is formally or materially unjust, he can be killed, even if perhaps he exists in the state of mortal sin and therefore is going to Gehenna; for 1. the state of mortal sin is not certain in a materially unjust aggressor; 2. the formally unjust aggressor must impute such danger to himself and indeed to himself alone. An aggressor is understood only as one who actually inflicts force, not as one who is in a power more or less remote of inflicting damage. Hence, e.g., an unjust aggressor can be killed who is already drawing a sword, who is already directing a gun at someone; but not he who is foreseen as going to attack after some days or who is going to accuse falsely. Therefore proposition 18 was deservedly condemned by Alexander VII as scandalous: "It is lawful to kill a false accuser, false witnesses, and even a judge from whom an unjust sentence certainly threatens, if in another way the innocent person cannot avoid damage."[114]

It is said 3. for preserving either one's own life, or the life of the neighbor, or the integrity of members and other goods of great value. Therefore it is not lawful to kill an unjust aggressor for the defense of any good whatever; and for this reason proposition 30 was condemned by Innocent XI: "It is right for an honorable man to kill an attacker who strives to inflict calumny, if otherwise this disgrace cannot be avoided; the same also must be said if someone strikes with a slap or strikes with a staff and after the slap or blow of the staff has been inflicted flees";[115] and proposition 31: "Regularly I can kill a thief for the preservation of one gold coin."[116]

The reason of all these things is that on the one side charity and justice would be injured if a neighbor, although unjustly attacking, were deprived of the greatest good, namely his life, on account of small damage inflicted upon me; but on the other side everyone has a strict right to preserve for himself goods of great value, as are one's own life, the life of the neighbor, the integrity of members, pudicity, etc. But if another unjustly wishes to take these goods away, he can be beaten back with all strength; but if this cannot be done otherwise, even by the killing of him. But I have deliberately said, "if this cannot be done otherwise"; for in defense the moderation of blameless defense must always be observed. Hence if these goods of great value can be preserved in another way, e.g., by beating or mutilation of the unjust aggressor, this certainly must be done, and in that case killing would be gravely sinful.

The goods which, with the moderation of blameless defense thus preserved, it is lawful to defend are therefore, besides life and members, also goods of fortune and pudicity, but not honor and reputation, as will be said below.

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[111] *Das Recht der Notwehr, la défense légitime.*

[112] c. 3, 18, X 5, 12; c. 3, X 5, 39; German Penal Code § 53 sqq.; German Civil Code § 227 sqq.; French Penal Code a. 328.

[113] *S. theol.* 2, 2, q. 64, a. 7. But the Angelic Doctor adds: "It is illicit that a man intend to kill a man in order to defend himself." Several teach the contrary, e.g., Lugo (*De iust. et iure* disp. X, n. 149), saying: "You will be able to intend the death of him, not only as the striking, but as it is death, because not otherwise except as death is it useful for your protection." They give this reason for that opinion, why it is lawful also to intend the death of an unjust aggressor. For the defender in his defense acts as the mandatary of the republic, which permits the killing of the aggressor. But the opinion of St. Thomas seems better.

[114] Denz. n. 1118. This proposition was defended by Thomas Sanchez, *Decalog.* l. 2, c. 39, n. 7; cf. St. Alphonsus, *Theol. mor.* l. 3, n. 388.

[115] Denz. n. 1180.

[116] Ibid. n. 1181.

121. a) Goods of fortune of great value, provided nevertheless that those goods are truly possessed. For it is not lawful to kill him who impedes us from the obtaining of goods concerning which we have only a right to the thing, as is plain from proposition 32 condemned by Innocent XI: "It is lawful to defend by killing defense not only those things which we actually possess, but also those to which we have an inchoate right and which we hope that we are going to possess."[117] St. Alphonsus[118] asks whether it is lawful to kill a thief of a thing of great moment, and calls the affirmative opinion most probable and common, which St. Antoninus, Sylvius, Dominic Soto, St. Raymund, Cajetan, and Lugo hold; and St. Thomas[119] clearly adheres to it. For after the Angelic Doctor brought forward the text of Sacred Scripture: "If a thief breaking into a house or digging under it has been found, and, having received a wound, has died, the striker will not be guilty of blood,"[120] he infers: "But it is much more lawful to defend one's own life than one's own house." Therefore he supposes as certain that that text permits the killing of an invader of goods. Nor do the words which are afterward read in the same place of Exodus stand in the way: "But if when the sun has risen he has done this, he has perpetrated homicide, and he himself shall die." For when the sun has risen, the thief can be more easily recognized and the goods taken away can be recovered through the sentence of a judge. Therefore then the killing of the thief would be illicit, because it would exceed the moderation of blameless defense. Billuart[121] holds the contrary opinion, teaching that it is not lawful to defend goods of fortune with the killing of the invader; but the reasons brought forward by him do not seem to be probative.

What is a good of great value is not so certainly established. The value of one gold coin is not enough, as is plain from proposition 31 just cited, condemned by the same Innocent XI; but theologians judge that a thing of great value is one whose price is equivalent to about the sum of 1000 francs. Indeed D'Annibale,[122] Bucceroni[123] think that a thing of great value is already 400 or 500 lire.

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[117] Ibid. n. 1182.

[118] *Theol. mor.* l. 3, n. 383.

[119] *S. theol.* 2, 2, q. 64, a. 7, arg. *Sed contra.*

[120] Ex. 22, 2.

[121] *De iure et iust.* diss. 10, a. 6, § 1.

[122] *Summula Theol. mor.* II, n. 283.

[123] *Inst. theol. mor.* I, n. 732.

122. b) Pudicity. It is lawful for a woman to repel by force an invader of pudicity, and if an unjust aggressor wishes to extort carnal intercourse, the woman, when other means are lacking, can kill him. Thus the common opinion. For if it is lawful to defend goods of fortune of great value by the killing of the invader, a fortiori it is lawful in this way to save the good of pudicity, which is much more excellent. For in that case the woman is exposed not only to some danger of consenting to a sinful act, but also of becoming pregnant and of bearing the greatest burdens of childbirth and education of offspring.[124]

Cuniliati, O.P.,[125] writes concerning this matter: "The invader of another's pudicity, wishing by force to oppress an honorable woman, a girl, or a male, granted that no other way of escaping lies open (which otherwise seems difficult; nevertheless, this being supposed), is justly killed, not by intending the killing but the defense of oneself. Thus many others after St. Antoninus." St. Augustine[126] is sometimes alleged as contrary to this opinion, because he seems to approve the opinion of Evodius: "Wherefore I indeed do not censure the [civil] law which permits such men to be killed; but in what way I may defend those who kill them, I do not find." Nevertheless from the context it does not appear whether that is truly the sense of St. Augustine. Billuart[127] vigorously asserts that a virgin cannot licitly defend pudicity with the killing of the invader. Although the intrinsic reasons brought forward by St. Antoninus, whom St. Alphonsus,[128] Lugo, Molina, Lessius, Reiffenstuel, Elbel, Sporer, etc.[129] follow, do not seem to be so convincing (because the danger of consenting to sin is not so grave; the physical violation of virginity does not seem equivalent to the life of the aggressor; and finally the danger of conceiving offspring is almost none in such circumstances), nevertheless their opinion seems safe in practice, because such deflowerers are accustomed by intercourse to infect the woman with venereal disease, by which they themselves are not rarely infected; then, after the crime extorted by force, they are often carried off into such rage that they immediately kill the deflowered virgin (*Lustmord*). Therefore the virgin is then also placed in danger of death, and thus she can licitly kill the unjust aggressor. But if it is a question not of carnal intercourse itself, but of other immodest acts which do not cause so great a damage or shame, e.g., of kisses or touches, it is indeed lawful to beat but not to kill the unjust aggressor. But after deflowering or adultery has been extorted by force, it is no longer lawful to kill the deflowerer or adulterer, because then the killing would not be defense but illicit revenge.[130]

[124] Cf. St. Antoninus, *S. theol.* P. 2, tit. 5, c. 6.

[125] *Theol. mor.* tr. 8, c. 2, § 2, n. 3.

[126] *De lib. arb.* l. 1, c. 5 (Migne, *Patr. lat.* 32, 1228).

[127] *De iure et iust.* diss. 10, a. 6, § 2.

[128] *Theol. mor.* l. 3, n. 382.

[129] Cited by St. Alphonsus, l. c.

[130] Cf. ibid. n. 386.

123. c) Reputation or honor cannot be defended with the killing of an unjust aggressor. This is plain from proposition 30 condemned by Innocent XI, cited above.[131] The reason is that then the moderation of blameless defense would be exceeded; for honor or reputation is not saved from the fact that someone kills his calumniator. Hence already from this head it appears how illicit and inept dueling is.[132]

[131] Cf. above n. 120.

[132] The things which have been said thus far concerning bloody defense are also accustomed to be admitted by diverse criminal codes. Thus, e.g., it is had in the German Criminal Code § 53: "A punishable act is not present when the act was commanded by necessary defense. Necessary defense is that defense which is required to avert a present unlawful attack from oneself or another."

3. On Dueling

124. Definition. Dueling is a contest between two or a few persons, done by agreement concerning place, time, and lethal weapons (or at least weapons gravely wounding).

It is explained. For constituting a true duel, it makes no difference with what intention it was done, e.g., for the sake of vainglory, of saving honor, of preserving an office, of taking revenge. Hence in the definition nothing is said concerning intention. But it is said 1. a contest between two or a few, because a contest between two armies is no longer called a duel, but war. Although in ancient times duels were celebrated in such a way that on each side several persons fought at the same time, nevertheless today this mode of dueling is unusual, and a duel is always a strictly singular fight, i.e., between two persons.

It is said 2. from agreement concerning place, time, and weapons. This threefold agreement or pact is an essential condition of a duel. For if two fight from an impulse of anger or revenge, they are not in a duel, although perhaps they go to a determinate place for the sake of fighting. As to the third agreement or pact, namely concerning weapons, it is required and enough that the weapons be suited for inflicting a grave wound, e.g., a gun, revolver, sword, dagger (commonly, *Rapier*, *Schläger*), etc. Therefore it is not a duel which is done for exercise in certain schools of swordsmanship, or which is done with rods or sticks. But it is not required that a lethal wound be immediately inflicted by these weapons, nor that in the duel there be grave danger of death. It is enough that a grave wound can be inflicted. Hence even the so-called academic duels or "Mensuren, Bestimmungsmensuren," although in them directly lethal weapons are not employed, have been proscribed by the Church as true duels and are subject to the ecclesiastical penalties established against dueling.[133]

Division. Dueling is divided a) into solemn or public and into private; b) into fatal and non-fatal. A solemn or public duel is that which in ancient times was had by public authority on account of the public good, e.g., for ending a dispute between two nations. A private duel is that which is undertaken in a private name, and indeed ordinarily for defending honor, as they say. Even in a private duel there are seconds and other assistants. A fatal duel is that which has or at least intends a fatal outcome, i.e., the death of one of the duelists; otherwise it is called a non-fatal duel.

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[133] S. C. Conc., Aug. 9, 1890, Feb. 10, 1923, June 20, 1925 (*Acta Ap. Sed.* XV, 155 and XVIII, 137).

125. Principle. A duel undertaken by public authority for the common good is not morally evil; but one done by private authority is gravely illicit and induces grave ecclesiastical penalties.

It is proved. a) That a duel undertaken by public authority is lawful is plain of itself; for if from public authority army can fight against army on account of the common good, a fortiori (namely lest the blood of many be poured out) a singular fight in a duel can be permitted on account of the same common good. Thus at least of itself. Thus it was lawful that David fight with Goliath. But I say that this is lawful only for the common good. Hence duels of private men do not yet become licit if the legislative power of some region indulges private duels too much, because from these private duels no true utility arises for the common good, as in the fights of gladiators among the pagans.

b) Private dueling gravely opposes the law both natural and ecclesiastical, and also at least certain civil laws. And certainly it opposes natural law; for duelists "direct their mind and strength to this, bound by no necessity, that they take away life or at least inflict a wound upon the adversary."[134] Moreover, they expose themselves to danger of death or grave wounding without sufficient motive. For the motive of dueling ordinarily is honor to be saved. This motive, although it is not always the end of the worker, since he not rarely completes the duel compelled by harsh necessity, nevertheless is almost always the end of the work. No one of sound mind will say that honor, whether mine or another's, has been saved if I have killed or wounded the adversary, or, what is still clearer, if I myself have been killed or wounded. Therefore there is not a sufficient motive for making or accepting a duel and thus exposing oneself to grave danger. To this is added that from dueling very grave damages often arise, without any notable good following from it.[135]

But since dueling is so damaging and irrational, ecclesiastical law has several times most severely prohibited it. Thus the Council of Trent[136] established: "Let the detestable use of duels, introduced by the contrivance of the devil, so that by the bloody death of bodies he may also gain the destruction of souls, be utterly exterminated from the Christian world. The emperor, kings ... and temporal lords by whatever other name, who shall have conceded a place for single combat [i.e., duel] in their lands among Christians, are by that very fact excommunicated.... But those who have entered upon the fight, and those who are called their seconds, incur the penalty of excommunication ... and of perpetual infamy, and ought to be punished as homicides according to the sacred canons; and if they die in the very conflict, let them perpetually lack ecclesiastical burial." The Council likewise punishes with excommunication those counseling or watching a duel. Benedict XIV enlarged and explained these Tridentine laws in the Constitution *Detestabilem*,[137] in which he condemns the following propositions as false, scandalous, and pernicious:

1. "A military man who, unless he offers or accepts a duel, would be held as fearful, timid, abject, and unfit for military offices, and from this would be deprived of the office by which he sustains himself and his own, or would have to lack perpetually the hope of promotion otherwise due and deserved for himself, would be free of fault and penalty, whether he offers or accepts the duel."
2. "Those accepting a duel, or provoking to it, can also be excused for the sake of protecting honor or avoiding human contempt, when they know certainly that the fight is not going to follow, since it is to be impeded by others."
3. "A commander or military official accepting a duel from grave fear of loss of reputation and office does not incur the ecclesiastical penalties established by the Church against duelists."
4. "It is lawful, in the state of natural man, to accept and offer a duel for preserving fortunes with honor, when the loss of them cannot be repelled by another remedy."
5. "The asserted license for the natural state can also be applied to the state of a badly ordered city, in which, namely, either by negligence or by malice of the magistrate, justice is openly denied."

From all these things it follows that a duel properly so called is never licit. Hence the sophisms which are often brought forward in its favor, and which were clearly and profoundly rejected by Leo XIII in the letter *Pastoralis officii* of Sept. 12, 1891, to the bishops of Germany and Austria, are to be made little of. But I say "a duel properly so called"; for if it is only a fight for defending oneself and one's goods against an unjust invader, then it is licit with the moderation of blameless defense, as is plain from the things said above, n. 120, concerning an unjust aggressor.

The civil laws of several nations also gravely prohibit dueling, e.g., in England and Austria.[138] In some regions, however, although dueling is prohibited of itself, nevertheless great connivance is employed toward those who nevertheless have perpetrated a duel.

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[134] Leo XIII, apostolic letter *Pastoralis officii*, Sept. 12, 1891.

[135] Cajetan (*In S. theol.* 2, 2, q. 95, a. 8) treats acutely of the malice of dueling, concluding: "The nature of a duel is foreign to the nature of a just war, both defensive and vindicative. And therefore in no respect is a duel found to be a proportionate means for the ending of a dispute, whether civil or criminal. And because evils are not to be done that goods may come, let him rather suffer who cannot otherwise protect his rights." On the history of dueling, see *Staatslexikon der Görres-Gesellschaft*, s.v. "Zweikampf."

[136] Sess. 25, c. 19 *de reform.*

[137] Nov. 10, 1752; Denz. n. 1491-1498.

[138] Articles of war n. 101. Mandate of Emperor Charles, Nov. 4, 1917.

126. The ecclesiastical penalties against dueling are four:

a) They incur excommunication, to be incurred by the fact itself and simply reserved to the Holy See, "those who perpetrate a duel, or simply challenge to a duel, or accept it, or furnish any favor or assistance to it, and also those who intentionally watch it, or permit it or do not prohibit it so far as they can, of whatever dignity they may be."[139] By this excommunication six classes of persons are punished:

1. Those perpetrating a duel, even an academic duel or "Mensur";[140]
2. Those challenging, namely seriously, even though afterward the duel itself does not follow.
3. Those accepting. Grave fear of losing an office does not excuse;[141]
4. Any who furnish favor, e.g., seconds, witnesses, physicians, those renting a house, provided nevertheless that the duel actually follows. For if the duel has been impeded on account of some cause, then the censure is not incurred by the seconds, witnesses, and physicians.[142]

A physician and a priest can indeed licitly be called to him who has been wounded in a duel, but they cannot, by agreement, wait in a place near the duel in order more easily to help him who will be wounded. For this would make the duelists more courageous, and consequently would be the same as favoring the duel.[143]

5. Those intentionally watching, i.e., those who openly and with explicit intention approach the place of the duel for the sake of watching, and thus make the duelists more courageous. Therefore he does not fall under the excommunication who by chance comes to the place of the duel and sees the duelists, or who, without the duelists knowing it, watches the fight from a hiding place.
6. Those permitting, i.e., those who can and ought from office to impede the duel and do not do it.

b) The duelists and their seconds are infamous by the fact itself.[144]

c) He who kills or mutilates another in a duel incurs a twofold irregularity, namely from delict (of homicide) and from infamy of law. But he who has been wounded in a duel incurs only one irregularity, namely from infamy of law.[145]

d) He who dies in the duel itself, or a little afterward from a wound received in the duel, cannot be given ecclesiastical burial unless he has given signs of penitence before death.[146] The ancient discipline, introduced

by the Council of Trent and confirmed by Benedict XIV, never conceded ecclesiastical burial to those dead from a duel, even penitents.

[139] Code of Canon Law, c. 2351.

[140] S. C. Conc., Aug. 9, 1890, and Feb. 10, 1923.

[141] Cf. above, prop. 1 and 3.

[142] Hollweck, *Kirchenrechtliche Strafgesetze* p. 408.

[143] S. C. Inquis., May 28, 1884.

[144] Code of Canon Law, c. 2351, § 2.

[145] Thus the Council of Trent, l.c.; Code of Canon Law, c. 2351, § 2; S. C. Conc., Aug. 9, 1890.

[146] Code of Canon Law, c. 1240, § 1, n. 4.

127. Scholion 1. On societies fostering dueling. In some Universities there are accustomed to exist corporations of students which by force of statutes oblige to a duel when the case occurs. Certainly no Catholic young man can become a member of corporations of this kind unless a) there is a most urgent cause, and b) a founded hope is present that he will never be in the necessity of accepting a duel, and in fact will never accept a duel. If these two conditions are present, Catholic members of these corporations can sometimes be left in good faith.[147] But if someone says that this opinion is too lax, he is also bound to prohibit all Catholic young men from accepting the office of officer in certain modern armies, since even there every officer is obliged by force of statutes to a duel. But no theologian teaches this.

[147] Against this opinion see: *Kirchl. Anzeiger f. d. Erzdiöz. Köln* 1926, Nr. 45, 3, p. 36.

128. Scholion 2. On the obligation of restitution arising from a duel. It is not easy in practice to determine according to the principles concerning unjust damaging when from a duel which has been done there arises an obligation of restitution. Yet the following seem to be sufficiently certain: a) He who freely challenges another to a duel has no right to exact reparation for damages perhaps brought upon himself from the duel. Hence if he himself is wounded, he must bear all the expenses of the physician; if he dies, his heirs can reclaim nothing from the other duelist. b) He who indeed has been challenged by another to a duel, but freely and spontaneously accepts it, also has no right to any reparation of damage inflicted upon himself. For he is presumed to yield his right. c) He who has been challenged by another to a duel and accepts it only compelled by grave fear has a right that the other duelist repair all the damages arisen. Hence if he has been wounded, the challenger is bound to make good the expenses of treatment (unless nevertheless the wounded man forgives this explicitly or implicitly); but if he has died in the duel, then the challenger must repair to the heirs all the damages arisen from the duel and death. Deservedly Lehmkuhl[148] says: "Wherefore it is false that duelists are never held from justice to make compensation to the survivors."

[148] *Theol. mor.* I, n. 1182.

4. On War

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[149] A. Vanderpol treats aptly of this matter in his works *Le droit de guerre d'après les théologiens et les canonistes du moyen-âge* (Paris 1911) and *La guerre devant le Christianisme* (Paris 1912).

129. Notions. War can be defined: a contest by force and arms between two opposing (external) armies. Therefore war differs from a duel, which is a contest by force and arms between two or a few men. Besides, war differs both from a brawl, which is as it were a certain private war between private persons, arisen not from any public authority but rather from disordered will,[150] and from sedition, which is as it were civil war and armed discord among citizens of one kingdom.[151] St. Thomas briefly indicates the difference among these three in this way: "War properly is against external enemies, as it were of multitude against multitude; but brawl is of one against one, or of few against few; but sedition properly is among parts of one multitude disagreeing among themselves, for example when one part of the city is stirred up in tumult against another." - War is one thing offensive, which is undertaken for obtaining satisfaction for an injury received; another thing defensive, which is the repression of an unjust aggression made by another prince or kingdom. Often, but not always, offensive war is waged by him who first begins warlike hostilities. But sometimes a preventive aggression is nothing other than necessary self-defense.

Note. Today, whether from the law of nations or from custom and a more cultivated humanity, the manner of waging war differs greatly from wars waged in antiquity or the middle age. Indeed today someone would call wars cruel which would be done as, for example, the wars of the Israelites in the Old Testament are described to us. Hence not all things which the older theologians permitted in war can today commonly be done licitly.

Principle. For licitly beginning war a threefold condition is required, namely authority of the supreme civil power, just cause, right intention. But for licitly waging war, the current statutes of the law of nations must be observed.

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[150] *S. theol.* 2, 2, q. 41, a. 1.

[151] Ibid. q. 42, a. 1. In a broader sense, however, sedition of this kind is called civil war.

130. It is explained. That war is sometimes licit is admitted by all (except the Manichaeans, Quakers, and a few others). For war is sometimes the only means for some people to vindicate its own rights, indeed to defend its own existence. Besides, if war were something illicit, God Himself would not often have commanded wars in the Old Testament. - But for licitly beginning war, according to St. Thomas[152] and other authors, three conditions are required:

a) The authority of the supreme civil power, because a private person can pursue his right in the judgment of a superior judge, and therefore does not need war in his own cause; nor does it belong to him directly to procure the common good. - "Likewise also to call together a multitude, which must be done in wars, does not belong to a private person. But since the care of the republic has been entrusted to princes, it belongs to them to guard the republic of the city or kingdom or province subject to them. And just as they licitly defend it with the material sword against interior disturbances when they punish malefactors, ... so also it belongs to them to guard the republic with the warlike sword against exterior enemies."[153] Now this supreme authority of declaring war sometimes resides in the prince alone, sometimes in the prince or president with the assent of the legislative assembly.

b) A just cause, and that most grave, is required, according to this: "To wage war is not of will, but of necessity."[154] The reason is that in war the greatest material damages arise, a great number of men is killed, and often even the innocent must suffer the harshest cruelties. Therefore before war is begun, one must strive with all strength that peace be preserved and the causes provoking war be eliminated. But if all efforts have been vain, it is licit to begin war. For defensive war a most urgent cause is not required; it is enough that the prince offer fitting satisfaction for the complaints of the other prince; if this satisfaction is spurned, defensive

war is licit. For beginning offensive war there is not sufficient a) the desire of converting infidels to the true faith, nor b) the enlargement of one's own empire, nor c) one's own glory, etc. "There is one and only just cause of making war: an injury received." Thus rightly says Francis de Victoria;[155] hence, for example, the following causes suffice: recovery of a province unjustly held by another, vindication of a grave insult brought upon the republic or prince, vengeance upon a nation which has unjustly violated a treaty entered into, etc. In present times the question can arise whether a civilized nation can make war upon pagan tribes altogether lacking culture in order to found colonies? - If those pagans are treated kindly and fitting compensation for vacant or lost land is offered to them, which they refuse to accept, war does not seem to be so illicit. The reason is that otherwise those lands would remain uncultivated, and the inhabitants would lack the great benefit of moral and religious culture. Therefore they seem to be irrationally unwilling that colonies be founded in their regions so sparsely inhabited. Thus speaking theoretically; for in fact European nations have often founded colonies in foreign regions with the greatest injustice.

c) A right intention is necessary, by which namely it is intended that good be promoted or that evil be avoided, and by which an act of true vindicative justice is exercised.[156] On this matter St. Augustine writes: "The desire of harming, cruelty of avenging, an unpacified and implacable spirit, fierceness of rebellion, lust of domination, and whatever things are similar: these are the things which are rightly blamed in wars";[157] and: "War is waged that peace may be acquired. Therefore be peaceful by warring, so that by conquering you may lead those whom you attack to the utility of peace."[158]

If these three conditions are present, war may be licitly begun. Nevertheless it is often much better, in discords arisen among diverse nations, to have recourse to the so-called international tribunals of peace; because it is almost always better to suffer some material damage than to prepare the scourge of war for oneself or others. Hence not undeservedly in the Litany of All Saints there is the deprecation: "From pestilence, famine, and war, deliver us, O Lord!" - In our times and in our regions it no longer belongs to common soldiers or inferior officers to judge concerning the liceity or illicitness of war; for it is altogether impossible for a private man to know all the motives which induced the so-called national Diplomacy to begin war. Besides, soldiers now are not free to fight or not to fight; on the contrary they would be punished with death itself if they refused to fight. Therefore in practice any soldier and subordinate officer can suspend his judgment concerning the justice or injustice of war, and if he is compelled to war, can fight with a safe conscience. But in those regions where soldiers are still freely hired and can freely desert military service, the matter stands otherwise. For then any soldier, before he undertakes military service, must have moral certitude concerning the justice of the fight and war; for it is a matter of the gravest damages to be inflicted upon the neighbor and of the most imminent danger to one's own life.

Once war has been begun, the statutes of the law of nations must be observed. But what things in particular are permitted or prohibited by the law of nations according to modern practice sometimes does not so appear. This must be held as a fundamental principle: War is not waged against private citizens, but against the nation as a public person, as has already been said above, n. 47. It is lawful to employ all those things which are necessary for breaking the strength of the enemy and which are not intrinsically illicit. Wherefore it is lawful to besiege fortified citadels and deprive them of all provisions, so that they may surrender themselves more quickly; likewise to fire cannons (commonly, *Kanonen*) against them, even with danger (but not with direct intention) of killing innocent persons, destroying churches, monasteries, etc.[159] "But since the expenses of war can be exacted from the enemy, the victor, when cities and villages have been captured, can impose taxes, provided they are proportionate to the resources of the inhabitants; but to give a captured city as booty to the army is not lawful today."[160] Also licit are the so-called *Repressalia*, provided they have been justly determined

by the prince for repelling an injury inflicted by the enemy. - Soldiers sin gravely if in a just war they desert military service or flee over to the enemy. The reason is that they sin gravely against obedience, and because they expose themselves to the greatest danger of death; for, if they shall have been captured, they are killed without mercy.

When the conquered enemies ask for peace, the victor must use the victory obtained moderately. Therefore let the conditions of peace not be very harsh. But it belongs to no private man to judge concerning the equity of such compensations and conditions.

Among the ancient authors besides St. Thomas, especially Francis de Victoria wrote best concerning the right of war.[161]

Scholion. On private men during war. Today it is most strictly prohibited that private men involve themselves during war in warlike affairs or take up arms. Transgressors of this statute are certainly justly punished with the penalty of death. Therefore during war especially clerics should beware lest in any way by words or deeds they participate in war.

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[152] *S. theol.* 2, 2, q. 40, a. 1.

[153] *S. theol.* 2, 2, q. 40, a. 1.

[154] c. 1, C. 23, q. 2.

[155] *Relectiones de iure belli* n. 13. In a similar way St. Augustine says: "Just wars are accustomed to be defined as those which avenge injuries" (c. 2, C. 23, q. 1).

[156] Cf. Cajetan, *Summula*, s.v. "Bellum."

[157] *Contra Faustum* l. 22, c. 74; cf. c. 4, C. 23, q. 1.

[158] Ep. 149 to Boniface; cf. c. 3, C. 23, q. 1.

[159] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 410.

[160] Thus rightly Tanquerey, *Synopsis Theol. mor. de iustitia* n. 355.

[161] *Relectiones theologicae* lect. 6.

5. On The Killing Of The Innocent In General

131. Principle 1. Never and for no one is it lawful directly to kill the innocent.

It is proved. No one except God alone has full dominion over the life and death of man, as has already been said. Therefore no one can dispose concerning the life of man except insofar as he is delegated by God. Now God indeed gave to the supreme civil power the delegated power of killing malefactors, since this is necessary for the common good of society; but He never conceded the power of killing even the innocent, because this would not only not be useful, but would be very harmful to human society. Indeed God commands most strictly: "You shall not kill the innocent and just."[162] Wherefore it is a most grave sin to kill, for example, hostages, legates, especially infants not yet born, those lethally wounded, the old, the sick, the dying, lest they suffer longer, etc.

The killing of the innocent is a sin crying to heaven.[163] To such an extent does God detest homicide in Sacred Scripture that He says He will demand back even from beasts the penalty of the slaughter of men,[164] and commands the beast which has struck a man to be killed.[165] Deservedly the Roman Catechism says:[166] "They are murderers of the human race and therefore most bitter enemies of nature, who, as much as lies in them,

overthrow the whole work of God, since they take away man, on whose account He testifies that He made all things whatever which have been created; indeed truly in Genesis, since man is forbidden to be killed because God created him to His image and likeness, he who takes away His image from the midst seems to bring an outstanding injury against God, and as it were to bring violent hands against Him."

The killing of the innocent can be either simple homicide, namely when a man not marked out by a special dignity or relation is killed; or qualified homicide, when the killing puts on a special malice. Qualified homicides are, for example, parricide, i.e., the killing of a parent, spouse, or child; regicide, i.e., the killing of a king; sacrilege, i.e., the killing of a priest or another religious person; robbery-homicide, i.e., homicide done from thirst for money or another material good; assassination, i.e., homicide done by contract, etc.

Whether and in what way an obligation of restitution arises from homicide or mutilation will be said below, n. 204 sqq.

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[162] Ex. 23, 7.

[163] Cf. Gen. 4, 10.

[164] Gen. 9, 5.

[165] Ex. 21, 28.

[166] Part 3, c. 6, q. 9.

132. Principle 2. From a proportionately grave cause it is lawful to do or omit something indifferent in itself, from which, besides the intention, the death of an innocent person follows.

It is proved. In that case all the conditions are had for licitly placing a cause from which a double effect follows: one good, the other bad.

Hence, for example, in a just war it is lawful to direct warlike cannons against a city, although many innocent persons are killed; it is lawful to administer a necessary medicine to a pregnant mother, even if perhaps from it abortion and the death of the fetus will follow; it is lawful to hand over an innocent person whose life a tyrant demands; it is lawful to pierce through an innocent child whom an unjust aggressor has placed before himself, lest he himself be wounded. The reason is that in all these cases nothing else is directly intended except the preservation of one's own life, from which indirectly follows the death of the innocent person, to whom injury is inflicted by the tyrant alone or by the unjust aggressor alone.

It is not lawful to throw an innocent person into the sea in order to lighten a boat too much burdened and otherwise about to perish, nor to throw a child before pursuing wolves, who otherwise would devour both father and child. The reason is that in these two cases there is no unjust aggressor by reason of whom the innocent person ought to renounce his life.

Whether it is lawful to trample with a horse a child sitting on a narrow bridge, if there is no other way for saving life? Several authors answer affirmatively. Thus, for example, Busembaum says in St. Alphonsus:[167] "If you cannot flee death, with an enemy pursuing, except by a narrow way in which someone sitting there would have to be crushed, it is nevertheless lawful (provided nevertheless, if he is an infant, he has been baptized, as Cardinals Lugo and Escobar warn) to flee with his danger and destruction, beyond your intention."

But it seems better that the answer should be made with a distinction: If that danger of death has been caused to me by an unjust aggressor at least materially, it is lawful to act thus, because then the injustice of that aggressor redounds upon me and upon the child, and I can free myself by every means from such injustice; but

if no injustice is present and the danger of death happens to me either from a just cause or from a physical cause, it is not lawful thus to crush the innocent person. For otherwise also abortion and craniotomy of the infant would be licit if the life of the mother cannot otherwise be preserved. Yet this is false, as will be said below. Hence, for example, if I cannot flee from a burning house except by trampling an infant, this is not lawful. The reason is that the infant has the same right to life as I do, nor am I excused on account of defense against an injustice inflicted upon me, because in reality no one has inflicted an injury upon me. Likewise one justly condemned to death, fleeing from the hands of the officers, cannot licitly trample a child coming in his way, even if otherwise he is again captured by the officers and punished with certain death.

The killing of the innocent in present times especially has place in the procurement of abortion and in the so-called craniotomy. Hence these must be treated specially.

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[167] *Theol. mor.* l. 3, n. 393.

6. On Craniotomy

133. Notion. Craniotomy (cephalotripsy, embryotomy, perforation, decollation, exenteration, embryothlasia) is a surgical operation by which an infant in the maternal womb is cut up and, once cut up, extracted in parts. In present times physicians sometimes perform this operation if a mature infant, on account of the narrowness of the mother or other reasons, cannot be brought forth into the light, and therefore if this operation were omitted the mother with the infant would perish.

134. Principle. Craniotomy and other surgical operations directly causing the death of the fetus are altogether illicit.

This is plain from the responses of the Holy Office on May 24, 1884, and Aug. 19, 1889. Here are the words of the prior response: "Whether it can safely be taught in Catholic schools that the surgical operation which they call craniotomy is licit, namely when if it is omitted the mother and son would perish; but if it is admitted, the mother is to be saved, with the infant perishing? - After all things had been weighed for a long time and maturely, and consideration also had been had of those things which have been written on this matter by expert Catholic men ... they [the General Inquisitors] judged that the response should be made: It cannot safely be taught." Leo XIII confirmed this response. But craniotomy not only cannot safely be taught; it is also altogether illicit, as is plain from the response of the Holy Office on July 24, 1895. - Now the reason is that craniotomy and other similar surgical operations are the direct killing of innocent offspring. But never and for no one is it lawful directly to kill the innocent, as was said above, n. 131.

Before the responses of the Holy Office it seemed to certain theologians (Ballerini, Avanzini, Constantini) that craniotomy was licit on account of the following reasons: a) Of two evils the lesser must be chosen. But it is a lesser evil to kill the child alone than the child together with the mother. Now if craniotomy is omitted, mother and infant will die. - b) From that operation only the death of the infant is hastened, who otherwise also after a brief interval will certainly die. But it is lawful to hasten death a little for the sake of preserving the safety of the mother. - c) The infant is a cause of death for the mother. Therefore he is an unjust aggressor. But it is lawful to kill an unjust aggressor if this is necessary for saving life. - d) Ordinarily a man can yield his right of living for another, as, for example, he who falls into the sea can yield his air belt to another, even if he himself is then certainly about to perish. But in the case in which, without craniotomy, the mother with the son is about to perish, it is deservedly permissible to presume that the son yields his right to life for the preservation of the mother's safety. - Although those reasons are not altogether to be spurned, nevertheless they are by no means convincing. For the first reason indeed avails ordinarily speaking, namely if the

avoidance of the greater evil can be had without an intrinsically evil act. But it is never lawful to do evils that goods may come, just as it is not lawful to lie in order to save the whole world. But the direct killing of an infant through craniotomy is intrinsically evil. - The second reason avails if it is a question of indirect hastening of death, but not of direct killing. Thus, for example, it is not lawful to kill a wounded man, certainly about to die, that he may be freed from pains more quickly. - The third reason is false; for the infant is not an unjust aggressor, but dwells without any fault at all in a place proper to himself. With better right the mother could be called the unjust aggressor of the infant. For through the action of the mother the infant was conceived and placed in the womb, and now he wishes to go out, but is impeded by the bad disposition or infirmity of the mother. Therefore rather the mother ought to sustain danger of life than the infant. - Finally, the last reason avails for indirect killing, or for the free undergoing of the extreme danger of death, but not for direct killing. Hence no one can permit that he himself be directly killed in order to save another.

135. Licit ways for saving both mother and offspring. In the case in which the infant truly cannot be born in the natural way, the physician can licitly do two other surgical operations by which the life both of the mother and of the offspring is preserved, namely either Caesarean section or symphyseotomy (hebosteotomy, pubiotomy). Certainly those two operations are sometimes more difficult than craniotomy, and also more dangerous for the mother, but on account of the difficulty or the danger arising it is not yet lawful to kill the infant. As is plain from the statistics brought forward by Bergmann,[168] only 2-3% of mothers die after Caesarean section has been done, provided nevertheless that the physician knows well the surgical art.

Both Caesarean section and symphyseotomy are a cutting open of the abdomen. Certainly the first is deeper, but the other, in which the bones of the pubis must be divided, is harsher. There were ancient authors, e.g., Cangiamilla, who taught that even a priest, when a physician and another fit person are lacking, ought in a case of necessity to perform this operation in order to baptize the infant. But this in our times and in our regions cannot be brought into practice for many reasons, e.g., a) because the priest lacks both the necessary instruments and sufficient skill to perform those very difficult operations, b) because he would be most gravely punished by the civil laws, c) because sinister criticisms could easily arise, greatly wounding his reputation, and finally d) because a great doubt exists whether by those surgical operations a priest could extract that fetus alive and baptize him. In places of foreign missions, when missionaries have special faculties and know somewhat the medical art, they themselves can licitly perform those surgical operations in great necessity. But when special faculties are lacking, the decree of the Holy Office on Dec. 13, 1899, must be observed: "The extraction of a fetus from the womb of a pregnant and deceased mother, although it is to be disclosed and persuaded, nevertheless His Holiness expressly guards and prohibits lest missionaries in particular cases involve themselves in ordering the section, much less in performing it."

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[168] *Medicina pastoralis* 1st ed., p. 48.

136. The manner of acting with physicians in this matter. Modern physicians, even Catholic ones, are not rarely in good faith concerning the liceity of craniotomy in the case in which the life of the mother cannot otherwise be saved. For the reasons brought forward above for the liceity of craniotomy have some appearance of truth. Hence even the Sacred Penitentiary itself at first did not wish to resolve the controversy; for when it had been asked about this matter: "Whether at any time there is licit the operation which is called craniotomy, or a similar operation, which of itself directly tends to the killing of an infant placed in the womb?" on Nov. 28, 1872, after the things set forth had been maturely weighed, it had responded: "Let him consult approved authors, whether old or recent, and act prudently." - To this is added that physicians expose themselves to an urgent danger both of punishment inflicted by penal laws[169] and of sinister criticisms, if in

extreme necessity they omit craniotomy for saving the mother. Therefore it belongs to a prudent confessor to judge whether it is better to leave the physician in good faith, provided nevertheless that baptism be conferred upon the offspring about to die. For thus the eternal salvation of the infant is procured and the life of the mother is saved. For sometimes material sins must be permitted so that formal sins may be avoided. Thus also teach Lehmkuhl,[170] Noldin,[171] and others.

If in a difficult birth the fetus is already certainly dead in the womb of the mother, then indeed it can be cut up, so that it may be more easily extracted. But if the fetus is not certainly, but more probably, dead, then several authors also rightly teach that craniotomy is licit for saving the mother, because the living mother ought not to give her life for a fetus more probably already dead. - But when the mother giving birth refuses Caesarean section or symphyseotomy, the physician can now do nothing, and must permit the death both of the mother and of the offspring. For it is impossible for him by licit means to impede the death of both.

[169] Cf. German Penal Code § 222.

[170] *Theol. mor.* I, n. 1002.

[171] *De praeceptis* n. 340.

7. On The Procurement Of Abortion

137. Definition. Abortion is the ejection of an immature living fetus from the maternal womb.

It is said: of an immature fetus, i.e., one who outside the maternal womb will certainly and soon die. Physiologists are accustomed to call a man in the maternal womb up to the first month after conception an embryo,[172] and afterward a fetus, which fetus indeed is considered viable, or able to live outside the maternal womb, around about the seventh month of gestation. For grave causes physicians sometimes licitly cause the artificial birth of a viable fetus, as will be said below. This birth indeed is the premature bringing-forth of a fetus, but it is not abortion properly speaking, because after such premature birth the fetus can live; on the contrary, the ejection of an immature fetus necessarily causes his death. Therefore one thing is acceleration of birth (artificial birth), another thing is abortion.[173]

[172] Some physiologists call the female ovule fecundated by semen, during the first two weeks, an ovum, and then up to the fifth week give it the name of embryo.

[173] In German the acceleration of birth is called *Frühgeburt*, but abortion is called *Fehlgeburt*.

138. Divisions. 1. A twofold abortion is distinguished: accidental, which occurs by chance without any intention on the part of man; artificial, which is procured intentionally. Moreover, the procurement of abortion is one thing direct, another thing indirect. It is called direct if the means employed of themselves and immediately kill and expel the fetus. But it is called indirect if the means employed of themselves and immediately are ordered to the health of the mother, but by accident and beyond the intention (although not beyond foresight) expel the fetus.

2. A twofold fetus is distinguished: animated and inanimate, according as it has or does not have a rational soul. Several Holy Fathers, e.g., Gregory of Nyssa,[174] Basil the Great,[175] likewise St. Maximus, Meletius, Tertullian, and all the Traducianists taught that the rational soul is in the fetus from the first instant of conception. The same is today admitted rather commonly by physiologists. But Aristotle and very many older theologians, e.g., Cassiodorus, Theodoretus, Gennadius, St. Anselm, Peter Lombard, St. Thomas, and almost all the Scholastics (who teach that the soul is the substantial form of the body)

affirm that the rational soul is not infused into the embryo before it is sufficiently formed and capable of receiving its substantial form. Now this sufficient formation is had in a male fetus around 40 days, but in a female fetus 80 days after conception. Before this time the embryo indeed lives, and indeed even by a life of its own, but the vivifying principle is something vegetative or merely animal.[176] The Scholastics chose this determination of time chiefly because of the law of the Old Testament prescribing a purification of 40 or 80 days, according as women bore a boy or a girl.[177] The opinion of the Scholastics is more conformable both with the philosophical doctrine concerning the soul as the substantial form of the body, and with Sacred Scripture, where it is had according to the version of the Septuagint:[178] "If anyone strikes a woman having in the womb and she miscarries, if the fetus has not been formed, he shall be fined with money; but if it has been formed, he shall give life for life." Therefore there is given a formed or animated fetus and a non-formed or inanimate fetus. He who commits abortion of an animated fetus commits homicide, and consequently must give life for life. But otherwise homicide is not present, and consequently there is only a monetary penalty. Besides, this opinion is much milder. For if from the first instant of conception a rational soul is present, the number of infants dying without baptism is perhaps ten times greater, since abortions are much more frequent especially in the first weeks after conception. - Whatever may be the value of each opinion, this one thing is certain: that the rational soul is in the fetus before birth. For on March 2, 1679, Innocent XI condemned the proposition (35): "It seems probable that every fetus, as long as it is in the womb, lacks a rational soul, and then first begins to have it when it is born, and consequently it will have to be said that in no abortion is homicide committed."[179] Neither in theology nor in canon law is there now any further distinction made between an animated and a non-animated fetus.

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[174] *De hom. opif.* c. 28.

[175] Canonical Epistle I to Amphilochius.

[176] Cf. *S. theol.* 1, q. 76, a. 3 ad 3, and q. 118, a. 2 ad 2.

[177] Lev. 12, 2.

[178] Ex. 21, 22. - The text of the Vulgate and the Hebrew text have another reading.

[179] Denz. n. 1185.

139. Principle 1. The acceleration of birth of a viable fetus is licit for grave reasons.

The reason is that in this way, indeed, the offspring is accustomed to remain weak throughout the whole life; indeed some danger of life arises both for the mother and for the offspring, yet that danger is not so imminent. But it is lawful from a grave cause to expose life to danger. - A sufficient reason for accelerating birth in this way is the infirmity of the mother, or the difficulty or impossibility of bearing a perfectly mature fetus. - Thus also the Holy Office responded on May 4, 1898: "The acceleration of birth is not illicit of itself, provided it is performed for just causes and at that time and in those ways by which, from ordinary contingencies, care is taken for the lives of the mother and the fetus."

140. Principle 2. For grave reasons it is lawful indirectly to procure abortion.

This principle follows from the rules given concerning the indirectly voluntary. For it is lawful to place a good or indifferent cause from which a double effect follows, one good, the other bad, if there is a good intention and a proportionately grave reason. Therefore it is lawful to provide to a mother laboring under a dangerous illness, which cannot be cured in another way, a remedy which directly and immediately tends to the cure of

the disease, although abortion is sometimes connected with it by accident. Such remedies are certain medicines which are given by way of medicine; besides these, diverse baths, injections made under the skin or in other places, bloodletting (commonly, *Aderlaß*), etc.[180] Indeed, absolutely speaking, it is lawful to excise the pregnant uterus itself affected by disease, if, this operation being omitted, the death of the mother would certainly follow. For the sick mother has a strict right that her sick members be cured. But if from such a cure the death of the fetus follows, this death is caused not directly, but indirectly.[181] - As is plain of itself, such remedies may not be employed unless true and ineluctable necessity exists.

But when by remedies of this kind abortion has occurred beyond the intention, the fetus brought forth is to be baptized at least conditionally as quickly as possible, that his soul may be saved. How such baptism is to be administered, see below III, n. 131.

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[180] Cf. Capellmann-Bergmann, *Pastoralmedizin* 19th ed., p. 37 sqq.

[181] Cf. Noldin, *De praeceptis* n. 341.

141. Principle 3. It is never lawful directly to procure the abortion of a living fetus.

It is said: of a living fetus. For if the fetus is certainly dead, it is lawful to extract it from the womb of the mother, as is plain of itself. But the death of the fetus ought not to be presumed, but proved. The enunciated principle is easily proved. For a) the direct procurement of abortion is the direct homicide of an innocent man. But it is never lawful directly to kill an innocent man. Therefore the direct procurement of abortion is never lawful. For a living fetus is a man consisting of body and soul; but according to the opinion of those who teach that the rational soul does not arrive except after 40 or 80 days, the fetus before this time has elapsed is a man in becoming and certainly will be a man unless it is impeded. Hence Innocent XI proscribed proposition (34): "It is lawful to procure abortion before the animation of the fetus, lest a girl discovered to be pregnant be killed or dishonored."[182] - b) Through the procurement of abortion there is caused to an animated fetus not only death of the body, but also death of the soul, since baptism can very rarely be conferred, or at least in fact is conferred very rarely. - c) In the year 1889, on Aug. 19, the Holy Office responded to the Archbishop of Cambrai, who had set forth six diverse ways of procuring abortion: "In Catholic schools it cannot safely be taught that the surgical operation which they call craniotomy is licit, as was declared on May 28, 1884, nor any surgical operation whatsoever directly killing the fetus or the pregnant mother." - From all these things it is manifestly plain that direct procurement of abortion is never lawful. Thus today all Catholic theologians also teach, with some of the older ones contradicting, e.g., Caramuel,[183] especially if the fetus is not yet animated.[184]

You ask what the direct procurement of abortion is. In practice it is not always easy to discern whether some medical action is the direct or indirect killing of the fetus. Let this be the rule: If by such an action or medicine the fetus is directly touched, it seems it must be called direct procurement, e.g., incision of the amnion,[185] which today is the most usual mode of procuring abortion. But if from such an action or medicine there arises indeed a greater or lesser danger of abortion, yet the fetus is not directly touched and abortion is not directly intended, it seems to be only indirect procurement.[186] - As has already been said above, even this indirect procurement of abortion is not lawful unless grave necessity demands it. Hence women sin (at least by a depraved intention) who, fearing that they are pregnant, provoke menstruation again in various ways, e.g., by washing the feet in water seasoned with salt or mustard, by taking expulsive drinks, by compressing the abdomen, by dancing in an excessive manner, etc.; nevertheless, since in the first months after carnal

intercourse has been had it cannot be known certainly whether the woman has conceived, therefore the penalties passed against those procuring abortion are not incurred.

[182] Denz. n. 1184.

[183] Caramuel, *Theol. fund.* n. 1653.

[184] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 394.

[185] *Eihäutstich.* I have written more broadly on direct and indirect procurement of abortion in *Linz. Theol. Quartalschr.* (1921) p. 565-576.

[186] Concerning this matter the response of the Holy Office on July 24 (25), 1895, must be noted: "Titus, a physician, when he was called to a pregnant woman lying gravely ill, commonly observed that no other cause underlay the lethal disease except the pregnancy itself, that is, the presence of the fetus in the womb. Therefore one way alone was at hand for him, in order to save the mother from certain and imminent death, namely to procure abortion or the ejection of the fetus. He commonly entered upon this way, yet employing means and operations of themselves and immediately not indeed tending to this, that they should kill the fetus in the maternal womb, but only that they should remove it from there, and that the fetus, if it could be done, should be brought forth alive to the light, though certainly about to die soon, since it is supposed still altogether immature.... Titus asks whether he can safely undertake the stated operations in the repeated said circumstances. Resp.: In the negative, according to the other decrees, namely of May 28, 1884, and Aug. 19, 1889. His Holiness approved." - Therefore the aforesaid operation is had as direct procurement of abortion. On account of this decree Lehmkuhl retracted the opinion previously proposed, namely that a violent invasion upon the fetus and its vital element could be done licitly in order to save the mother otherwise about to perish (cf. Lehmkuhl, *Theol. mor.* I, n. 1006).

142. Penalties against those procuring abortion.

The antiquated laws being omitted,[187] according to the current ecclesiastical discipline, by common law the following penalties are inflicted upon those procuring abortion:

1. **Excommunication reserved to Ordinaries.**

The Code of Canon Law c. 2350, § 1 establishes: "Those procuring abortion, the mother not excepted, incur, the effect having followed, a *latae sententiae* excommunication reserved to the Ordinary; and if they are clerics, besides this they are to be deposed." For incurring this penalty it is required that the abortion has certainly followed. Hence if someone has vainly attempted to procure abortion, or if it is doubtful whether a fetus truly had been conceived (which happens very often), the excommunication is not incurred. In ancient times this censure was not present if the aborted fetus was inanimate, but today every direct procurement of abortion induces the penalty of excommunication. - Under the name "those procuring" are comprehended all who directly and proximately, but not those who remotely, produce the abortion. Hence, for example, he who merely advises abortion, or a pharmacist who prepares an abortive medicine prescribed by a physician, does not incur this censure; but if - as not rarely happens - the pharmacist himself, without the prescription of a physician, compounds a medicine for procuring abortion, he is a truly efficacious and principal cause of the abortion, and consequently incurs excommunication. But a physician doing a surgical operation for this end or prescribing a medicine is excommunicated. - Cooperators do not fall under this censure unless the delict would not have been committed without their work.[188] But those commanding, and all those who induce the woman by grave fear, seem to be excommunicated. Wherefore the father, husband, fornicator, seducer, etc., who command abortion, fall under this censure, because in reality they are the principal cause of this crime.

[187] Cf. Hollweck, *Die kirchlichen Strafgesetze* § 163.

[188] Code of Canon Law, c. 2231.

143. You ask: Whether craniotomy is to be equated with abortion as to the penalty of excommunication. Certain authors, as Haine,[189] Berardi,[190] Génicot,[191] Bucceroni,[192] think that craniotomy is not properly the procurement of abortion, and consequently that physicians perpetrating craniotomy and similar actions directly killing the fetus do not incur this excommunication. This opinion indeed seems probable. He who does craniotomy is indeed as evil a murderer as he who procures abortion. Not incongruously the latter is compared with a killer who throws an infant into water or suffocates him; but the former is similar to him who butchers an infant with a little knife. Then, both in abortion and in craniotomy there is had an occisive ejection or extraction of the fetus from the maternal womb. Yet since abortion is the ejection of an immature fetus, but craniotomy is the killing of a mature infant, there is some distinction between the procurement of abortion and craniotomy. Hence just as he who reads a heretical book is excommunicated, but he who hears such a book read is not judged to fall into excommunication, so he who procures abortion is excommunicated; but he who does craniotomy of a fetus (at least a mature one) is free from excommunication. For all censures are to be interpreted strictly. Nor let anyone say that craniotomy is something worse than abortion, therefore worthy of a greater penalty. For it is still worse to kill a king or father perhaps existing in the state of mortal sin, and yet the regicide or parricide is punished by no *latae sententiae* censure. Now the reason is the general rule: "It is not lawful to extend a penalty from case to case, although an equal reason is present, indeed a graver one."[193] But irregularity certainly arises from the perpetration of craniotomy, inasmuch as it is true voluntary homicide.

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[189] *Elem. Theol. mor.* IV, 476.

[190] *Praxis Confess.* IV, n. 1094.

[191] *Theol. mor.* II, 608.

[192] *Commentarii* n. 81.

[193] Code of Canon Law, c. 2219, § 3.

144. 2. Irregularity from delict.

By this penalty indeed are punished not only those procuring, but also all culpably cooperating.[194] Therefore everyone who voluntarily procured the abortion of a fetus or culpably cooperated in this, e.g., by advising, preparing medicines, incurs irregularity in the same way as if he had committed homicide. Hence this penalty of irregularity extends more broadly than the excommunication inflicted, since it is borne also against cooperators, who nevertheless sometimes do not incur excommunication, as has already been said. In ancient times this irregularity was not incurred except by the procurement of abortion of an animated fetus; but now it is incurred by the procurement of abortion of any living human fetus whatever, the effect having followed.[195]

Irregularity contracted from the procurement of abortion cannot be dispensed except by the Holy See (by the Sacred Penitentiary, if it is a question of occult irregularity; otherwise by the Sacred Congregation of the Sacraments) or by its delegate.[196] But in more urgent occult cases, when, namely, from the observance of this irregularity the guilty person would betray himself with great infamy or with scandal, then, although a proper faculty of dispensing has not been conceded as for other ecclesiastical penalties, nevertheless from epikeia any confessor in the sacramental forum can suspend the obligation of observing the irregularity, with the grave burden imposed of having recourse at least within a month by letter and through the confessor to the Sacred Penitentiary or to a bishop furnished with the faculty, and of standing by his mandates.

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[194] Thus from the Constitution of Gregory XIV *Sedes Apostolica*, May 31, 1591, and from the Code of Canon Law c. 985, n. 4.

[195] Code of Canon Law, c. 985, n. 4.

[196] Code of Canon Law, c. 990.

145. 3. Deposition for clerics.

Thus from the Code of Canon Law c. 2350, § 1 cited above. This penalty is of *ferendae sententiae*.

Note. From particular law other penalties are still not rarely inflicted upon clerics and religious who have committed the immense crime of abortion.

Scholion 1. On civil laws concerning abortion. Most severe penalties are accustomed to be inflicted also by the criminal codes of diverse nations upon those who procure abortion by private authority;[197] but, marvelous to say, physicians procuring abortion on account of the illness of the mother are in no way punished by civil law, but on the contrary are praised.

[197] Cf., e.g., German Penal Code § 218 sqq.

146. Scholion 2. On ectopic fetuses. Ectopic or extra-uterine fetuses are called those who are found outside the maternal womb, e.g., in the Fallopian tubes. There exist two responses of the Holy Office concerning this matter: "Is laparotomy lawful when there is question of extra-uterine pregnancy or of ectopic fetuses?" The Holy Office on May 4, 1898, responded: "Necessity compelling, laparotomy is lawful for extracting ectopic conceptions from the womb of the mother, provided that the lives both of the fetus and of the mother, as much as can be done, are seriously and opportunely provided for." - But since this response could be badly understood, as if it were always lawful to extract ectopic fetuses, it was again asked: "Whether at any time it is lawful to extract from the womb of the mother ectopic fetuses still immature, the sixth month after conception not yet having been completed?" The Holy Office on March 5, 1902, responded: "In the negative according to the decree of May 4, 1898, by force of which the lives of the fetus and mother, as much as can be done, must be seriously and opportunely provided for; but as to the time, according to the same decree, let the petitioner remember that no acceleration of birth is lawful unless it is performed at the time and in the ways by which, from ordinarily occurring circumstances, the lives of the mother and the fetus are cared for." - These two responses indeed clearly show that ectopic fetuses are to be treated in altogether the same way as fetuses existing in the womb, i.e., they cannot be killed, but their birth after the sixth or seventh month of conception can be accelerated, grave necessity existing. The matter stands otherwise if outside the womb in some organ of the mother there has unexpectedly arisen a tumor or cyst, in which perhaps a living fetus is found, which cyst nevertheless now causes an instant danger of death. For just as it is lawful to excise a gravely diseased uterus, even if it contains a fetus - as was said above - so a fortiori it is lawful to excise a tumor lethal to the mother. For such an operation is not direct, but indirect procurement of abortion, because directly there is removed a gravely diseased organ of the mother, but indirectly the fetus perhaps existing in it perishes. Thus also teach Lehmkuhl,[198] T. Antonelli,[199] and others.

[198] *Theol. mor.* I, n. 1011.

[199] *Medicina pastor.* (1905) 224.

§ 3. On Injury From Stuprum, Fornication, Adultery

Notions. *Stuprum*, strictly speaking, is the defloration of a virgin still existing under paternal care;[200] fornication is carnal intercourse had with an unmarried woman who has already lost virginity; adultery is

carnal intercourse had with a person joined to another in marriage. Here we do not treat of these sins insofar as they wound chastity, but insofar as they wound, or at least can wound, commutative justice. But since there are special and grave difficulties concerning the reparation of damage arisen from adultery, first we treat of the reparation of damage arisen from any carnal intercourse whatever, and then of the reparation of damage arisen from adulterous intercourse.

[200] Cf. *S. theol.* 2, 2, q. 154, a. 6. See other acceptions of *stuprum* below, n. 699, in the treatise on chastity.

a) On The Reparation Of Damage Arisen From Any Carnal Intercourse

147. Principle 1. In the forum of conscience, before the sentence of a judge, there is of itself no obligation of restitution on account of a physical lustful act, even one perpetrated by force.[201]

The reason is that it is impossible to assess such a physical lustful act in money. But it is said 1. before the sentence of a judge; for if a judge has condemned a defiler, fornicator, or adulterer (especially if they employed force), then such a sentence is just and obliges in conscience. Likewise, since a woman unjustly oppressed, or her parents, have the right of calling the violator before the tribunal of justice, they can exact money for the renunciation of this right. - It is said 2. of itself there is no obligation, because if from the physical act other damages have arisen, whether to body or reputation or fortune, e.g., syphilitic disease, there certainly exists an obligation of repairing those damages, as will appear from the following principles.

[201] Thus the common opinion. A few authors, among whom Billuart (*De iure et iust.* diss. 10, a. 11, appendix 2, dico 2), think that the corrupter is held to pay money for the violation of the virginal cloister, if the parents or girl demand it.

148. Principle 2. He who has had carnal intercourse with a woman consenting spontaneously, a) is held to nothing indeed with respect to the woman; b) nevertheless is held in conscience (and indeed even before the sentence of a judge) by an equal obligation with the woman (*in solidum*) to educate the offspring perhaps conceived, until that offspring will be able to provide for itself.

The reason of the first part is that no injury is done to one knowing and willing. Hence, for example, a fornicator is not held from justice to pay the expenses of childbirth, unless nevertheless positive law has established otherwise.[202] But the reason of the second part is that the offspring conceived must be educated by each parent, just as the natural law itself demands. But I say, before the sentence of a judge, because in several regions the civil judge, when asked, is accustomed to determine the quantity of support to be paid by the illegitimate father.[203]

If a woman has fornicated with several men and for this reason does not know certainly who is the father of the offspring, no one is held to repair for the woman herself any damage which she suffers from the birth and education of the offspring. Nevertheless in three cases all the men who about that time had intercourse with the woman are held, according to the proportion of the doubt, to reparation of damage, namely:

a) if by force or deceit they induced the woman to sin. For then there is grave injury on the part of the men.

b) if the woman is incapable of educating the offspring. For then there is present a natural obligation incumbent upon those who perhaps begot the offspring.

c) if there is question of a woman joined in marriage and it is certain that the offspring is not from the husband, but was begotten by one of the adulterers. Thus at least probably.[204] For then the greatest injury is done both to the husband and to the other legitimate children. But St. Alphonsus and several other theologians teach that the adulterer probably is held to no reparation if there is doubt whether the offspring is his or the

husband's, or even whether it is another adulterer's. For no one is held to reparation unless it is morally certain that he was the cause of the damage.

But how the quantity of reparation in these three cases is to be determined cannot be expressed by a general rule. In the first two cases all the expenses can be divided equally among the diverse men. In the last case the adulterous woman ought to restore half of all the damages, and the other half is to be divided equally among the diverse adulterous men. But if the woman cannot restore, the whole damage must be made good equally by the diverse accomplices.[205] Besides, in practice, when a woman has had intercourse with several, the matter is accustomed quickly to become public, and then the civil judge will determine everything.

Fornicators or adulterers who are able to provide fitting sustenance, but secretly send offspring conceived from sin to a foundling home, do not seem to be held to any restitution if that foundling home is a work of private charity. The reason is that the faithful giving alms for institutions of this kind intend only the welfare of exposed infants and do not care which infants are fostered.[206] But if the foundling home is supported at the expense of the city, then parents who by deceit cause infants to be educated there are held to restore the expenses of education, because foundling homes of this kind are not accustomed to be destined except for parents and infants truly poor. Billuart[207] and others teach that in each case the parents are held to restore the expenses of education. But concerning this obligation there is no certainty.

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[202] Cf. Swiss Civil Code a. 317.

[203] Thus, for example, the Civil Code of Germany (§ 1708 sqq.) establishes that the illegitimate father is held to provide fitting support for the offspring up to the 16th year. Cf. Austrian Civil Code § 166 to 171; Spanish Civil Code a. 143; Swiss Civil Code a. 317-319. The French Code imposes no obligation of support of the illegitimate child upon the illegitimate father; for it prohibits inquiry concerning the illegitimate father: "La recherche de la paternité est interdite" (a. 340). This, however, was changed somewhat in six cases by the law given Nov. 16, 1912.

[204] Cf. Tanquerey, *Synopsis Theol. mor. De iust.* n. 578; Billuart, *De iust.* diss. 8, a. 11, § 6.

[205] Thus also Lehmkuhl, *Theol. mor.* I, n. 1190.

[206] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 656, who also in the second case exempts from the obligation of restitution.

[207] *De iure et iust.* diss. 10, a. 11.

149. Principle 3. He who under a true or even fictitious promise of marriage has seduced an honorable woman to carnal intercourse is regularly held to lead her (although she has not become pregnant) into marriage.

Thus with St. Thomas[208] and St. Alphonsus[209] almost all theologians and jurisconsults think. The reason is that if the promise was true, then a true (although shameful) contract intervened, gravely obligatory. But if the promise was fictitious, then the promiser deceived the girl or woman enormously, and for this reason he is held, in punishment of such deception, now truly to promise and enter into marriage. But I have said, "he is regularly held to lead this woman into marriage," because several exceptions are given. And so this obligation falls:

a) if this woman afterward fornicates with another; because faith is broken with one breaking faith, as the adage says.

b) if from all the circumstances the woman could easily have understood that the promise of marriage was not serious.

c) if from entering into marriage grave evils, e.g., quarrels, enmities, are deservedly feared; which indeed is especially accustomed to happen if there is great disparity of condition between the man and the woman.

d) if the woman herself now no longer wishes to enter into marriage with the fornicator. In this case nevertheless it must be examined why the woman now no longer wishes to enter into marriage. For the man who deceived her, by showing himself better than he really is, is held at least to repair the damage which was caused from the fornication. But if, without any fault on the part of the man, the woman refuses to marry him, then the man is no longer held to anything.

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[208] 4, dist. 28, q. 1, a. 2 ad 4.

[209] L.c. n. 644.

150. Principle 4. He who by force, grave fear, or deceit induced a woman to carnal intercourse is held to repair all damages which arise from it to the woman, to the parents, to offspring perhaps born, and to others.

The reason is that he who perpetrates carnal intercourse in such a way is truly an unjust damager, who is held to repair all damages truly and efficaciously caused.

Under the name of fear here there also comes reverential fear (which otherwise in canon law is ordinarily not judged grave). Hence if the corrupter is a person of great authority, or a superior or guardian, whom the woman does not dare to resist, he is held to repair the damages arisen.

The damages which arise from unwilling intercourse are accustomed to be the following: bodily disease, defamation of the girl and dishonoring of the family, inability or at least greater difficulty of entering another marriage, expenses for childbirth and education of offspring, etc. The corrupter is not held, at least of itself, to enter marriage with the corrupted woman, unless he has promised this. The quantity of the reparation to be made can be determined either by a judge or from a free agreement of each party.

b) On The Reparation Of Damage Arisen From Adulterous Intercourse

151. Principle 1. The adulterer is held to no material reparation if from the adultery neither offspring nor any external damage has arisen. Thus at least before the sentence of a judge.

This is plain from the first principle explained above.

Note. When the adultery committed has remained secret, and no other material damages have arisen from it, then each accomplice is to be warned to observe deep silence, because otherwise the greatest quarrels easily arise.

152. Principle 2. If the adultery was perpetrated with each accomplice consenting, then each adulterer *in solidum* is liable to the reparation of all damages arisen.

The material damages which can arise from adultery are chiefly: expenses for the childbirth and education of the offspring conceived, the portion of inheritance which will come to the spurious offspring and will be taken away from legitimate offspring, and diseases caused from the carnal intercourse itself.

Of itself indeed each adulterer (i.e., the adulterous man and the adulterous wife) is held to repair half of the damages; but if the one cannot or does not wish to repair the other half, the first adulterer is held to repair the whole damage. For each adulterer is the unjust cause of all the damages.

As to inheritances, legacies, and gifts which come to adulterine offspring reputed legitimate, a distinction must be made: a) All inheritances and legacies which come from the putative father (or from the paternal line) by

intestacy must be restored. This is plain, because by this the strict right of the legitimate children or of other necessary heirs is injured. b) All inheritances and legacies which fall to adulterine offspring from the mother (or from the maternal line) are not to be restored, provided the civil law does not exclude that offspring from the hereditary succession of the mother.[210] c) All inheritances, legacies, and gifts which come to adulterine offspring not by intestacy nor by force of law, but by force of the free disposition of donors, need not necessarily be restored. For although such or similar donations would not have come to the adulterine offspring if his condition had been known, nevertheless from this commutative justice is not injured with respect to the legitimate children, inasmuch as they do not have a strict right to those free donations. But if the adulterine offspring certainly knows his own condition, he himself cannot receive or retain donations of this kind, as having been made from error.[211]

The adulterous wife ought to make reparation of the damages from paraphernal goods or other goods of which she has free disposition. But if she does not have free goods, she is held by greater labor and industry to repair damages both to the husband and to the legitimate children, insofar as this is possible. Usually, however, the adulterous wife is not held to manifest her crime for avoiding the damages of the husband or children. For such a manifestation is accustomed to cause great quarrels, indeed perhaps divorce. Besides, the common adage says: No one is held to defame himself; and Innocent III established: "To a woman who, while the husband is ignorant, has conceived offspring from adultery, although she fears to confess this to her husband, penance is not to be denied.... But competent satisfaction ought to be enjoined upon her by a discreet priest."[212] If nevertheless the adulteress were of such lost reputation that confession of the adultery would not cause grave damage to her, she would be held to make it known in order to avoid grave damages otherwise arising to others.[213] But that case is rare.

As to the manner and quantity of reparation of damages to be made by adulterers, great prudence is necessary. Adulterers ought first of all to inquire what up to now the putative father has expended in the support and education or even dowering of the illegitimate offspring, if perhaps that offspring has already assumed a state. All these damages must be made good to the putative father. But as to those things which the legitimate children will be able to suffer if afterward the illegitimate son receives an equal portion of inheritance from the putative father, the adulterers ought to make dispositions for these damages to be made good to the legitimate children. But they are not held even now to make good these damages, because it can happen that the illegitimate son dies before the putative father, and then no damage arises to the legitimate children. But what must be done if the adulterer now is near death, but on the contrary both the putative father and the illegitimate son are still in good health? Certain authors (Navarrus, Soto, Billuart) think that then the adulterer is not held to repair the whole damage perhaps about to occur, but only a certain part according to the prudent judgment of a man. Perhaps it would be better if then the dying adulterer committed it to the confessor, that he, when the case occurs, should make good from goods handed over to him the damages arisen. But if the illegitimate son should die before the putative father, then the confessor ought to dispose otherwise of the goods received, according as the dying adulterer shall have determined. But let the confessor proceed with the greatest prudence and, for greater security, exact from the penitent that, necessity demanding it, he himself not be held to the sacramental seal. But if he foresees that some grave damage is going to occur, it is better that he tell the penitent that he is not held to repair the damage with so great a damage to himself.

Things to be noted for the practice of the confessor. From what has been said it is plain how many things must be considered by the confessor if it is a question of restitution arisen from fornication or adultery. Therefore let the confessor proceed in order as follows:

1. Let him investigate whether from fornication or adultery truly certain and unjust material damage has been caused.
2. Then let him investigate how great that damage is which has already been suffered up to now.
3. Finally let him investigate how great a damage is going to arise in the future for legitimate offspring, for the spouse who is the other party, and for others.
4. If there is question of a dying penitent, let the confessor proceed most cautiously and not assume the restitution to be made in the name of the penitent under the sacramental secret.[214]

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[210] The German Civil Code § 1705 and the Swiss Civil Code a. 324 and 461 concede to illegitimate offspring the right of taking an inheritance from the mother and her blood relatives. The Austrian Civil Code § 754 indeed grants inheritance from the mother, but not from her blood relatives. The French Civil Code a. 762 and the Spanish Civil Code a. 845 exclude adulterine offspring from every legal hereditary succession and concede to him nothing except support.

[211] Cf. Billuart, *De iure et iust.* diss. 10, a. 11, appendix 3.

[212] c. 9, X 5, 38; cf. also Billuart, l.c. a. 11, and St. Alphonsus, *Theol. mor.* l. 3, n. 653.

[213] Cf. St. Alphonsus, l.c.

[214] Cf. Billuart, l.c. We have written more broadly on this matter in *Linzer Theol. Quartalschrift* 1916, 807 sqq.

Article IV. On Unjust Damaging By Words

Preliminary note. After we have treated of the vices which wound justice by deeds, whether in external goods or in goods pertaining to life itself, there remains to be treated the obligation of not violating justice also by words. Almost all these obligations are reduced to the eighth precept of the Decalogue: "You shall not speak false testimony against your neighbor."[215] Therefore, just as under injuries against the goods of the body we comprised the fifth precept, so now under injury by words we treat of the eighth precept of the Decalogue. - St. Thomas distinguishes between injuries by words which are done in judgment, and those which are caused outside judgment. Therefore he first treats of the injustice of the judge, of the accuser, of the defendant, of witnesses, and of advocates.[216] But since, for ecclesiastical judgments, all these things are determined in canon law, while for lay judgments there are usually norms determined most specially by the codes of diverse nations, we shall treat very briefly I. of injuries by words in judgment, namely, of the obligations and sins 1. of the judge, 2. of the accuser and the plaintiff, 3. of witnesses, 4. of the advocate, and 5. of the accused or defendant. Then we shall treat II. of injuries by words outside judgment, namely, 1. of truthfulness and its violation, 2. of lying, 3. of mental restriction, 4. of violation of a secret, 5. of wounding of honor, 6. of wounding of reputation, 7. of rash judgment.

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[215] Ex. 20, 16.

[216] *S. theol.* 2, 2, q. 67-71.

I. On Injuries By Words In Judgment

§ 1. On The Obligations And Sins Of The Judge

153. Principle 1. For lawfully exercising his office the judge must a) be endowed with sufficient knowledge, and b) pronounce sentence according to just laws.

a) For sufficient knowledge there is required not only theoretical knowledge of the laws, but also a perfect, or at least sufficient, investigation of the case to be handled. Hence the judge sins both if he does not sufficiently know juridical science, and also if he neglects a sufficient investigation of the case on which he must judge. If a judge lacking either of these forms of knowledge, while exercising his office, has brought damage, he has wounded commutative justice, and therefore is held to reparation of the damage. For he is then an unjust damager, who truly, formally, and efficaciously brought unjust damage.[217]

b) That the judge is held to judge according to just laws is evident of itself; for his whole office is to apply just laws in a particular case. Hence he is most certainly held to reparation of damage if, knowingly judging against a just law, he has brought grave damage. There are, however, authors, such as Lugo,[218] Lessius[219] (whose opinion St. Alphonsus[220] calls probable), who teach that the judge is not held to restitution if his false sentence was the cause that a fine to be paid was not assigned to the treasury. For they think that the judge then wounds not commutative justice but only legal justice, and that fines of this kind are imposed principally as penalties of the guilty person and only secondarily as emoluments of the treasury. Indeed this opinion can be sustained in practice if there is question of rare and small fines, because then the legislator is not so reasonably unwilling that the judge should treat the guilty with benignity. But if there is question of great fines, and those frequently occurring, e.g., of great defraudations of customs duties,[221] the opinion set forth does not seem probable, because then the judge wrongly absolving transgressors causes great damage to the treasury, and therefore the legislator is reasonably and gravely unwilling in damages of this kind. Moreover, the judge who judges badly truly wounds commutative justice, because he fails in the office undertaken from contract.

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[217] Cf. Code of Canon Law c. 1625.

[218] *De iust. et iure* disp. 37, n. 97.

[219] *De iust.* l. 2, c. 13, n. 73.

[220] *Theol. mor.* l. 4, n. 1906.

[221] *Zolldefraudation.*

154. You ask: Must, or at least can, the judge judge according to laws that are manifestly unjust? e.g., can the judge, according to the unjust law of several regions, punish a pastor who has blessed a Christian marriage before a civil marriage was entered?

This question, which is of the greatest moment especially in ecclesiastical and matrimonial causes, is solved with difficulty by a general response. Rather, in individual cases it is necessary to weigh whether such a sentence of the judge is an act intrinsically evil. The Angelic Doctor[222] teaches absolutely that judgment must not be made according to those positive laws which are opposed to the natural or divine law; therefore cases can occur in which the judge must rather resign his office than violate natural or divine law by a judicial sentence, e.g., a judge can never decree that a Catholic should deny the faith. But since in modern Codes the liberty of the judge is usually greatly limited, so that his office has been reduced almost to the inquiry of the fact and to the application of the law to the fact investigated, perhaps Catholic judges can sometimes be excused who are held to pronounce an unjust sentence, e.g., concerning divorce or concerning ecclesiastical persons and things. For on the one hand a Catholic judge cannot, without the gravest damage, refuse judgment in these cases; but on the other hand he himself commits no free injustice, but only applies an unjust law. Besides, as will appear from the things to be said below, a judge can condemn one whom by private knowledge he knows to be innocent, if juridically he is proved guilty. Therefore in that case the judge

condemns an innocent person, because he is compelled to this by the testimony of false witnesses. Why could the judge not do something similar if he is compelled by an unjust legislator? The intrinsic reason of all these things is that the judge, thus most gravely compelled to apply an unjust law, seems only to furnish material cooperation in an evil thing. Now, when a grave cause exists, it is lawful materially to cooperate in evil, as was said above, I, n. 619. - Hence in practice a Catholic judge can be left in good faith if, e.g., he is most gravely compelled to pronounce judgment according to iniquitous laws; e.g., a judge who is held to liquidate the goods of religious according to iniquitous laws in force. The Sacred Penitentiary also seems to imply this, when on Aug. 5, 1907, it responded that "liquidators, insofar as in the name of the government they administer usurped goods and procure their sale, do not incur the censure."

Concerning the obligations of the judge in pronouncing civil divorce there will be treatment below, III, 902.

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[222] *S. theol.* 2, 2, q. 60, a. 5 ad 1.

155. Principle 2. A sentence of the judge which is a) certainly just obliges in conscience; but one which b) is certainly unjust does not of itself oblige in conscience; c) nevertheless, by accident, it can oblige in the external forum for avoiding scandal or public disturbance.

a) A just sentence of a judge includes the precept of the supreme legislator, and therefore in a penal cause it demands obedience, but in a civil cause it defines strict right between the parties.

b) A judge can judge unjustly either formally, i.e., with the essential form of judgment neglected, e.g., without an accuser, without sufficient proof of the fact or of the delict; or objectively, i.e., by bringing forth a false sentence, e.g., condemning the innocent, assigning a good to him to whom it does not belong; or formally and objectively at the same time. It matters little in what way finally the judge has judged unjustly. For every unjust sentence of a judge does not of itself oblige in conscience, because a judgment is, as it were, a particular law.[223] But no unjust law obliges of itself in conscience. Therefore neither does an unjust sentence of a judge oblige. - Besides, above, I, n. 219, it was proved that a law founded on a false presumption of fact does not oblige in conscience. But an unjust sentence is founded on a false presumption of fact, namely, on the false presumption that the conditions required by law in the present case have been fulfilled. Therefore an unjust sentence does not oblige in conscience. From all these things it follows that one unjustly condemned can compensate himself occultly, if otherwise he cannot obtain his certain right.[224] But I say "his certain right"; for if the right is only doubtful, or the judge's sentence is doubtfully unjust, then one must stand by the sentence of the judge, because the presumption stands for him.

c) The third part of the principle is evident of itself, since private good must yield to public good.

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[223] *S. theol.* 2, 2, q. 67, a. 1.

[224] Cf. St. Alphonsus, *Theol. mor.* l. 4, n. 215.

156. Principle 3. In doubt, a) if there is question of a crime to be punished, the judge must favor the accused; but if b) there is question of civil matters, the judge is held to judge according to the greater probability.

a) In criminal causes the judge must absolve the accused unless his guilt is morally certain, according to that saying: "No one is presumed evil unless he is proved," and according to Rule of Law 49: "In penalties the more benign interpretation is to be made."[225]

b) But in civil causes the judge must keep before his eyes the principle: "In doubt the condition of the possessor is better." Hence he cannot deprive anyone of possessed goods or rights unless by certainly more

probable reasons it is shown that the possession is illegitimate. But if neither litigating party is in possession of the disputed thing, then, if there is equal probability on each side, let the judge urge an amicable composition; and if this is rejected, the judge can assign the thing to whichever one he prefers. But if there is greater probability on one side, the thing must be assigned to that one, because the judge must render right to the parties according to the merit of the cause. The proposition (2) was condemned by Innocent XI: "I probably think that the judge can judge according to an opinion even less probable";[226] and the proposition (26) was proscribed by Alexander VII: "When litigants have opinions equally probable in their favor, the judge can accept money for rendering sentence in favor of one rather than the other."[227]

[225] Cf. Code of Canon Law c. 1869, § 4.

[226] Denz. n. 1152.

[227] Denz. n. 1126.

157. Principle 4. In no way is it lawful for the judge to accept gifts properly so called from litigants.

Thus all laws establish.[228] But the reason is that gifts of this kind introduce a grave danger of corruption. Hence it is said: "Presents and gifts blind the eyes of judges."[229] But it is said: gifts properly so called; for the judge can accept a just stipend, to be paid either by the republic or by the litigants, as is evident of itself. Likewise there are not prohibited certain little gifts in food and drink which are offered from mere liberality,[230] unless even this is specially prohibited, as in fact the Council of Trent[231] prohibited it to examiners of those who undergo a competitive examination for obtaining a parish. Therefore when the judge accepts gifts properly so called, he sins gravely; indeed he is held to restore them if he accepted and exacted them for rendering a just sentence, because truly such a judge already by force of his office is held to render a just sentence. Therefore he cannot exact some other gift for that which he is already held to do from another source.[232] But if the judge exacted gifts for rendering an unjust sentence, certainly he is held to restore these gifts before the sentence has been given, both because he accepted money for committing sin and because he is held to rescind this shameful contract. But after he has rendered the unjust sentence, he is indeed held to make good all the damages which are brought upon the one unjustly condemned; nevertheless he can retain the gift accepted, just as a prostitute can retain the price which she accepted for fornication done.[233]

[228] Cf. Code of Canon Law c. 1624, 1627.

[229] Eccli. 20, 31.

[230] c. 2, T 3 in VI.

[231] Sess. 24, c. 18 de reform.

[232] Cf. St. Alphonsus, *Theol. mor.* l. 4, n. 216.

[233] Cf. below, on a shameful contract, n. 253, and St. Alphonsus, l.c. l. 3, n. 712.

158. Scholion. On the obligation of the judge to judge according to the allegations of witnesses. Authors dispute most sharply whether the judge is always held to render sentence according to the allegations and proofs of witnesses, even if from private knowledge he knows that the matter is otherwise. Three opinions are enumerated. The first asserts that in that case the judge is held to disregard the allegations and proofs of witnesses and to judge according to his own private knowledge, which he certainly knows to be true. For it seems to be intrinsically evil to condemn an innocent man or to compel someone to pay who owes nothing. For this opinion Lessius,[234] Bonacina,[235] etc., are cited, and St. Alphonsus[236] calls it very probable. - The second teaches that in civil causes and in lesser criminal causes the judge is held to judge according to the

allegations and proofs of witnesses, notwithstanding any private knowledge whatever; but in greater criminal causes judgment must be rendered according to the truth, with the witnesses proving the contrary disregarded. Thus Lugo,[237] Sylvius,[238] Schindler,[239] and others. The reason of this opinion is that it is of the greatest interest to the common good that the right judicial order be observed, and therefore the prince of the republic is presumed to have conferred all his power upon the judge for obtaining this end. But the prince can dispose of the goods of private persons on account of the common good; likewise he can impose lighter penal works on individual citizens on account of the common good; yet he can never punish an innocent man with the penalty of death. Therefore the judge also can act thus when he is compelled to this by the allegations of witnesses. - The third opinion teaches that the judge is indeed held with all his strength to judge according to the truth certainly known, and therefore ought to leave nothing unattempted so that he may render the allegations and proofs of witnesses conformable to the truth; but if nevertheless he has tried thus in vain, judgment must be made according to the proofs of the witnesses, although objectively the sentence is false. Thus St. Thomas,[240] St. Raymond, St. Antoninus, Cajetan, Dominic Soto, Banez, Valentia, Sanchez, the Salmanticenses, Billuart, and others. The Angelic Doctor[241] writes to the point: "The judge, if he knows that someone is innocent who is convicted by false witnesses, must examine the witnesses more diligently, so that he may find an occasion of freeing the innocent man, as Daniel did. But if he cannot do this, he must leave him to a superior to be judged. But if he cannot even do this, he does not sin by rendering sentence according to the allegations, because he himself does not kill the innocent man, but those who assert him to be guilty do." - This whole controversy now is of less practical moment, since in greater criminal causes guilt is for the most part decided not by the judge but by "jurors." Now these jurors are held to render sentence according to their inward conviction, nor are they compelled to offer the motives of their sentence. Hence jurors must always judge according to objective truth and not according to the false proofs of witnesses. - If judgment must be rendered not concerning the penalty of death but concerning other lesser causes, theologians very commonly teach that the judge, as a public person, must judge according to those things which he publicly knows from the testimonies of witnesses, but not according to those things which he knows by private knowledge. Hence the same theologians also deduce, on the contrary side, that the judge acts unjustly and is held to reparation of damage who condemns him whom by private knowledge he certainly knows to be guilty, but whom the witnesses prove to be innocent.[242]

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[234] *De iust. et iure* l. 2, c. 29, dub. 10.

[235] *De octav. praec.* disp. 10, q. 2, punct. 2, n. 2.

[236] L.c. n. 208.

[237] *De iust. et iure* disp. 57, sect. 4, n. 43.

[238] In 2, 2, q. 67, a. 2, concl. 1.

[239] *Lehrbuch der Moraltheol.* III, 803.

[240] *S. theol.* 2, 2, q. 67, a. 2.

[241] *S. theol.* 2, 2, q. 64, a. 6 ad 3.

[242] Cf. Billuart, *De iure et iust.* diss. 12, a. 2 and 3. The Code of Canon Law c. 1896 also seems to favor the opinion of St. Thomas, establishing: "For the pronouncement of any sentence there is required in the mind of the judge moral certitude concerning the matter to be defined by the sentence. The judge must draw this certitude from the acts and proofs. But the judge must estimate the proofs from his conscience, unless the law expressly establishes something concerning the efficacy of some proof."

§ 2. On The Obligations And Sins Of The Accuser And The Plaintiff

159. Notions. In a civil cause he who presses before the judge against another is called the *actor* (Kläger), but in a criminal cause the accuser (Ankläger). In the strict sense the accuser is distinguished from the denouncer, and accusation from denunciation. For *accusation* is usually defined: the delation of a defendant concerning a crime for public vindication, made by one who pledges that he will prove the crime. Therefore the end of accusation is the public vindication of crime for preserving the common good. The accuser is held strictly to prove the existence of the crime; otherwise the accused must be freed. In ancient Roman law, in modern laws, and in ecclesiastical law there are several requisites for legitimate formal accusation.[243] *Denunciation* is the delation of a crime to a legitimate superior, so that he can investigate and punish; but it does not induce a strict obligation of proving. This denunciation indeed is either judicial, if it tends toward a delict to be punished, or evangelical, if a crime is denounced to the superior not as to a judge, but as to a father, for correcting the delinquent. - Therefore these are not to be confused: plaintiff, accuser, denouncer, or action, accusation, denunciation.

1. In more recent laws formal accusation is scarcely admitted except by persons destined for this from their office,[244] e.g., by a procurator of public causes (commonly *Staatsanwalt*, *procureur général*), by guardians of forests, of customs, etc. But these persons are held to accuse, or at least judicially denounce, crimes found, unless there is question of certain matters of lighter moment. The reason is that they have been constituted for this end by legitimate superiors. Therefore officials of this kind sin if they neglect their offices; indeed they are held to reparation of damage if from the neglected accusation real damage has occurred either to the republic or to private men.
2. A private man is held to denounce crimes a) if this is prescribed by positive law, e.g., denunciation of one soliciting to shameful things on the occasion of confession; b) if the common good demands this, e.g., denunciation of counterfeiters of money; c) if there is question of grave damages to be averted from a private neighbor. - In other cases denunciation can indeed sometimes be done laudably, but it is not necessary. But a man is never held to denounce or defame himself.[245]
3. Judicial denunciation can be made from a reasonable cause, even if fraternal correction has not preceded, because this denunciation chiefly intends the punishment of the delinquent for preserving the common good. Evangelical denunciation also can often be made without fraternal correction having been previously given, namely, if the amendment of the delinquent is thus obtained more efficaciously, or if fraternal correction appears too difficult, as was said above, I, n. 602.

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[243] Cf. ibid. diss. 13, a. 1.

[244] Code of Canon Law c. 1934.

[245] Cf. below, on the defendant.

§ 3. On The Obligations And Sins Of Witnesses

160. 1. Generally speaking, the statutes of civil laws concerning giving or refusing testimony can be considered as obliging in conscience, since they seem to be sufficiently just.[246] A much greater obligation rests upon those who by force of their office are held to furnish an oath or testimony (commonly *Amtseid*) than upon other men, who by transgressing those statutes of themselves wound only legal justice.

2. The obligation of giving testimony can arise:

a) from charity, namely, if testimony is necessary for avoiding damage of the neighbor or of the republic. Since this obligation of charity arises from natural law, anyone is held even spontaneously and unasked to offer himself for testifying if otherwise notable damage of the neighbor or of the republic cannot be avoided.[247] Hence if someone has been condemned for a homicide which you certainly know was committed by another, you must appear spontaneously as a witness for freeing the innocent man.[248] But when testimony is joined with damage of the one testifying, the rules given above, I, n. 579 sqq., concerning the order of charity must be applied. For no one is held from charity to forestall another's damage with equal or greater damage of his own.

b) from commutative justice, namely, if someone by force of his office is held to give testimony; e.g., a guard who is asked by a legitimate superior about some crime seen.[249]

c) from legal justice or from obedience, namely, if someone is lawfully cited by a legitimate judge to testify.[250] For this citation of witnesses is necessary for the common good and for preserving judicial order.

3. Excuses from giving testimony. Several cases are found in which a cited witness either can or must refuse testimony. Cases of this kind are:

a) The secret of the confessional seal to be observed. For those things which the priest knows from sacramental confession he does not know as a man, but as a minister of God. Hence the confessor never ought, indeed cannot even, testify concerning those things which he knows from confession.[251] And truly the greatest inconveniences would arise for the Christian religion if ever a confessor could, without the express permission of the penitent, disclose a secret had from sacramental confession. Indeed it has been salutarily established in canon law that a priest, even if released from the bond of the seal, can never in ecclesiastical judgment testify concerning those things which he knew from sacramental confession.[252]

b) Professional secret also for the most part prohibits testimony from being given. Hence physicians, advocates, pharmacists, etc., neither can nor ought to testify concerning matters known from their office.[253] I say "for the most part"; for if it is necessary for averting grave damage, whether common[254] or another's or one's own, there can be an obligation of testifying; e.g., a physician who from his office knows that some woman procures abortion rather often in other women is held to render testimony for avoiding the gravest evils of several abortions.

c) If from the testimony grave damage arises either for the one testifying himself or for the near relatives of the one testifying. This excusing cause is usually admitted by modern Codes and also by the Code of Canon Law c. 1755. Hence, e.g., no one is held to give testimony against his own parents.

d) If the judge is not legitimate, or if he does not interrogate legitimately. Hence, e.g., a cleric, speaking absolutely, is not held to furnish testimony before a civil judge. Nevertheless, because modern laws are not accustomed to acknowledge this immunity of clerics, and because illegal refusal of testimony is gravely punished, hence in practice a cleric neither can nor ought to refuse testimony from the sole title of clerical immunity.

e) If the witness came to knowledge of the matter through injury, e.g., because he secretly opened another's letters.[255] For the acquisition of the knowledge was already unjust, and the testimony of that knowledge would be still more unjust.

f) If there is question only of the punishment of someone's crime, which is not so necessary for the common good; e.g., one knowing of a homicide committed by someone drunk can sometimes by lawful means

withdraw himself from giving testimony, provided that from this no suspicion of the crime falls upon another or other grave damage arises.

4. The fault of false testimony. He who gives false testimony of himself sins gravely against justice; hence a false witness in Sacred Scripture is called hateful before God.[256] According to St. Thomas,[257] false testimony has a threefold deformity: a) from perjury, because witnesses are not usually admitted to testifying unless sworn. But perjury is a very grave sin against the virtue of religion, which is a potential part of justice. b) from violation of justice, whether legal justice, which gravely commands true testimony to be given by a witness legitimately cited, or commutative justice, since almost always from false testimony grave real damages of the neighbor or of the republic arise. c) from the lie itself; for false testimony is directly opposed to the virtue of truthfulness, which likewise is a potential part of justice. Therefore St. Augustine deservedly says: "A false-speaking witness is liable to three persons: first to God, whose presence he contemns; then to the judge, whom he deceives by lying; last to the innocent man, whom he wounds by false testimony."[258] - By accident (but rather rarely) false testimony furnished without an oath can be a light sin, namely, if it arose from inadvertence or forgetfulness, or from very slight matter.

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[246] For ecclesiastical law see Code of Canon Law c. 1755.

[247] Cf. *S. theol.* 2, 2, q. 70, a. 1.

[248] The contrary opinion of Lugo (*De iust.* disp. 39, n. 1) and of his followers does not seem probable.

[249] The obligation of giving true testimony is grave for officials of this kind, both because an oath (*Amtseid*) intervenes and because, by freely undertaking such offices, they have entered a contract of denouncing to legitimate superiors those things whose care was imposed upon them. Hence officials of this kind are held to restitution if real damage has come about from their false testimony or from the omission of due testimony.

[250] Code of Canon Law c. 1766.

[251] *S. theol.* 2, 2, q. 70, a. 1 ad 2.

[252] Code of Canon Law c. 1757, § 3, n. 2.

[253] Ibid. c. 1755, § 2.

[254] *S. theol.* 2, 2, q. 68, a. 1 ad 3.

[255] St. Alphonsus, *Theol. mor.* l. 4, n. 268 (5).

[256] Cf. Prov. 6, 19.

[257] *S. theol.* 2, 2, q. 70, a. 4.

[258] It is also found in c. 1, X 5, 20.

161. 5. The obligations of a false witness. He who knowingly and voluntarily has given false testimony and in this way has truly wounded commutative justice is held to repair all damages arisen from this false testimony. But from false testimony commutative justice is not always wounded; e.g., he who by false testimony has freed a guilty person from the penalty of prison quite often has brought grave real damage upon no one and therefore is not held to restitution. The matter stands somewhat otherwise if someone by false testimony has freed the guilty person from a monetary fine to be paid to the government. On this matter Noldin[259] writes after Lessius: "If a witness from the false testimony given is the cause on account of which the guilty person is absolved and by this reason the treasury is deprived of a monetary fine, he is not held to reparation of damage toward the treasury. For the judge is not held to repair damages which have come to the treasury from a

monetary fine not imposed; therefore neither is the witness." But whatever is to be said concerning the obligation of the judge, which seems to have to be judged according to the diverse laws which he violates, insofar as they are either merely penal laws or preceptive laws,[260] the false witness impeding a monetary fine to be paid to the treasury is held to restitution if this fine is imposed for repairing damages caused, but not if this fine is the effect of a merely penal law. E.g., Peter, who brought damage to a public building, is freed from the obligation of repairing the damage by the perjury of Paul. If Peter does not repair this damage, the obligation falls upon Paul. But Peter, who is just about to be condemned to pay a fine of one hundred francs on account of injurious words against the emperor, is freed from this fine on account of the perjury of Paul. In this case neither Peter nor Paul is held to pay the fine.

When the false witness has culpably wounded commutative justice, he is held to repair the damage caused, even if he himself must suffer equal or even somewhat greater damage. The reason is that the false witness is an unjust damager, who is held to repair every damage which he caused with grave theological fault. If a witness by bringing forth false testimony from inadvertence or with light fault has caused grave damage, he is held to revoke his testimony and thus repair the damage. But what if the false witness cannot repair the damage caused unless by gravely defaming himself and incurring the greatest damages, e.g., the penalty of a rather long imprisonment? - Lehmkuhl[261] asserts against Schwane that the false witness is held to confess his crime. But in the work *Cases of Conscience*[262] he speaks more mildly. And truly the common adage says: "No one is held to defame himself." Besides, it seems to be a heroic act, which cannot be exacted from a penitent, that he should confess that he voluntarily committed perjury and that he should accept the harshest penalties of prison and deprivation of honor imposed against perjurers. Hence the obligation of gravely defaming oneself in practice is not to be imposed upon the penitent, unless nevertheless there is question of avoiding the death of another. It is sufficient that he repair the damages caused to others by whatever better ways he can.[263] The quantity of this reparation can sometimes be determined with difficulty.

6. Price for testimony. A witness of himself can exact nothing for giving the testimony itself.[264] Nevertheless modern civil laws and also ecclesiastical law determine the fitting compensation due to him for expenses of the journey or for time spent.[265]

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[259] *De praeceptis* n. 241.

[260] Cf. above, n. 153.

[261] *Theol. mor.* I, n. 982.

[262] I, n. 639.

[263] Cf. Gopfert, *Moraltheol.* II, 263.

[264] Cf. *S. theol.* 2, 2, q. 71, a. 4 ad 3.

[265] Cf. Code of Canon Law c. 1787.

§ 4. On The Obligations And Sins Of The Advocate

162. Notion. 1. An advocate is he who in judgment defends the part of one or the other litigant. In several regions there are usually distinguished advocates who from office protect the matter of the treasury or of the common good (commonly *Staatsanwalt*, *procureur général*), and private advocates, who defend the causes of private persons. - In canon law several persons are barred from the office of advocating.[266]

2. The obligations of the advocate are chiefly the following: a) to have sufficient knowledge of law and to apply due diligence in causes to be handled; b) to defend just causes by just means; c) not to exact an exorbitant salary for labor to be furnished or already furnished.[267] But the salary must be measured according to just laws; but if the law does not determine it, attention must be paid to the conditions both of the advocate and of the client and of the labor furnished and of the contract freely stipulated.[268]

3. The sins of the advocate are chiefly:

a) Knowingly to defend unjust causes. For this is illicit cooperation in evil. Hence St. Thomas teaches: "If [the advocate] knowingly defends an unjust cause, without doubt he sins gravely and is held to restitution of that damage which, against justice, the other party incurs by his help. But if unknowingly he defends an unjust cause, thinking it to be just, he is excused according to the mode by which ignorance can be excused."[269] "If the advocate at the beginning indeed believed the cause to be just, but afterward in the process it appears that it is unjust, he ought not betray it, namely, so that he may help the other party or reveal the secrets of his own cause to the other party. Yet he can and ought to desert the cause, or induce him whose cause he is conducting to yield, or to settle without damage to the adversary."[270] In criminal causes an advocate can always defend the accused by lawful means. Indeed, according to the discipline in force, a defender is conceded to any accused person.

When there is question of a cause of divorce before a civil judge, a Catholic advocate can always defend the bond of a legitimate marriage; but he cannot cooperate in obtaining the divorce of a true marriage, unless nevertheless he knows that this divorce of this kind will produce nothing except merely civil effects. But if, on the contrary, he foresees that one or the other spouse after the divorce obtained is going to contract new nuptials, then the advocate cannot act as patron in these causes unless a very grave cause is present.[271] In this sense the decree of the Holy Office of Dec. 19, 1860, seems to be understood: "Provided that the Catholic party can approach no other tribunal from which he may obtain a sentence of separation as to bed and table, and provided that the sentence of this tribunal has no other effect than the aforesaid separation, it can be tolerated that Catholics act in that forum in the parts of plaintiff and advocate, provided there are just causes of separation according to the judgment of the Bishop."

b) To treat negligently causes undertaken and thus cause damage to his client. This is evident of itself.

c) Not faithfully to manifest the dangers which can arise from a doubtful cause undertaken. Therefore the advocate sins and is held to restitution if he inspires too great confidence in the client, who thus, with notable damage, pursues a doubtful cause in court and finally loses.

d) To prolong too much a cause undertaken for extorting a greater salary.

e) To defend a just cause by unjust means.[272] Therefore the advocate sins by producing false witnesses, bringing forward false documents, etc. Then indeed he does not sin against justice, and therefore is not held to restitution, if the cause defended is certainly just - which indeed in practice quite often can be known clearly only with difficulty - but he sins against truth and other virtues. But it is never lawful to use a false document in judgment, even if perhaps the identical true document has been lost without fault. Thus, e.g., it is not lawful secretly to supply a purely formalistic defect in some testament which, on account of this defect, would be considered invalid in court.[273]

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[266] *S. theol.* 2, 2, q. 71, a. 2; Code of Canon Law c. 1657 sq.

[267] *S. theol.* 2, 2, q. 71, a. 4.

[268] For ecclesiastical tribunals it is established: "The advocate is forbidden to purchase the suit, or to bargain for himself concerning an immoderate emolument or concerning a part of the thing in litigation once vindicated. If he has done these things, the agreement is null, and by the judge or by the Ordinary he can be punished with a monetary penalty; besides, he can both be suspended from office and also, if he is a recidivist, be removed and deprived of his title" (Code of Canon Law c. 1665).

[269] *S. theol.* 2, 2, q. 71, a. 3.

[270] Ibid. ad 2.

[271] Cf. below in the treatise on marriage, III, n. 903.

[272] *S. theol.* 2, 2, q. 71, a. 3 ad 3.

[273] Cf. below, on testaments, n. 277.

§ 5. On The Obligations And Sins Of The Accused Or Defendant In Criminal Judgment

For the sake of clarity we distinguish the obligations of the accused before and after the sentence of the judge. Before the sentence of the judge the defendant a) is not held to confess the crime committed by himself; b) can defend himself by all just means.

163. 1. Confession of the defendant.[274] The opinions of older authors in this matter are not always applicable today, since the judicial order of the Middle Ages differs very greatly from the discipline now in force, both ecclesiastical and civil. For in ancient times an accused person whose crime had been half-fully proved was held to confess the truth, and if he refused this, he was subjected to torture for extorting confession. This way of acting indeed is not repugnant to natural law and sometimes produced good effects. Nevertheless it must be confessed that not a few abuses also crept in from it. Today this torture has become antiquated among cultivated nations. It is never strictly exacted by modern civil laws that an accused defendant confess his crime. But in ecclesiastical law Benedict XIII already gravely commanded that an oath by no means be exacted from defendants, except however that they be examined as witnesses concerning others. "Otherwise an examination so constituted and all the acts are by that very fact null and void and lack every effect against the defendants."[275] But if it is not lawful to impose an oath on defendants, it is a sign that the Church does not wish to compel the defendant that he himself confess the crime committed. Since these things are so, the principle placed by all the older theologians, "A defendant legitimately interrogated by the judge and with the order of law observed is held to confess the truth," is indeed true even today, but according to modern common law the judge now cannot under grave obligation oblige the defendant to confess his own delict.

Lehmkuhl[276] writes on this matter: "I judge that there is never a grave obligation of confessing; nevertheless, that there is a venial sin of lying in persisting in denying a crime when no broad mental restriction can any longer be conceived." Noldin[277] speaks still more absolutely: "The defendant is not held to confess the crime committed by himself; wherefore he must indeed abstain from lies, but to the interrogations of the judge he can respond with mental restriction; indeed the very denial of the crime in this case is not a lie, but a broad mental restriction, since he denies that he committed a crime which he is held to confess." This doctrine indeed is not contrary to St. Thomas teaching: "If [the defendant] is unwilling to confess the truth which he is held to say, or if he denies it mendaciously, he sins mortally."[278] For the Angelic Doctor proves this opinion of his from the fact that the defendant in that case gravely wounds the obedience due to the legitimate superior commanding. This indeed was true at that time, both according to Roman law and according to ecclesiastical law. But today this is no longer true, neither according to civil laws nor according to ecclesiastical law (at least common law, and ordinarily speaking). For the Code of Canon Law c. 1743, § 1 establishes: "Parties are held to respond to the judge legitimately interrogating and to confess the truth, unless there is question of a delict committed by themselves."

But what if particular law, e.g., in some religious Institutes, still after the Code prescribes confession of a crime? A distinction must be made: If in such an Institute all statutes oblige not under fault, but under penalty only (which is more common), then even this confession of crime does not oblige under fault; but if in such an Institute certain statutes oblige under sin, then perhaps confession of crime can also be imposed under sin. In practice, however, ecclesiastical superiors can indeed admonish the accused person to confess freely the fault committed, because this confession is usually an act of virtue; but let them wholly beware lest they impose upon the accused person a grave precept of confessing his delicts. - A confessor accused on account of solicitation to shameful things, according to the Instruction of the Holy Office of Feb. 20, 1866,[279] is held to confess the truth. For thus it is contained in that Instruction, n. 11: "These diligences having been completed, the defendant is brought into judgment, and before the judge... concerning the individual circumstances of each denunciation and examination, bound by the oath of telling the truth, he must respond." But since this Instruction does not have preceptive force but only directive force (because at its end the indicated norms are not commanded but recommended), it does not yet clearly appear that the confessor sins mortally if he refuses confession of the crime; and this all the more because the Code of Ecclesiastical Law c. 1744 simply and without limitation establishes: "The judge cannot tender to the accused an oath concerning the truth to be told in criminal causes."[280] Thus, saving a better opinion.

2. Defense of the defendant. An accused defendant can defend himself by all just means. The reason is that the accused defendant, before the condemnatory sentence of the judge, is still considered innocent. Hence, necessity demanding, the accused can, e.g., narrate the hidden crimes of witnesses, if this is necessary for breaking their false testimony; he can interpose an appeal from the lower judge to the superior.[281] But it is by no means lawful to use unjust means, e.g., calumniously to impose false crimes upon others. This is plain from proposition 44 condemned by Innocent XI: "It is probable that he does not sin mortally who imposes a false crime on someone in order to defend his own justice and honor. And if this is not probable, scarcely any opinion will be probable in theology."[282] - He who is unjustly captured or condemned can defend himself, e.g., by taking flight even with breaking out of prison, by resisting guards, etc. The reason is that natural right permits each person to defend himself against unjust aggressors with the moderation of blameless defense. Nevertheless, in today's times positive resistance is often illicit, because it is not only useless but also harmful both to the accused himself and to the common good.[283]

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[274] Defendant in general is called he from whom a thing is sought in judgment, whether civil or criminal (cf. c. 10, X 5, 40). We are speaking of that defendant who is accused in criminal judgment; but the thing which is sought is the punishment of the accused.

[275] Roman Council, a. 1725. The Code of Canon Law c. 1744 establishes the same.

[276] *Cas. consc.* I, n. 502.

[277] *De praeceptis* n. 732.

[278] *S. theol.* 2, 2, q. 69, a. 1. Cajetan, the best interpreter of St. Thomas, notes on this place that there are three cases in which alone the defendant is held to confess the truth: 1. when infamy concerning some crime has preceded; 2. when manifest indications of the crime have appeared; 3. when half-full proof has preceded. But he limits these cases in such a way that a grave obligation of confessing the crime committed is rarely present. In today's practice the defendant can indeed sometimes be admonished by the confessor, but not compelled under penalty of absolution to be denied, to confession of the truth. You may see very many diverse opinions of authors on this question in Piat, *Prael. iur. regul.* II, 406 sqq.

[279] *Collect. de Prop. Fide* n. 1282 (11).

[280] Cf. ibid. c. 1830, § 3.

[281] In a criminal cause the defendant can almost always lawfully use the means of appeal; but in civil causes appeal requires solidly probable reasons. Cf. St. Alphonsus, *Theol. mor.* l. 4, n. 285; Banez, *Comm. in 2, 2*, q. 69, a. 3, concl. 3.

[282] Denz. n. 1194; cf. also *S. theol.* 2, 2, q. 69, a. 2.

[283] The proposition 18 condemned by Alexander VII is to be noted: "It is lawful to kill a false accuser, false witnesses, and also the judge from whom an iniquitous sentence certainly threatens, if by another way the innocent person cannot avoid damage" (Denz. n. 1118). - This proposition indeed seems to have been condemned because by a killing of this kind the moderation of blameless defense is wounded.

164. 3. Penalties to be sustained by the defendant. After the sentence of the judge, a defendant justly condemned cannot positively resist custodians or guards. The reason is that then he would resist legitimate power and therefore, the Apostle bearing witness, he would acquire damnation for himself.[284] Yet theologians commonly teach that even one justly condemned can flee from prison, or even break prison by force.[285] But the reason is that the imposition of prison is a penal precept, which does not oblige with great inconvenience, and especially not to a heroic act, such as spontaneously remaining in prison, notwithstanding that there is a founded hope of escaping. - But is the defendant thus fleeing or breaking prison held to repair the damages which he has caused either to the treasury or to the custodians? Although certain authors deny it, the affirmative opinion seems truer, if nevertheless the fugitive truly brought notable damage, which rarely happens in our times. The reason is that although the fugitive did not commit theological fault by fleeing, nevertheless, with liberty recovered, he has become, as it were, richer, and therefore he is fittingly held to make good the damages which he caused by fleeing. But if the flight was vain, namely, because the fugitive was captured again, then he does not seem to be obliged to make good any damage, because then he will be punished more gravely and for a longer time in prison, and this penalty can be regarded as compensation of the damage caused.

Special prohibition being excluded, it is lawful for other private men not only to advise flight and prison-breaking to the defendant, but also to furnish him the necessary instruments. For this seems to be material cooperation in an act which is not intrinsically evil. But it would not be lawful directly to help one imprisoned to break prison, because this would be an unjust damaging of another's good, and besides because then public security would be endangered too greatly.[286] A defendant detained in prison can also deceive the custodians so that flight becomes possible. Thus he can give them little gifts, administer intoxicating drink, etc., but he cannot directly corrupt them or induce them to other sins of neglected office.

Note. The doctrine explained above concerning penalties to be declined by the defendant, which is commonly proposed by older authors, today seems to have to be tempered somewhat on account of circumstances wholly changed. For in ancient times prisons were very harsh, and a captive who once escaped prison was with difficulty captured again. But today prisons are not usually so harsh, while escape is not only very difficult, but also sometimes joined with imminent danger of death or of another most grave inconvenience. Hence today flight from prison often is against right and necessary love of oneself, and therefore illicit.

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[284] Cf. Rom. 13, 2.

[285] Cf. *S. theol.* 2, 2, q. 69, a. 4 ad 2.

[286] Cf. St. Alphonsus, *Theol. mor.* l. 4, n. 283.

II. On Injuries By Words Outside Judgments

Preliminary note. Rightly and deservedly St. James called the tongue "a world of iniquity,"[287] because very many iniquities and injustices are caused by the tongue. But we shall treat, as was already said above, art. 4: 1.

of truthfulness; then of the vices opposed to it, namely, 2. of lying, where also there will be discussion of simulation, boasting, and irony, 3. of mental restriction, 4. of violation of a secret, 5. of wounding of honor, 6. of wounding of reputation, 7. of rash judgment. Thus we comprise all those things which other authors are accustomed to treat under the eighth precept of the Decalogue.

[287] Jas. 3, 6.

§ 1. On Truthfulness

165. Notions. Truth is taken in a diverse sense: either 1. for conformity of the intellect with the thing, or of the thing with the intellect (and in this sense truth is treated in philosophy, which distinguishes between formal or logical truth and ontological truth), or 2. for a moral virtue. In this last sense truth is sometimes called truthfulness and can be defined: the virtue inclining one to say what is true, when, where, and in what manner one ought; or according to St. Thomas: "the habit by which someone shows himself, both by life and by speech, to be such as he is."[288] The same Angelic Doctor[289] excellently teaches that the act of him who manifests the truth from justice, for example, when someone confesses the truth in judgment or says true testimony, directly pertains to the virtue of justice. We spoke above concerning acts of this kind, where there was discussion of the obligations of the judge, advocate, witness, etc.... But if someone from a certain uprightness manifests the truth to another, as is accustomed to happen among private men outside judgment, then an act of this kind pertains to the special virtue of truthfulness, which is only a potential part of the virtue of justice. Truthfulness taken in this sense is a special and moral virtue. Special indeed, because it exercises acts having a special notion of goodness. For the special goodness of our acts is that our exterior things (whether words or deeds) are duly ordered to our internal intention, as sign to thing signified.[290] But the Angelic Doctor[291] notes that simplicity[292] is reduced to this virtue of truthfulness; simplicity is opposed to duplicity, by which, namely, someone has one thing in the heart and shows another externally. In some way also reduced to this virtue of truthfulness is the virtue of fidelity, which inclines the will to execute promises sincerely.[293] For just as truthfulness is conformity between external words and the internal mind, so fidelity is conformity between deeds to be performed and the words of the promise.

The virtue of truthfulness, because it is a virtue annexed to justice, partly agrees with it and partly falls short of it. The virtue of truthfulness agrees with justice in two things, namely, being toward another and constituting a certain equality. For by truthfulness one man manifests to another, and indeed according to equality, his internal thoughts, insofar as words and other external signs are equal to the internal conception. But truthfulness falls short of the proper notion of justice, because in justice there is a strict debt, while in truthfulness there is only the moral debt of uprightness, insofar as wounding truthfulness is indeed against uprightness and against debt broadly so called, but of itself alone it neither induces an obligation of restitution nor offends the debt of the neighbor strictly so called.[294]

Excellence. Truthfulness is a most beautiful virtue; it is praised by all and is very necessary. "Because man is naturally a social animal, he owes to other men from a certain uprightness the manifestation of truth, without which the society of men could not endure."[295] For the peaceful living-together of men is wholly impossible if lies and deceits prevail in place of truthfulness. Wherefore St. Paul warns: "Speak truth, each one with his neighbor, because we are members one of another."[296]

The offices of truthfulness are: 1. To love truth in words and deeds. 2. To conform external words and deeds with the interior thought, insofar as this is possible, with all the circumstances considered. For truthfulness by no means requires that the judgment of the mind always and everywhere be manifested externally; indeed, it

sometimes must rather be concealed, since otherwise there would be a sinful violation of a secret. 3. Faithfully to execute lawful promises.

The vices opposed to truthfulness are, by defect: lying and infidelity in promises. But by excess violation of a secret is opposed to truthfulness. Lying and violation of a secret will be treated at once, but infidelity in promises below, n. 268.

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[288] *S. theol.* 2, 2, q. 109, a. 3 ad 3.

[289] Ibid.

[290] *S. theol.* 2, 2, q. 109, a. 2.

[291] Ibid. ad 4.

[292] *Offenheit*, *Geradheit.*

[293] Concerning the obligation of this virtue of fidelity arisen from a promise, there will be broader treatment below, n. 267 sqq.

[294] Cf. *S. theol.* 2, 2, q. 109, a. 3.

[295] Ibid. q. 114, a. 2 ad 1; cf. also q. 109, a. 3 ad 1.

[296] Eph. 4, 25.

§ 2. On Lying

166. Definition. Lying is usually defined: voluntary speech against the mind. This definition, if rightly explained, seems better than others.[297]

It is explained. It is said 1: speech; but under the name of speech is understood any external sign whatever by which interior concepts are signified, whether this is done by words or nod or gesture or writing, etc. Nevertheless, lying is chiefly and almost always done by speech, and for this reason it is deservedly called a sin of the mouth and defined: voluntary speech against the mind. - It is said 2: voluntary speech against the mind,[298] for if someone were to speak what is false from ignorance and without consent, it would not be a lie, but objectively false speech. St. Thomas writes to the point: "The notion of lying is taken from formal falsity, namely, from this, that someone has the will of enunciating what is false; hence also lying is named from the fact that it is said against the mind. And therefore if someone enunciates what is false, believing it to be true, it is indeed materially false, but not formally, because the falsity is outside the intention of the speaker; hence it does not have the perfect notion of a lie.... But if someone formally says what is false, having the will of saying what is false, although that which is said is true, nevertheless insofar as such an act is voluntary and moral, it has falsity of itself and truth by accident; hence it attains to the species of lying."[299] Therefore he who affirms what is false, which he thinks true, errs; he does not lie. On the contrary, he who affirms what is true, which he thinks false, does not indeed err, but lies.[300]

Theologians dispute whether the intention of leading others into error pertains to the essence of lying. For four elements can be distinguished in a lie, namely: a) the will of saying what is false, b) speech discordant from the interior judgment of the mind, c) the will of deceiving another, d) the deception really following. Without any doubt this fourth element is not of the essence of lying; hence, e.g., an accused person whom no prudent man believes when he asserts his innocence lies if without mental restriction he denies the crime committed. Therefore the deception of another is sometimes the effect of lying, but not lying itself. The third element, namely, the will of deceiving, is commonly asserted by the Scotists to be of the essence of lying, but the Thomists deny it after St. Thomas, who teaches: "That someone intends to establish falsity in the opinion

of another by deceiving him does not pertain to the species of lying, but to a certain perfection of it."[301] Therefore a true lie is present, even if the one lying certainly foresees that the hearer will by no means believe his fallacious speech. Waffelaert,[302] however, tries to prove that in fact there is no distinction between the Thomistic and Scotistic opinion, rightly understood. For by the very fact that someone knowingly and seriously speaks something false, he intends at least implicitly to deceive another. Hence if even this implicit will of deceiving is manifestly lacking, a lie is no longer present. Thus modern authors deservedly teach that there is no lie a) if someone openly says false things from jest; b) if he brings forth things false indeed, but only materially; c) if someone uses locutions manifestly ironic or hyperbolic, or even locutions which are not usually understood as the words sound; e.g., if a servant responds to one asking, "The master is not at home," he does not wish to say that the master truly is not at home, but that the master cannot be approached.[303] Therefore even according to the Thomists, an implicit intention of deceiving pertains to the essence of lying, but an explicit intention is by no means required; it is only an aggravating circumstance.

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[297] Especially the definition given by Berardi (*Praxis confess.* I, n. 1095) and others seems defective: "A lie is false speech against the right which another has of knowing the truth or of not undergoing deception."

[298] i.e., against one's own knowledge and conscience.

[299] *S. theol.* 2, 2, q. 110, a. 1.

[300] Cf. St. Augustine, *Enchir.* c. 8.

[301] *S. theol.* 2, 2, q. 110, a. 1.

[302] *Diss. mor. sur la malice du mensonge* (Bruges 1884) p. 16 sqq.

[303] Cf. Lehmkuhl, *Theol. mor.* I, n. 916, and St. Thomas, *S. theol.* 2, 2, q. 110, a. 3 ad 6.

167. Division of lying. According to St. Thomas and other theologians there are two divisions of lying:

1. On the part of the end there is distinguished the officious lie, the jocose lie, and the pernicious or damaging lie.

An officious lie (*Nutzlüge*) is that which is chiefly brought forth in order to be useful, namely, for one's own or another's utility, without directly harming anyone, e.g., lies of children lest they be punished on account of committed delicts.

A jocose lie (*Scherzlüge*) is that which is chiefly made for the sake of trifling and delighting, e.g., the tales of hunters.[304] But those locutions are not jocose lies which, considered materially indeed, are false, but from the very mode of pronouncing can immediately be understood as false (and not as really true), e.g., narratives made by the so-called Münchhausen or by Don Quixote. St. Augustine writes to the point: "Therefore excepting jests, which have never been thought lies - for they have, from the pronunciation and the very affection of the one joking, a most evident signification of a mind by no means deceiving, even if not enunciating true things - whether this kind is to be used by perfect souls is another question, which we have not now undertaken to untie";[305] and: "Lies are performed seriously by liars, not in jest; but when things which are not are said as jokes, they are not reckoned lies."[306] Nevertheless in oral conversation jokes of this kind are better avoided, because they easily degenerate into true lies, although jocose.

A pernicious or damaging lie (*Schadenlüge*) is that which causes special damage. Indeed every lie (even a jocose one) causes damage to another, insofar as by its nature it is inductive of error in the minds of hearers. For error is always something evil. But that sometimes a lie causes no error in fact to the hearers is by

accident, and does not prevent every lie from causing damage of itself. Certain lies, however, produce special damages to the neighbor, e.g., concerning knowledge, goods of fortune, goods of the body, etc., and for this reason they are called, in the strict sense, damaging or pernicious lies.

2. On the part of opposition to truth there are distinguished boasting and irony.

Boasting,[307] as it is taken here, is a violation of truth by excess and can be defined: a vice by which someone externally raises himself above that which is in himself.[308] It very often arises from pride or from vainglory.

Irony[309] is not taken here for a figurative locution by which something is mockingly said through the contrary, but for simulation by which someone either asserts of himself something vile which he does not recognize in himself, or denies of himself something great which nevertheless he perceives to be in himself. Hence it is opposed to truth by defect.[310] The sin of irony is very often accustomed to occur in false beggars, who externally simulate the greatest need, although in reality they are by no means so poor.

[304] Commonly *Jägerlatein*, tall stories.

[305] *De mendacio* c. 14.

[306] *In Gen.* q. 145.

[307] Ἀλαζονεία (Aristotle, *Ethic.* lib. 4, c. 7), *Großtuerei, Prahlerische Selbstüberschätzung, Aufschneiderei, gasconnade*, bragging.

[308] Cf. *S. theol.* 2, 2, q. 112, a. 1, and above I, 414.

[309] Εἰρωνεία (Aristotle, l.c.), *Kleintuerei, fausse dépréciation de soi-même*; false undervaluation of one's self.

[310] Cf. *S. theol.* 2, 2, q. 113, a. 1.

168. Scholion. On simulation and hypocrisy. Simulation and hypocrisy can be reduced to lying. For it belongs to the virtue of truth that someone show himself externally through external signs such as he is. But external signs are not only words, but also deeds. Falsity in words is lying; but falsity in the signs of external deeds is simulation[311] (*Verstellung*). But hypocrisy is a species of simulation; for it is the simulation of another person and notably the vice of him who does not have holiness, but nevertheless externally so conducts himself that he may be regarded as holy. Simulation and hypocrisy must be judged especially from the end of the agent. For often they are assumed as means for obtaining a very depraved end, e.g., the kiss of Judas. When a dishonorable end is absent, they are venial sins or even wholly lack culpability. For external deeds are not so clearly and certainly significative as words, but often are of ambiguous interpretation, and therefore they must be regarded as amphibologies, which sometimes can be permitted from a reasonable cause. Thus, e.g., from a grave cause a cleric can proceed in lay dress, although then many will regard him as a lay man.

The malice of lying.

[311] Ibid. q. 111, a. 1.

169. Principle 1. Every true lie is intrinsically evil, so that it can be made honorable by absolutely no reason.

Thus, after St. Augustine and St. Thomas, is the most common opinion, with few Catholic theologians contradicting it. Clement of Alexandria,[312] Origen,[313] St. Chrysostom,[314] St. Hilary,[315] and especially Cassian[316] seem to have taught that in a case of necessity, for averting the greatest damage, it is lawful to use a lie as a medicine. Here are the words of Cassian: "Therefore one must think about lying in such a way and use it in such a way as if the nature of hellebore [*Nieswurz*] were in it; if it is taken when a deadly disease threatens, it becomes healthful; but if it is received without the necessity of supreme danger, it is of present destruction....

Therefore when some grave danger threatens from the confession of truth, then refuges of lies are to be received, yet in such a way that we are healthfully bitten by the guilt of a humble conscience."[317] There are, however, several Catholic theologians[318] who explain the Fathers and older ecclesiastical writers as if they spoke concerning the liceity of mental restriction, not of lying properly so called.[319] Hence there would only be a dispute about words. Certain modern Catholic theologians distinguish between a moral lie, which is never lawful, and a psychological lie, or false-speaking, which in a case of necessity is lawful according to Bolgeni,[320] Piat, O. Cap.,[321] Tanquerey,[322] and several Protestants, such as Luther, Grotius, Pufendorf, Martensen.[323] Again there seems to be a dispute about words; because that which they call a psychological lie or false-speaking (*fausseté*), others call mental restriction. Nevertheless it would be much better if the expressions "psychological lie" or "false-speaking" were avoided. For in practice it is not so easy to distinguish between a psychological and a moral lie, and it sounds very bad if a Catholic theologian says that some lie is sometimes lawful. - These things having been premised, it is proved that lying properly so called is intrinsically evil:

1. From Sacred Scripture, which indiscriminately prohibits every lie. You shall flee a lie;[324] Do not lie, nor let each one deceive his neighbor;[325] Do not lie to one another.[326]

2. From the Holy Fathers. St. Cyprian,[327] citing Prov. 12, 22, says that one must not lie, because lying lips are an abomination to the Lord. - But especially St. Augustine strenuously proved in his diverse writings[328] that a lie is never lawful, neither for anyone's temporal safety, nor for preserving chastity, nor for the safety of the neighbor. But since lies seem to be approved in not a few places of Sacred Scripture, e.g., Jacob, who deceived his father Isaac; the midwives, who concealed the children of the Jews by a lie; Judith, who deceived Holofernes by a lie, etc., St. Augustine shows that the alleged deeds either are not lies properly so called, or are not to be imitated. St. Thomas assumed the doctrine of St. Augustine, and simply asserts: "Every lie is a sin";[329] and, "We concede that lying is always a sin."[330]

3. From reason. a) Lying is repugnant to the natural end of speech: "For since words are naturally signs of understandings, it is unnatural and undue that someone should signify by the voice that which he does not have in the mind. Hence the Philosopher says[331] that 'lying is of itself depraved and to be fled; but the true is good and praiseworthy.'"[332] Therefore lying is an abuse of the voice.

b) Lying is repugnant to the natural commerce of men. For without truthfulness human society cannot stand in peace.

c) Lying is repugnant to the good of the neighbor hearing. As was said above, any true lie by its nature induces the hearer into error. Now to induce another into error is to harm him. If sometimes a lie does not induce into error, this is by accident, and therefore does not change its absolute culpability.

d) Lying is repugnant to the good of the speaker himself. For although an (officious) lie sometimes seems to be useful to the speaker himself, nevertheless in reality it harms, since it excites to many evils. Hence it is evident from experience that a lying man loses nobility of soul and often sins especially from cowardice or even from a cauterized conscience.

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[312] *Strom.* l. 7, c. 9 (Migne, *Patr. graec.* 9, 474).

[313] *Strom.* l. 6 (Migne, l.c. 11, 102).

[314] Hom. 3, n. 3 in 2 Cor. 1, 17 (Migne, l.c. 61, 408).

[315] *Comm. in Ps.* 14, n. 10 (Migne, *Patr. lat.* 9, 305).

[316] *Collat.* 17, c. 17.

[317] L.c., in Migne, *Patr. lat.* 49, 1062. This doctrine of Cassian seems taken from Plato, who taught that lying is sometimes salutary: ψεῦδος δὴ ἐν φαρμάκου εἴδει (*De republ.* l. 3 [ed. Didot n. 389]). Socrates and the Stoics spoke in the same way. On the contrary Aristotle calls lying from its very nature something evil: καθ' αὑτὸ δὲ τὸ μὲν ψεῦδος φαῦλον καὶ ψεκτόν, τὸ δ' ἀληθὲς καλὸν καὶ ἐπαινετόν (*Ethic.* l. 4, c. [13] 7, 6).

[318] Waffelaert, *Diss. mor. sur la malice du mensonge* p. 41 sqq.

[319] Especially it is not so clear what St. Jerome thought in this question. In his Commentaries on the Epistle to the Galatians c. 2, 11-12 he had written that St. Paul did that very thing concerning which he rebuked St. Peter, and therefore did not speak so according to truth. St. Augustine, vehemently moved by this, invites St. Jerome to sing a palinode in this matter (Ep. 67 among the works of St. Jerome; in Migne, *Patr. lat.* 22, 650), but he took this very badly and wrote rather vehement letters to defend his opinion; yet he expressly asserts that he does not wish to defend an "officious lie," as Augustine imputed to him, but that the holy Apostles committed simulation from a certain "honest dispensation" (Ep. 113; ib. 923). St. Augustine was unwilling to admit even this, and strenuously defended St. Paul (Ep. 116; ib. 936 sqq.). Therefore between St. Augustine and St. Jerome there exists rather a controversy about St. Paul's manner of acting than about the liceity of lying. Nevertheless it must be confessed that St. Augustine extended the words of St. Jerome to an officious lie. - Concina treats this whole matter excellently, both historically and theologically (*In Decal.* l. 5, diss. 3, c. 20 and l. 10, c. 5), and also clearly shows that St. Raymond of Pennafort is falsely cited as permitting an officious lie in grave necessity.

[320] *Mélanges théologiques de Liége*, 4th series (1850-1851), p. 409-413.

[321] Appendix 4 to *Theol. mor.* by Van der Velden I, 524 sq.

[322] *Theol. mor. De iust.*, n. 4105 sqq.

[323] *Die christl. Ethik* II (1879), 245 sqq.

[324] Ex. 23, 7.

[325] Lev. 19, 11.

[326] Col. 3, 9; cf. also Prov. 12, 22; Eccli. 20, 26.

[327] Lib. 3 *testim. ad Quirin.* c. 104 (Migne, *Patr. lat.* 4, 807).

[328] *De mendacio*, *Contra mendacium*, Sermons 81, 133, and 166 (Migne, *Patr. lat.* 40, 494-497 and 541-547).

[329] *S. theol.* 2, 2, q. 110, a. 3.

[330] *Quodl.* 8, a. 14.

[331] *Ethic.* l. 4, c. 7.

[332] *S. theol.*, l.c.

170. Principle 2. Lying, insofar as it is chiefly opposed to truthfulness, is a venial sin; but insofar as it is opposed to justice, religion, and other virtues, it is from its genus a mortal sin.

The reason of the first part is that the abuse of speech and the other disorders found in a pure lie do not seem to be so grave that they constitute a mortal sin. Thus also bears the common sense of the faithful, even those who fear God, who do not think that they have sinned mortally if they have told a purely jocose or officious lie. And truly it seems too harsh to condemn someone to the penalty of Gehenna who departed from this life with a jocose or officious lie. Concerning these lies St. Augustine says:[333] "There are altogether two kinds of lies in which there is no great fault, but nevertheless they are not without fault, when either we joke, or lie in order that we may help. That first, in joking, is therefore not most pernicious, because it does not deceive. For he to whom it is said knows that it was said for the sake of a joke. But the second is milder, because it retains some benevolence."

The reason of the other part of the principle is that these virtues (charity, justice, faith, religion) of themselves oblige under grave matter. Hence without any doubt he commits mortal sin who by lying causes grave scandal and thus wounds charity, e.g., if a bishop should tell a pure and foul lie; or if someone by lying causes grave damage, because it is a grave wounding of justice; or if someone tells a lie with an oath, because he wounds the virtue of religion; or if someone speaks against the true faith, because he wounds the virtue of faith. - Therefore lies which, besides truthfulness, also wound other virtues, are from their genus mortal sins; but they become venial sins either from lightness of matter or from imperfection of the act.[334] But when in Sacred Scripture it is said: You will destroy all who speak a lie,[335] and: The mouth that lies kills the soul,[336] such and similar places are to be understood of the pernicious lie.[337]

[333] *Enarr. in Ps.* 5, n. 2 (Migne, *Patr. lat.* 36, 86).

[334] Cf. *S. theol.* 2, 2, q. 110, a. 4. - The opinion proposed by Tanquerey seems too harsh: "Lying properly so called ... is of itself a grave sin" (*Theol. mor.*, *De iust.* n. 411). But if under lying properly so called only a damaging lie is understood, the proposition is indeed true, but then that manner of speaking is not pleasing, because it is repugnant to the common usage of theologians. Mausbach also speaks less rightly in this matter (*Kathol. Moraltheol.* III, 59).

[335] Ps. 5, 7.

[336] Wis. 1, 11.

[337] Cf. *S. theol.*, l.c. ad 1.

§ 3. On Mental Restriction And Amphibology

171. Declarations. Strictly speaking, equivocation, amphibology, ambiguity, and mental restriction are distinguished:

For equivocation is a word which signifies two diverse things, e.g., *volo* (from willing or flying), *Gallus* (a rooster or a man sprung from Gaul). Christ Himself used such equivocation when He said: "Lazarus our friend sleeps";[338] for sleeping is said of sleep or of death.

Amphibology is a proposition or phrase having several senses, e.g., Peter is at home (*Petrus est domi*): Peter is present at home, and Peter eats at home.

But ambiguity is said not only of words and propositions, but also of other signs or things. Thus, e.g., to weep can be a sign either of great sadness or of great joy.

Mental restriction is an act of the mind by which, while we speak, we restrict words to another sense than the obvious one. If this sense, with attention paid to all the circumstances of the speaker and hearer, in no way appears nor can be understood, it is called a purely mental restriction; e.g., someone asked whether he has seen Peter responds affirmatively, understanding within himself, in a picture. But if the sense of the words can be understood by a prudent man because of the accompanying circumstances, it is called a broadly mental restriction; e.g., if a maidservant responds to one wishing to visit the master: the master is not at home; any prudent person immediately understands that by this phrase it is not certainly expressed that the master truly is not at home, but that the master cannot receive the visitor. By not a few authors this restriction is, not undeservedly, called rather a restriction of diction than of mind, because the diction is restricted to one of two or several senses.

[338] Jn. 11, 11.

172. Principle. A purely mental restriction is never lawful; but if necessity or a reasonable cause is present, it is lawful to use a broadly mental restriction (or restriction of diction), or amphibologies and equivocations.

Thus now all Catholic theologians teach; thus in daily life all prudent men act, even those Protestants who indeed accuse the so-called "lax Catholic Morality" with such calumnies, but nevertheless admit a psychological lie or false-speaking, as was said above.

The first part is proved. A purely mental restriction is a pure lie. But a pure lie is never lawful. Therefore neither is a purely mental restriction lawful. For in a purely mental restriction the external speech has a sense so diverse from the interior concept that no hearer could suspect the truth. Therefore it is a pure lie. Hence Billuart[339] deservedly says: 1. If the use of purely mental restrictions were lawful, no one except a dull and leaden man would lie, since nothing is easier than mentally to twist the sense of words to anything else. 2. The use of mental restrictions harms human society no less than lies, since hearers are equally deceived by it. - Innocent XI condemned the following propositions:[340] "If someone, either alone or before others, whether questioned or spontaneously, whether for the sake of recreation or for any other end, swears that he did not do something which in truth he did, understanding within himself something else which he did not do, or another way (day) than that on which he did it, or any other true addition, in truth he neither lies nor is perjured"; and: "A just cause of using these amphibologies is whenever this is necessary or useful for preserving the safety of the body, honor, family goods, or for any other act of virtue, so that the concealment of truth is then considered expedient and studious."

The second part is proved. The end of broadly mental restriction is the concealment of truth. But in necessity or from a reasonable cause it is lawful to conceal the truth by means not intrinsically evil. Therefore broadly mental restriction, which does not employ means intrinsically evil, is lawful in necessity or from a reasonable cause. St. Augustine[341] says: "Although everyone who lies wishes to conceal what is true, nevertheless not everyone who wishes to conceal what is true lies"; and St. Thomas[342] teaches: "It is not lawful to tell a lie; ... nevertheless it is lawful to conceal the truth prudently under some dissimulation." - Indeed concealment of truth is not only lawful, but sometimes gravely commanded, e.g., an entrusted secret is commanded. But broadly mental restriction employs means not intrinsically evil for concealing the truth. For the words uttered can have the intended sense; indeed the hearer, with all the circumstances seen, ought to suspect this sense. Hence the hearer is not directly and necessarily deceived, but his deception is rather only indirectly permitted. But deception of this kind can be permitted if a reasonable cause or necessity is present. For the good of human society and the legitimate defense of oneself require that there be a means of lawfully concealing truth and preserving a secret. But sometimes no other means is present except equivocation or broadly mental restriction. For such is the disposition of men that, if you keep silent or if you refuse a response to one questioning, they immediately conclude that the matter is as they think or ask. - Christ Himself seems sometimes to have used mental restriction. For when the disciples asked Him to go up to the feast day, He responded: "You go up to this feast day, but I do not go up,"[343] and nevertheless afterward He went up. Yet He neither changed His purpose, nor still more strongly lied, because in truth He did not go up solemnly and publicly, as the Apostles asked, saying: "Pass hence and go into Judea, that Your disciples also may see Your works; manifest Yourself to the world";[344] but He went up "not manifestly, but as it were in secret," as the Evangelist notes. Likewise with mental restriction Christ seems to have responded to the Apostles asking concerning the day of judgment: "But of that day or hour no one knows, neither the Angels in heaven, nor the Son, but the Father."[345] For certainly the Son of God knows the day of judgment, but He does not know it so as to manifest it to the Apostles.

Although, therefore, broadly mental restriction is lawful, nevertheless in its use some necessity is always required; hence he sins who rather often employs an equivocation or restrictions of this kind in lighter matters. For if this were lawful, the hearer in almost any saying would have to suspect ambiguity and could almost never safely believe the speaker; and this indeed certainly would tend toward the detriment of peaceful living together. But for discerning when there is a sufficient cause for employing amphibologies of this kind, let this be the rule: When the one questioning has a strict right of knowing the truth (e.g., in essential matters of an onerous contract), it is not lawful to conceal the truth by broadly mental restriction; but when someone asks importunately and unjustly, and a response cannot be refused without offense of the one questioning and without danger of violating a secret, then it is lawful to use these amphibologies.[346]

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[339] *De relig.* diss. 9, a. 2.

[340] Prop. 26 and 27 (Denz. n. 1176 sq.). These errors are taken from T. Sanchez, *In Decal.* l. 3, c. 6, n. 15. Cf. also prop. 24, 25, 28 (Denz. n. 1174 sq., 1178).

[341] *Contra mendacium* c. 10.

[342] *S. theol.* 2, 2, q. 110, a. 3 ad 4.

[343] Jn. 7, 8.

[344] Jn. 7, 3 sq.

[345] Mk. 13, 32.

[346] Cf. Billuart, *De mendacio* a. 2.

173. Applications. Although the principle enunciated is admitted by all modern authors (with certain ancient authors contradicting it), nevertheless its application in practice is not without difficulty, because sometimes it is difficult to discern between a purely and broadly mental restriction. Hence we give the following practical resolutions:

1. A confessor asked about any matter known from confession can always, indeed sometimes must, say: I do not know. For every interrogation thus posed to a confessor is unjust, and truly the confessor as a man does not know those things which he heard in confession as a minister of God. But I say, sometimes he must say: I do not know, namely, if otherwise the seal of confession would come into danger. For cases can happen in which, from a refused response, the questioner easily suspects an affirmative response to his question. - A confessor can say even under oath: I do not know. - A penitent also can use amphibologies when the confessor puts a certainly undue question concerning sins already confessed; for he then lawfully responds: I did not commit this sin (understanding, which I am held to reveal to you, because I have already confessed it).

2. All who are held to preserve the so-called professional secret, e.g., secretaries, advocates, physicians, pharmacists, midwives, etc., can use broadly mental restriction for preserving that secret, if no other means is available. The reason is that each hearer easily understands that these persons neither can nor wish unduly to violate professional secret.

3. He who, invited to a meal, is asked whether the food pleases him, can respond affirmatively, although in reality the food is tasteless. Thus at least if otherwise inconveniences would be prepared both for himself and for the host of the meal. The reason is that words of politeness of this kind (commonly compliments), just as also subscriptions: most devoted, most obedient, most attached servant, etc., are taken by no prudent person in the strict and obvious sense.

4. A servant, by order of the master, can say to a visitor: The master is not at home; and this locution indeed, at least in our regions, signifies nothing other than: the master cannot be seen, or the master is not at home so as to receive visitors. - Likewise to one asking for a loan or for a loan for use, it can often (but not always) be answered: I do not have it, namely, what I can easily give to you.

5. Some restrictions which by certain older authors were held lawful nevertheless seem to be rejected. Thus, e.g., to affirm something in a loud voice, adding in a low voice the restriction, as if someone says in a loud voice: I did not do it, and mutters softly: today. For he who acts thus is deservedly regarded as a deceitful and lying man. Likewise in our times it seems illicit that a cleric, even if not obliged from canon law to pay tax, should declare that he carries or has nothing (understanding, that is subject to taxes). For if goods subject to tax are discovered with the cleric, he is regarded by all as a defrauder and causes grave scandal.

174. Warning. Generally speaking, all mental restrictions are to be avoided as far as possible, and they can be employed only if true necessity exists which cannot be avoided in another way. But these restrictions are especially to be avoided in an oath. For if someone were found to have made an oath with mental restriction, according to the modern practice of tribunals he would immediately be condemned as a perjurer. Therefore he who is required to give testimony or to confess the truth should use the right conceded to him of refusing testimony.

On account of the use of mental restriction no small odium has been caused for moral theology, but undeservedly! For although certain authors exceeded too far in this matter and therefore were also condemned by Innocent XI, nevertheless true Catholic moral theology has always restrained mental restriction within just limits.[347]

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[347] Cf. Billuart, *De mendacio* diss. 9, a. 2, who excellently discusses this matter and also explains well 14 places from Sacred Scripture in which lies or mental restrictions seem to be present. Even Caramuel himself, who was called by St. Alphonsus "the prince of the laxists," writes most beautifully: "An aversion against mental restrictions is innate in me. For if they are contained within the bounds of piety and sincerity, they are not necessary. For all things which they can furnish, the co-signifying circumstances will furnish. But if such are said that they are to be admitted even where signifying circumstances are lacking (let their authors and defenders forgive me), they take away human society and security and have been condemned as pestiferous. For once admitted they open the way to every lie, to every perjury. And the whole difference will be in this: that what yesterday was called a lie changes not its nature and malice but its name, so that today it is ordered to be named mental restriction; which is to season poison with sugar and to color wickedness with the appearance of virtue" (*Theol. fund.* II, n. 1805 [p. 182]).

§ 4. On Violation Of Secret

Just as lying violates the virtue of truthfulness by defect, so violation of a secret violates it by excess, as was already said above. Hence, conveniently, after lying and mental restrictions there is discussion of violation of secret.

175. Notion. Secret taken objectively is the hidden thing itself; but accepted subjectively it is knowledge of that hidden thing and the obligation of not betraying the knowledge received. Concerning this secret accepted subjectively there is treatment here.

Division. A threefold secret is usually distinguished:

1. A natural secret, which is an obligation of concealing something arisen not from contract, but from the very nature of the thing, because, namely, such a secret cannot be manifested without another being

reasonably unwilling, even if no entrusting or promise has intervened. This natural secret indeed is again distinguished as either simple or extorted. A simple natural secret is that which someone knows either by chance or because of the levity or lack of consideration of another, e.g., someone by chance sees another's hidden disgraceful vice. - An extorted natural secret is that which someone has known after a crafty investigation has been made; e.g., someone by design investigates concerning the private life of another.

2. A promised secret is that which someone promised to another after knowledge of the matter had been received. This promise indeed can be given in a twofold way. a) Someone has already known another's secret matter from another source, and now promises him that the secret is to be kept. b) Someone has heard a matter from another without secrecy and afterward promises him secrecy. Therefore in a promised secret, knowledge of the secret precedes the promise, and that promise is (ordinarily) gratuitous.[348]

3. An entrusted or strict secret (*anvertrautes Geheimnis*) is that which was not communicated except after there had first been an implicit or explicit pact of keeping secrecy. If this pact was implicit or tacit, the secret is called official (*Amtsgeheimnis*), because it arises from an office undertaken. By such an official secret, e.g., physicians, midwives, counselors, etc., are bound. But if the pact was explicit, this secret is called a privately entrusted secret; e.g., Peter says to Paul: I wish to narrate to you a matter of great moment, provided you promise me strict silence. Paul, having promised silence, hears the matter. This secret is entrusted to him in a private way. - Stricter is the secret which obliges from an oath taken, such as, e.g., officials of the Roman Curia emit. But the highest degree of entrusted secret is obtained by the sacramental secret, or the confessional seal, concerning which there will be discussion in the treatise on penance. In an entrusted secret, knowledge of the secret follows the promise, and that promise is onerous.

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[348] Under promised secret, privately entrusted secret also is included by some authors, e.g., by D'Annibale, Haine.

176. Principle 1. It is not lawful by unjust means to explore another's secret; but when sufficient cause accedes, it is lawful to use just means for knowing another's secret.

The first part of this principle is plain of itself, since it is never lawful to use unjust means for obtaining some end. There is added that a secret truly is another's thing. Now, just as it is not lawful to usurp another's thing, so neither is it permitted to explore another's secret. Hence it is not lawful to listen at a wall or door, to open another's letters, to discover an invention of art by unjust means; much more strongly, it is not lawful to use knowledge of a secret unjustly received, for this would be to renew or continue the injustice already committed.[349] But he who uses knowledge of a secret unjustly received with grave damage to another is held to restitution; e.g., he who unjustly opens another's letters and from this causes grave material damage to another must repair this damage. When it is lawful to manifest a secret will be said below, n. 180 and 192.

The second part of the principle likewise is easily proved. For just as it is not a sin to take away another's material thing when a legitimate cause accedes, namely, if the owner is now not reasonably unwilling, so also from a sufficient cause it is lawful to use just means for exploring another's secret. Thus, e.g., it is lawful by just means to explore in war the forces and positions of the enemy; a father may inquire concerning the hidden crimes of a son for correcting him.

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[349] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 969.

177. Principle 2. A natural secret obliges of itself under grave matter.

The reason is that the neighbor has a strict right to a natural secret from the very nature of the thing. But from the revelation of such a secret the neighbor is saddened, and quite often damages arise for him in the goods of fortune or of reputation. Hence it is plain that he who without just cause wounds a natural secret sins, and indeed from its genus mortally, in almost the same way as a thief who takes away another's thing. From lightness of matter or of the damage caused this sin becomes venial. Therefore he sins who without sufficient cause reveals the hidden sins or hidden defects of another. - What are just causes of revealing a natural secret will be said below.

178. Principle 3. A merely promised secret of itself ordinarily does not oblige except under light matter.

I say 1: a secret merely promised. For often a secret of this kind is also natural, and then the preceding principle must be applied. - I say 2: of itself it does not oblige; for by accident violation of a promised secret can be a grave sin, namely, if because of this violation grave damage is caused to the neighbor. - I say 3: ordinarily it does not oblige except under light matter; for it can happen (although rarely) that someone promises under grave matter that he will keep a secret; e.g., I promise you the secret so firmly that, if I break it, I shall pay 1000 francs. - The principle taken with these clauses is proved in this way: Violation of a promised secret is only violation of a gratuitous promise or of fidelity. But the virtue of fidelity, which is a certain part of truthfulness, does not oblige of itself except under light matter, as was said above, n. 165 and 170, concerning lying. Therefore violation of a promised secret of itself is only a venial sin. - Nevertheless, violation of a promised secret is greatly to be avoided, because quarrels and grave enmities often arise from it.

179. Principle 4. An entrusted secret obliges of itself under grave matter, and indeed more gravely than a natural and a promised secret.

The reason is 1. because in an entrusted secret there is always a contract (implicit or explicit) of not revealing those things which are known, and 2. he who violates an entrusted secret wounds the right both of the neighbor and of society. For the neighbor would not have revealed his secret except under the condition of faithfully guarding it. Besides, the good of society demands that all can safely seek counsel or help from those who, from a special office approved by public authority, are able to furnish it. But if those officials could, without a legitimate and urgent cause, reveal secrets entrusted to them, no one would now approach them; and this would certainly bring great inconvenience for the common good. - Hence civil Codes also gravely punish the wounding of an entrusted secret.[350]

As appears from what has been said, the obligation of diverse secrets is diverse. As a general rule it can be held:

A secret obliges according to the quantity of damage which is unjustly brought upon either the public good or private good from its violation.

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[350] Cf. German Penal Code § 300.

180. Just causes of manifesting a secret. Just as the neighbor's material thing can lawfully be taken away under certain conditions, so equally also a secret, to which otherwise the neighbor has a right, can sometimes be revealed, indeed must be. For the keeping of a secret is prescribed on account of both private and public good. But the general principle is: When the end of a law ceases contrarily, i.e., when the law has become not only useless, but even harmful, the law itself ceases. Hence in the case in which the law concerning keeping a secret by no means profits but rather harms private or public good, this law ceases; or in other words: a just

cause of manifesting a secret is urgent necessity of public or private good. For in that case the neighbor is irrationally unwilling that the secret be revealed; or he is considered to renounce his right concerning the keeping of his own secret.

1. Therefore urgent necessity of the public good demands the manifestation of a secret; and therefore the Angelic Doctor: "Against the common good it is lawful to receive no secret."[351] But I say: urgent necessity; for if only some utility is present, it is not lawful to disclose a secret. For this reason the same principles are to be applied here which above were established concerning the obligation of denunciation. E.g., a physician is held to denounce some sick person who could easily infect others gravely.
2. Necessity of a private good regards either a) the one knowing himself, or b) a third person, or c) the very one who handed over the secret.

a) The proper good of the one knowing is then a just cause of manifesting a secret when otherwise grave damage would follow for him. This damage indeed ordinarily must be graver than that which follows for the other from revelation of the secret. If there is question of keeping a secret which is altogether necessary for the common good, it can in no way be revealed, even if death threatens; e.g., a soldier captured by enemies can in no way reveal the secrets of his fatherland. But if there is question only of the secret of some private man, then almost always no one is held to keep a known secret with great damage to himself, because no one is supposed to undertake such a secret with so great an inconvenience. The exception is if someone explicitly promised to keep the secret even with the greatest inconvenience. For then, according to the truer opinion, the promise is to be kept. There are nevertheless several authors who even in this case permit violation of the secret from a most grave reason.[352]

b) The good of a third person requires revelation of a secret if otherwise he would unjustly suffer great damage. E.g., Peter, knowing under secret that Paul is preparing death for Andrew, must first, as far as he can, turn Paul away from a perverse plan of this kind; but if he does not wish to desist, Peter must make Andrew more certain concerning the danger threatening him. Or a physician, knowing by force of his office that a bridegroom, who feigns himself healthy, labors under a grave and contagious syphilitic disease, must turn him away from marriage; but if this will have been vain, he can manifest the matter to the bride, in order to forestall the greatest danger to her and to the offspring perhaps to be born. Thus at least from natural law. For in practice the statutes of positive law in this matter must also be attended to, because otherwise grave penalties are usually inflicted.[353]

But what must be said if Peter knows from an entrusted secret that Titius is the murderer, but in his place innocent Sempronius has been accused, condemned, and is now about to be punished by death? The general rule is: I am held to keep an entrusted secret so long as the one entrusting the secret has a right that I not betray it. But in that case Titius is not held to confess his crime with the most immediate danger of his own death. Therefore he retains the right to the secret. Therefore Peter cannot manifest the entrusted secret for saving Sempronius.[354] - Nevertheless this opinion does not seem sufficiently proved. For although the rule proposed is excellent, nevertheless it is not sufficiently proved that in that case Titius still has a right to the secret. For although he is not held to betray himself, because he can love his own life more than the life of another, nevertheless it by no means follows from this that neither can nor ought I betray him for saving an innocent man. For in this case two lives are endangered, namely, the life of the innocent man and the life of the guilty man. Now, other things being equal, I ought rather to save the life of the innocent man than the life

of the guilty man. But the guilty man cannot be reasonably unwilling that I save the life of the innocent man, although this cannot be done without revelation of the entrusted secret.

c) The good of him who handed over the secret permits or requires manifestation of the secret if otherwise great damage would come to him. For he is not presumed to be unwilling in that case, and if nevertheless he resisted the manifestation of the secret, he would be irrationally unwilling. Hence if someone secretly entrusts to you that he wishes to enter marriage notwithstanding the impediment of bond, and you cannot impede him otherwise, you are held to reveal this impediment to the proper pastor, so that concubinage may thus be avoided.

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[351] *S. theol.* 2, 2, q. 68, a. 1 ad 3.

[352] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 971; St. Thomas, *S. theol.* 2, 2, q. 70, a. 1 ad 2.

[353] Cf. German Penal Code § 300.

[354] Thus Laymann in Noldin, *De praeceptis* n. 670.

181. Scholion. On reading another's letters.

He who reads another's secret letters or writings without the consent of the sender or recipient, or without legitimate authority or a just cause, or otherwise by force or fraud fishes out another's secret, sins against justice. Thus rightly Billuart.[355] The reason is that he acts like a thief or robber who unjustly takes goods away from another. For a secret is a good to which the neighbor has a strict right. This sin will be mortal or venial according to the quantity either of damage, or of danger, or of the intention of damaging gravely or lightly. Hence he sins only venially who opens letters which he knows with moral certainty contain nothing except greetings or matters of lighter moment. On the contrary, he sins mortally if he knows or even doubts that they contain matters bringing infamy, or matters which it much concerns him who sends or receives that they remain secret.[356] In practice all who unjustly intercept or read another's letters must be corrected severely. Modern criminal Codes also are accustomed to punish gravely those who violate epistolary secrecy.[357]

But I said 1: another's secret letters or writings, such as closed letters, or even open ones if they are kept in a secret place, e.g., in a cabinet, or even by chance have been lost; otherwise, if they have been thrown away, because then they are regarded as abandoned. But letters torn into minute pieces and thrown into a public place are nevertheless considered secret. Wherefore with St. Alphonsus[358] I judge that he sins against justice who astutely gathers, composes, and reads the fragments. The reason is that it is too difficult to burn all letters or destroy them in another way than by tearing. But such a throwing into an accessible place by no means signifies (as Lugo[359] wishes) that the owner yields his right in letters thus torn into minute pieces, the reading of which he cannot prevent.

I said 2: without the consent of the sender or recipient. This consent indeed can be express or tacit. Thus a husband ordinarily does not sin by reading the letters of his wife, since she does not wish to conceal anything from her husband.

I said 3: or without legitimate authority. In several religious and also civil institutes (e.g., in prisons, in hospitals of the insane, etc.) it is established that superiors can or must read the letters of subjects. Excepted, however, are letters directed to major superiors or sent by them. Statutes of this kind are not unjust, because anyone either freely entered such an institute, and then is considered to have given consent concerning his letters, or because of his moral or physical defects he is compelled to enter such an institute, e.g., into prison,

and then the opening of letters is either a just penalty or is necessary for the common good. But if these letters open secrets of conscience, let the superior abstain from reading.

I said 4: or a just cause. Namely, for averting grave damage either to oneself or especially to the republic. Hence in time of war the leader of an army can lawfully open the letters of enemies. The father of a family can read the letters of his children, at least if they are minors. A private man who foundedly fears that some letter may unjustly bring grave damage upon him can read it.

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[355] *De iure et iust.* diss. 15, a. 4, appendix.

[356] Cf. Billuart, l.c.

[357] Cf. German Penal Code §§ 299 and 354 sqq.

[358] *Theol. mor.* l. 5, n. 7.

[359] *De iust. et iure* diss. 14, n. 151.

§ 5. On Injury To Honor

182. Notions. Honor is the testification concerning someone's excellence.[360] This testification indeed is usually made in a threefold way: by words, when someone pronounces by mouth the excellence of someone; by deeds, such as by inclinations, by yielding the first place; by external things, e.g., by the offering of gifts, the conferring of dignity, etc. But this testification must be shown to the person present, or at least to his image or another representative. Thus the king present is honored, or represented through his delegate; thus the saints are honored in their images or relics. When the testification of excellence regards someone absent, it pertains more to his reputation than to his honor.

The difference from St. Thomas between honor, reverence, praise, and glory must be noted.

"Reverence is not the same as honor. But on the one hand it is the first motive for honoring, insofar, namely, as someone from the reverence which he has toward someone honors him; but on the other hand it is the end of honor, insofar, namely, as someone is honored for this, that he may be held in reverence by others."[361]

"Praise is distinguished from honor in two ways: in one way, because praise consists only in signs of words (whether oral or written); but honor consists in any external signs whatever, and according to this praise is included in honor. In another way, because through the exhibition of honor we render testimony concerning the excellence of someone's goodness absolutely; but through praise we testify concerning someone's goodness in order to an end, as we praise one who works well for the sake of the end. But honor is also of the best things, which are not ordered to an end, but are already in the end.

"But glory is the effect of honor and praise, because from the fact that we testify concerning someone's goodness, his goodness becomes clear in the knowledge of many; and this the name of glory imports; ... for glory is clear knowledge with praise."[362]

The difference between honor and reputation must also be noted. Honor is a testification of another's excellence; reputation is public opinion concerning another's excellence. Honor is shown to one present; reputation is borne concerning one absent. Honor is wounded by contumely; but reputation is wounded by calumny, detraction, and whispering.

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[360] Cf. *S. theol.* 2, 2, q. 103, a. 1. But since the excellence of a man is considered especially according to virtue (ibid. q. 145, a. 1), all other things which are below virtue are honored insofar as they assist toward works of virtue, such as nobility, power, riches (ibid.

ad 2). H. Gay has written well on honor, *L'honneur, sa place dans la Morale* (Fribourg, Switzerland, 1913).

[361] *S. theol.* 2, 2, q. 103, a. 1 ad 1.

[362] Ibid. a. 1 ad 3.

183. Injury to honor. Honor is chiefly wounded by contumely,[363] which can be defined: unjust dishonoring of a person present. This dishonoring for the most part is done by a positive act, namely, by word or deed; but ordinarily the omission of an honorific act does not suffice. Thus, e.g., when a friend from anger or for another reason now no longer greets a former friend, he does not yet commit contumely, unless nevertheless that omission, on account of special circumstances, is equivalent to a positive act.

Dishonoring can be done in many ways: 1. by objecting moral vices to another, e.g.: you are a thief - and then this dishonoring is called contumely in the strict sense;[364] 2. by objecting physical defects to another: you are one-eyed, or blind cow; and especially "when someone injuriously brings back to another's memory the help which he conferred upon him suffering necessity. Hence it is said in Eccli. 20, 15: He will give little things and reproach much."[365] Dishonoring of this kind is called reproach;[366] 3. by deriding another with words and laughter, and then there is mockery[367] or derision; 4. by manifesting contempt for another with ridiculous gestures, as the soldiers did when genuflecting before Christ crowned with thorns, and then there is derision with contempt.[368] All these diverse modes are indeed diverse sins,[369] but they are reduced to the same moral species of contumely, because their end is the same, namely, externally to manifest contempt toward the man to be dishonored. Hence it is not necessary to indicate in confession in what way the contumely was done.

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[363] *Beschimpfung, outrage*, insult. Rash judgment also and detraction wound honor, but concerning them there will be special discussion afterward.

[364] *Schmähung.*

[365] *S. theol.* 2, 2, q. 72, a. 1 ad 3. The Angelic Doctor himself asserts in the same place: "Sometimes, however, one of these is put for another."

[366] *Vorwurf, opprobre.*

[367] *Verspottung*; if it is done jokingly: *Fopperei, Hänselei, Spöttelei*, "Aufziehen," *raillerie.*

[368] *Verhöhnung.*

[369] Cf. *S. theol.* 2, 2, q. 75, a. 1.

184. The malice of contumely. Contumely is from its genus a mortal sin against justice.

That contumely is from its genus a mortal sin is plain from the words of Christ: "Whoever shall say (to his brother), Fool, shall be liable to the fire of Gehenna."[370] But St. Paul numbers the contumelious among those whom God handed over to a reprobate sense.[371]

That contumely wounds justice is clear from the fact that any man has a strict right to honor; and this right indeed contumely violates. And certainly honor is a good more excellent than riches. But to steal the riches of another is from its genus a mortal sin against justice. Therefore, more strongly, to take away honor, which contumely does, is such a sin.

Honor, which is founded upon true virtue, obtains the first place among all the external goods of man. Hence not rarely men sacrifice riches, health, indeed even life itself, for acquiring or retaining honor. Concerning this matter St. Thomas teaches: "Things which come into the use of man are exterior things, among which simply the greatest is honor: both because it is nearest to virtue, as being a certain testification existing concerning someone's virtue; and also because it is shown to God and to the best; and also because men set aside all

things for attaining honor and avoiding blame."[372] From these things it follows that unjust wounding of honor is a very grave sin against justice. Nor is that sin diminished from the fact that he who is dishonored does not always feel great damage, although this sometimes happens. For a very rich man upon whom notable damaging is inflicted does not even feel damage of this kind much, on account of abundant other riches; and nevertheless the damaging inflicted remains a great sin.

Contumely often has other malices joined to it, such as: irreligiosity, if, e.g., a cleric or religious is dishonored; wounded piety, if, e.g., the contumely is against parents; blasphemy, if it is against God or the saints; scandal, etc.

Contumely becomes a light sin:

1. from imperfection of the act, e.g., inadvertence, lack of deliberation, from sudden anger;
2. from the intention of not gravely wounding honor, e.g., if someone from jest or not so seriously says to another: You are an ass;
3. from the condition of the speaker and hearer. Hence Soto, Sylvius, and others deservedly teach that insults by which men of the lowest condition or quarrelsome women attack one another, crying that the other is a prostitute, an adulteress, a scoundrel, the devil himself, etc., are not mortal sins. The reason is that by these exclamations no great wounding of honor is caused to anyone. The same holds for contumelious words which are brought forth by parents against children, by teachers against pupils, etc.

Mockery, which, as was said above, is reduced to contumely, is often no sin; indeed, it is an act of the virtue of eutrapelia if it is done jokingly concerning another's small defect and with small embarrassment for him; for it pertains to honorable recreation.[373] Yet let there be nothing excessive! For from jokes of this kind charity is sometimes wounded.

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[370] Matt. 5, 22.

[371] Cf. Rom. 1, 28-30.

[372] *S. theol.* 2, 2, q. 129, a. 1. Cf. also Aristotle, *Ethic.* l. 4, c. 8.

[373] Cf. *S. theol.* 2, 2, q. 72, a. 2 ad 1.

185. Restitution of honor. He who has inflicted true contumely upon another is held to sufficient reparation of honor. Therefore he who publicly inflicted contumely is held also publicly to repair the honor taken away; but he who privately and secretly dishonored another ought at least privately to satisfy. This obligation of repairing honor is of itself grave and to be done as quickly as possible. For after Christ said: "Whoever shall say to his brother: Fool, shall be liable to the fire of Gehenna," He adds: "If therefore you offer your gift at the altar, and there remember that your brother has something against you, leave your gift there before the altar, and go first to be reconciled to your brother."[374] Satisfaction, or restitution of wounded honor, must be made by a new exhibition of honor and reverence. But how this ought to be done in individual cases depends both on the person wounded and on the person who inflicted the contumely. Subjects and equals who have inflicted contumely are often held to ask pardon, especially if the person wounded by grave contumely demands this and does not wish to accept another satisfaction. Nevertheless, in some regions it is not the custom, and therefore there is no obligation of asking pardon. Superiors who have inflicted a not so grave contumely upon their subject are, generally speaking, not held to ask pardon, "lest," says St. Augustine,[375] "among those whom

it is necessary to be subject, while humility is observed too much, the authority of governing be broken." Therefore superiors can satisfy wounded subjects by exhibiting special signs of benevolence. - Wounded honor ought not to be repaired by payment of money.[376] Sometimes nevertheless a monetary fine is imposed by the judge on the one who committed contumely, to be paid for the poor or for pious causes.

[374] Matt. 5, 22 sqq.

[375] *Regula ad servos Dei* (Migne, *Patr. lat.* 32, 1383).

[376] Cf. nevertheless below, n. 204.

186. Scholion. On contumely to be tolerated patiently. In a special article St. Thomas[377] investigates whether and when someone ought patiently to tolerate contumelies inflicted upon himself. A man indeed is held with great patience to tolerate contumelies inflicted and not to exact satisfaction solely on account of desire for private honor. Nevertheless, sometimes it is necessary to repel the contumely inflicted, especially on account of two things: first, indeed, on account of the good of him who inflicts the contumely, namely, so that his audacity may be repressed and that he may not attempt such things afterward; ... in another way, on account of the good of many, whose progress is impeded on account of contumelies inflicted upon us. Hence Gregory says: "Those whose life has been placed as an example for imitation ought, if they can, to restrain the words of those detracting from them, lest those who could hear their preaching do not hear it, and thus, remaining in depraved morals, they contemn living well."

As to the manner of repelling contumely, the moderation of blameless defense must altogether be observed. Wherefore it is not lawful to provoke to a duel, nor to kill an aggressor of honor.[378] Sometimes, however, it is lawful to retort contumelious words or blows upon the one committing contumely by the same words or blows, namely, if otherwise reparation of wounded honor cannot conveniently be obtained.

[377] *S. theol.* 2, 2, q. 72, a. 3.

[378] Cf. proposition 30 condemned by Innocent XI.

§ 6. On Injury To Reputation

187. Notions. Reputation taken generally is frequent and common speech about some matter; thus we speak of the rumor of war, of the bad reputation of some evildoer. But more strictly reputation (good reputation) is the common estimation (brought forth in speech) concerning someone's excellence. In this strict sense we now speak of reputation, and thus we say, e.g.: This man has a good reputation (*guten Ruf*), when, namely, many proclaim his good morals or other excellences. Good reputation principally concerns a virtuous life, secondarily also other good qualities,[379] e.g., concerning medical skill. That to every man there belongs a strict right to a good reputation has been said above, n. 7, concerning the object of dominion. This right indeed is preserved even for dead men, since their immortal soul still exists. Hence it is not lawful to take away good reputation even from them without sufficient reason. Likewise this right belongs to moral or juridical persons, e.g., a monastery, a society, etc.; and therefore it can be a grave sin to say unjustly concerning some monastery that grave disorders are committed there. - The good reputation of a man is injured by defamation.

Defamation is the unjust blackening of another's reputation.

It is explained. It is said 1. *unjust blackening*, because not every blackening of reputation, but only one made without sufficient cause, is defamation or detraction. It is said: *blackening*, because just as a man shines with a good reputation, so by defamation, through the revelation of a true or imputed crime, he is blackened or

obscured, although his good reputation is not always totally taken away. It is said 2. *of another's reputation*, because, properly speaking, no one can commit detraction against his own reputation. St. Thomas, Bl. Albert, and many others add in the definition: *by hidden words*. Here is the text of St. Thomas:[380] "Just as someone harms another by deed in two ways: manifestly indeed, as in robbery or any violence inflicted; but secretly, as in theft and a deceitful blow; so also by word someone injures another in two ways: in one way openly, and this is done by contumely; in another way secretly, and this is done by detraction.... Detraction differs from contumely in two ways: in one way as to the manner of proposing the words, because, namely, the contumelious man speaks openly against someone, but the detractor secretly; in another way as to the intended end, or as to the harm inflicted, because, namely, the contumelious man derogates from honor, the detractor from reputation." Therefore only an injury to reputation, while the defamed person is absent, is defamation or detraction. But he who openly detracts from him while the defamed person is present commits contumely; because then honor is injured together with reputation. Other authors, however, teach that in this case there is both contumely and detraction.[381]

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[379] Cf. Billuart, *De iure et iust.* diss. 15, a. 1, § 1.

[380] *S. theol.* 2, 2, q. 73, a. 1.

[381] Cf. Billuart, *De iure et iust.* diss. 15, a. 2, § 1.

188. Divisions. Defamation is twofold: formal and material. Formal defamation is had when someone by his words explicitly intends to blacken the reputation of another. But material defamation is present when someone from talkativeness or levity of mind brings forth defamatory words, yet without having an intention of defaming. - Each defamation (formal and material) is again twofold, namely, either direct, when another's vices are narrated, which occurs in four ways, namely: a) by imputing a false crime, b) by exaggerating a true crime, c) by revealing a hidden crime, d) by interpreting a good work sinisterly; or indirect, when another's endowments are diminished, which also happens in four ways: a) by denying the good works of one's neighbor, b) by diminishing those good things, c) by being silent when others praise, d) by praising coldly.[382] - These eight modes indeed were expressed by ancient authors in these little verses:

Imputing, increasing, manifesting, turning to evil, Who denies or diminishes, keeps silent, or praises faintly.

Modern theologians more briefly distinguish defamation from narration of a true but hidden defect, which they call simply detraction,[383] and lying defamation, which arises from narration of a false crime or defect, which they call calumny.[384] We also shall take detraction and calumny in this way in what follows.

Whispering also is reduced to detraction,[385] which is detraction by which discord is sown among friends. Therefore whispering adds to detraction the end of sowing discords. E.g., Peter and Paul are friends. Andrew narrates to Peter the vices of Paul, with the intention that the friendship between Peter and Paul may be destroyed. - Whisperers in Sacred Scripture are called double-tongued, because they are accustomed to use a twofold manner of speaking, namely, otherwise before one and otherwise before the other. Whispering is a vice which renders a man not only sinful, but also contemptible and hateful; it destroys at once the reputation and the friendship of one's neighbor. Hence it is deservedly said in Sacred Scripture: The whisperer will defile his own soul, and he will be hated in all things.... The whisperer and the double-tongued man is cursed: for he will disturb many who have peace.[386] But St. Thomas says: "And therefore whispering is a greater sin than detraction, and also than contumely; because a friend is better than honor, and to be loved than to be honored."[387] - It is self-evident that he by no means commits whispering who destroys a truly harmful or dangerous friendship by lawful means, and indeed even by manifesting the true crimes of either friend.

Rash judgment also is in some way reduced to defamation; special discussion about it will return in the following paragraph.

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[382] *S. theol.* 2, 2, q. 73, a. 1 ad 3.

[383] *Ehrabschneidung, médisance.*

[384] *Verleumdung, calomnie.*

[385] *Ohrenbläserei, rapport, délation.*

[386] Eccli. 21, 31 and 28, 15.

[387] *S. theol.* 2, 2, q. 74, a. 2.

189. The generic malice of defamation.

Principle. *Unjust defamation (whether it is simple detraction, or calumny) is from its genus a mortal sin both against justice and against charity.*

It is proved 1. from Sacred Scripture. "A good name is better than many riches."[388] But unjustly to snatch away riches is a mortal sin. Therefore, a fortiori, the detractor commits a mortal sin who unjustly takes away from his neighbor a good name. - The evil-speaking will not possess the kingdom of God.[389] But every defamer is a true evil-speaker.[390]

2. from the common sense of theologians and Fathers. Thus St. Augustine, that he might deter his guests from this vice, had an inscription placed above the table:

Whoever loves by sayings to gnaw the life of the absent, Let him know that this table is forbidden to him;[391]

and St. Bernard inveighs vehemently and with great eloquence against detractors, saying: "Is not the tongue of the detractor a viper? Most savage indeed, surely, which so lethally infects three with one breath," namely, it kills itself, the hearer, and him from whom detraction is made.[392]

3. from reason. Man has a strict right to reputation, as is clear from what was said above concerning dominion. But this right is violated through defamation. Wherefore St. Thomas[393] teaches: "To take away someone's reputation is very grave, because among temporal things reputation seems to be more precious, through the lack of which a man is impeded from doing many good things. On account of which it is said:[394] Have care for a good name; for this will remain to you more than a thousand precious and great treasures. And therefore detraction, speaking of itself, is a mortal sin." "Yet contumely is a graver sin than detraction, insofar as it has greater contempt of one's neighbor; just as also robbery is a graver sin than theft."[395]

That calumnious defamation is of itself a mortal sin against justice is easily understood. For it causes great injury to one's neighbor, to whom, although innocent, it falsely imputes a crime. Hence calumny is gravely punished not only by God, but also by civil law. The matter is not so clear if it is a question of simple detraction, i.e., the undue revelation of a true crime. Civil laws are accustomed rather rarely to punish revelations of this kind. But from this it does not yet follow that simple detraction is not even punished by God. For there are many things which civil law does not punish (e.g., simple fornications), which nevertheless are grave sins before God.

The reason why even simple detraction is sinful is that by it 1. the right of one's neighbor is violated, 2. the rights of God are usurped, 3. the social good is damaged. - The right of one's neighbor is violated, and therefore justice is truly injured, because a hidden sinner still possesses a good reputation, from which possession he cannot be expelled except by a just title. But the unjust detractor does not have a just title of expelling the hidden sinner from the good reputation possessed; otherwise it would no longer be detraction, but the lawful revelation of another's crime, concerning which below, n. 192. - The rights of God are usurped by the detractor, because it belongs to God alone to judge the living and the dead according to the hidden things of their hearts, all of which indeed will be made manifest in the last universal judgment. - The social good is damaged by the detractor, because from the undue revelation of a hidden fault there are accustomed to arise contentions, quarrels, and very great hatreds.

That unjust defamation also injures charity is almost self-evident, because, as St. Thomas most rightly says: "Reputation is a disposition toward friendship and ill repute toward enmity";[396] and: "He who detracts from his brother seems to detract from the law insofar as he contemns the precept concerning the love of one's neighbor."[397]

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[388] Prov. 22, 1.

[389] Cf. 1 Cor. 6, 10.

[390] St. Thomas also cites the text of St. Paul (Rom. 1, 30), where detractors and whisperers are called hateful to God, but many exegetes understand this text otherwise (cf. Cornely, *Comm. in ep. ad Rom.*).

[391] In Migne, *Patr. lat.* 32, 52.

[392] *Sermo* 17 *de diversis* n. 4-5 (Migne l.c. 183, 585). Cf. also *De modo bene vivendi* c. 33 (Migne l.c. 184, 1256).

[393] *S. theol.* 2, 2, q. 73, a. 2.

[394] Eccli. 41, 15.

[395] *S. theol.* 2, 2, q. 73, a. 3 ad 2.

[396] *S. theol.* 2, 2, q. 74, a. 2 ad 2.

[397] Ibid. ad 3.

190. The specific and numerical malice of defamation.

1. Calumny and simple detraction do not differ in moral species (at least mortal species),[398] since the end and effect of each is the same, namely, the defamation of one's neighbor. In calumny indeed a lie is added, but this is from its genus only a venial sin. Nevertheless, when it is a question of grave calumny, this must commonly be declared expressly in confession, because then the confessor can more easily know both the gravity of the sin and assign the fitting mode of reparation. Yet there are authors who teach that calumny and detraction differ in species,[399] because calumny injures the reputation of one's neighbor in a wholly other way than simple detraction does.

2. Defamation does not seem to acquire a diverse moral species according as this or that crime is unduly narrated (e.g., that someone is an adulterer or a thief). For this difference seems to be only material in the injury of reputation. Hence just as theft does not have diverse species according as someone has stolen, e.g., money or clothes, so also defamation is not specified by the diverse crimes narrated or imputed. Thus Cajetan, Serra, Noldin,[400] etc. But St. Alphonsus,[401] with many others, judges that in this case several sins are committed; but it is not so certain whether the holy Doctor wished to say that

there are several sins numerically, or even specifically distinct. In practice, at least when defamation of this kind has been made in one impulse of passion, it seems to be one sin both in species and in number. Concina also,[402] who otherwise theoretically asserts that there are several sins in this case, seems to admit this for practice. Hence the confessor would act imprudently who asked from the penitent the diverse matters of detraction, unless this were necessary for judging concerning the gravity of the detraction and concerning the modes of making reparation.[403]

3. He who detracts from someone before several people seems indeed to commit a graver but single sin. "The reason is, because to detract before several people is only an aggravating circumstance, since the right to reputation is one among all, not multiple."[404] Hence it suffices to confess: I detracted before several people.

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[398] Thus also Lehmkuhl, *Theol. mor.* I, n. 1418; Noldin, *De praec.* n. 648.

[399] Tanquerey, *Synopsis Theol. mor. de iust.* n. 385; Marc, *Instit. mor.* I, n. 1195; Mausbach, *Kathol. Moraltheol.* II, 2, § 57.

[400] *De praeceptis* n. 648.

[401] *Theol. mor.* l. 5, n. 48.

[402] *De pecc. in commun.* diss. 1, c. 6, n. 21.

[403] Cf. Billuart, *De iure et iust.* diss. 15, a. 2, § 1.

[404] S. Alph., l.c. n. 49.

191. Rules for judging the gravity of defamation.

The sin of defamation, which is from its genus a mortal sin, becomes venial 1. from imperfection of the act, 2. from lightness of matter, i.e., from the slightness of the damage caused. - From the first reason, detractions are often venial sins on account of inadvertence or an erroneous conscience, since no sins seem to be more subject to lack of consideration and false judgment than those which are born from talkativeness. Moreover, how easily a talkative man finds reasons excusing him from keeping silence concerning the defects of others! Hence innumerable detractions are accustomed to be made even by persons otherwise good. Nevertheless, let the confessor fight with all his strength against this evil manner of acting, mindful of the verses of St. Augustine related above. - From the other reason likewise, many detractions are only venial sins. But in each case it must be weighed, not indeed what vice has been revealed or calumniously imputed, but whether, all the circumstances of the persons and the speech being considered, grave damage has truly been caused or not. Hence:

a) The person speaking is first to be considered; if he is serious and prudent, he harms more than if he is frivolous and talkative. Hence, if talkative women publicly known as liars detract or calumniate, often there is no mortal sin, because no one believes them. Nevertheless, let the confessor not indulge them too much, mindful of that saying: "Calumniate boldly; something always sticks." The truth of this saying, alas, appears too much in newspapers and pamphlets, which often calumniate priests and other religious persons.

b) The injured person and his condition and dignity are then to be considered. For one who is of unimpaired reputation and great dignity suffers much greater detriment from detraction and calumny than a person of low condition. Hence it can happen that grave damage is inflicted if a light sin is narrated concerning some very dignified person, e.g., if someone should say: The Pope is a liar. On the contrary, perhaps slight damage would be caused, and therefore there would be a light sin or no sin, if someone should narrate that a certain soldier known to be undisciplined had entered a brothel.

To manifest natural defects without sufficient reason, e.g., to say that someone is ignorant or illegitimate, ordinarily is not a grave sin, because defects of this kind easily come to the knowledge of others and do not injure reputation as gravely as moral defects. I say, however, that ordinarily it is not a mortal sin; for if a natural defect is very disgraceful and reputation is greatly diminished by its revelation, it is a grave sin to reveal it; e.g., to narrate that a certain pastor is an illegitimate son, which until then had been wholly unknown.[405]

c) The hearers of the defamation likewise are to be considered. For if they are numerous and talkative, grave damage will more easily be present than if they are few and discreet. But theologians do not agree whether it is a grave defamation to manifest to one prudent person a grave defect of another. If this manifestation is made for a reasonable cause, e.g., for seeking counsel, there is no sin; but if it is made from talkativeness, some theologians judge such a manifestation to be a grave sin, because it is truly hard to lose one's reputation with a dignified and prudent person. St. Thomas seems to favor this opinion, saying: "Although even if someone speaks evil of an absent person to one alone, he corrupts his reputation not in whole but in part";[406] but Billuart, who treats this question excellently,[407] adds: "From the opposite opinion it follows, 1. that a prudent man, to whom you reveal the crime of another, can with equal right reveal it to another prudent man, and he to another, and thus one's neighbor will be gravely defamed among several people without mortal sin. It follows, 2. that he who alone hears a grave detraction could tolerate it as venial, accounting himself prudent, which is against the common opinion." Nevertheless, Cajetan,[408] Navarrus, Bonacina, and others deny that this is a mortal sin, because grave damage is not thereby caused to the defamed person. The matter is therefore uncertain. But to calumniate in a grave matter even before one person is a mortal sin, because it is a much greater injury to impute a false crime to someone than to manifest a true hidden crime.

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[405] Cf. S. Alph., *Theol. mor.* l. 4, n. 967.

[406] *S. theol.* 2, 2, q. 73, a. 1 ad 2.

[407] *De iure et iust.* diss. 15, a. 2, § 4.

[408] *Comm. in II, II*, q. 73, a. 2.

192. d) Finally, the motive on account of which the defects of others are manifested is to be considered. If it is a question of calumny, an honest motive can never be present; and therefore, if a grave defect is falsely imputed to another, there is almost always a mortal sin, unless, however, it is certain among the hearers that the calumniator is lying. Wherefore Innocent XI condemned the following propositions (44): "It is probable that he does not sin mortally who imputes a false crime to someone, that he may defend his own justice and honor. And if this is not probable, scarcely any opinion in theology will be probable"; and (43): "Why should it not be merely venial to destroy by a false crime the great authority of one detracting, which is harmful to oneself?"[409]

On the revelation of a hidden crime. If it is a question of simple detraction, then there is no sin at all if the manifestation of the defect is made for a proportionately grave cause. Proportionately grave causes are: the public good and a private good, whether this latter is that of the delinquent himself, of the revealer, or of another neighbor.

The public good not only permits, but altogether demands, the manifestation of a harmful defect; e.g., defects ought to be manifested to a canonical visitor; a lustful boy dwelling in some college and seducing others ought to be denounced to the legitimate superior, that harm to many may be forestalled.

The good of the delinquent himself likewise sometimes permits the manifestation of a crime, if, namely, this is necessary for his correction or for forestalling great harm to him; e.g., a girl given to dangerous love affairs, from which she is unwilling to desist, can be denounced to her father, that she may be corrected and her honor preserved.

The good of the revealer excuses the manifestation of a crime if this is necessary for the sake of defense, consolation, or seeking counsel; e.g., a penitent can sometimes confess his sin even if the confessor thereby recognizes the accomplice. In this case, however, it would at least be more perfect to approach another confessor, with whom the reputation of the accomplice would remain unimpaired.[410]

Finally, the good of one's neighbor permits or demands the manifestation of some delinquent, as is clear in the example given above of the lustful boy seducing several persons in some college. Thus also it is lawful, indeed sometimes necessary, to inform a betrothed woman of the hidden crimes of the bridegroom, at least those which will probably render the future marriage unhappy.

Question. Is it lawful for a grave reason to manifest a hidden crime, knowledge of which was acquired unjustly (e.g., by reading another's letters)? Lugo[411] and St. Alphonsus[412] deny it; Lessius, Concina, and others[413] affirm it, because to acquire knowledge in this way is indeed illicit, but for a grave reason to use this knowledge once acquired is contrary to no natural or positive law; just as, by an almost parallel case, to acquire money through prostitution is illicit, but to use such money is not of itself illicit. In practice, even the authors of the negative opinion sometimes permit the manifestation.

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[409] Denz. nn. 1194 and 1193.

[410] Cf. below in the tract on penance, concerning the accomplice not to be manifested, III, n. 381.

[411] *De iust. et iure* disp. 14, nn. 100-108; cf. also above, n. 160, concerning excuses from giving testimony, and n. 176.

[412] *Theol. mor.* l. 3, n. 969.

[413] In S. Alph., l.c.

193. On the spreading of a notorious crime.

A public or notorious crime cannot indeed be revealed, as is self-evident, but it can be spread more and more.

a) A twofold notoriety must be distinguished: of law and of fact. Notoriety of law is had when the crime is established by a sentence of a judge or by the judicial confession of the accused. But notoriety of fact is present when the crime is already known to the greater part of the community (an altogether public or widely known crime), or so many and such talkative persons know it that the whole community will shortly know it (a simply public or notorious crime).[414]

b) This distinction having been premised, the following principles seem to be observed:

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[414] Cf. Code of Canon Law, c. 2197.

194. Principle 1. *Without sufficient reason and from mere talkativeness or from an itching to narrate bitter things, to speak about the crimes of others, even public ones, is always at least a certain imperfection, which produces nothing good and often much evil; indeed, sometimes it is against charity, but not against justice.*

The reason is that, even if he whose crime has become notorious by notoriety either of law or of fact has indeed lost a strict right to reputation, nevertheless he is deservedly and reasonably unwilling that his reputation be destroyed more and more without sufficient advantage either to the speaker, the hearer, or the

commonwealth. Hence, e.g., it seems to be a sin against charity when highly defaming condemnatory sentences passed against a delinquent who will no longer bring harm either to his neighbor or to the commonwealth are published in newspapers without sufficient reason. Certainly it is lawful to spread condemnatory sentences or crimes of this kind if certain harms are thereby forestalled. For it is expedient that the wicked not be held as upright. From these things it also follows that it is illicit, without a cause of true utility or necessity, to narrate a crime which in former times was notorious but has now been given over to oblivion and amended; likewise, to spread a crime wholly unknown in one place which is notorious in another distant place. - But a violation of commutative justice, and therefore an obligation of restitution, does not seem to be present in these cases, because he whose crime was once truly public has simply lost the strict right to conceal that crime.[415]

Principle 2. *Even the deceased retain a right to reputation; hence it is not lawful for historians to reveal and spread their vices and crimes without sufficient reason.*

Nevertheless, in our times there is almost always a sufficient reason for narrating all things which are historically true. For history ought to be the teacher of life, the witness of truth, and the vindicator of divine justice; hence it is of great importance that all historical facts be set forth according to the truth of the matter. Wherefore Leo XIII ordered the Pontifical Archives to be accessible to all, so that history might be composed according to the truth of the matter. Yet in writing the history of recent times care must be taken lest survivors who are connected with the deceased person suffer any harm.

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[415] Cf. S. Alph., *Theol. mor.* l. 3, n. 974.

195. On those cooperating in defamation.

1. He who induces another to detract, e.g., by inquiring about the defects of one's neighbor, by praising and approving the narration, sins in almost the same way as the detractor himself; indeed, if the reputation of one's neighbor is thereby injured among other persons hearing it, he sins against justice and is held to reparation. Hence, e.g., he who in some gathering unduly induces someone publicly to narrate the hidden crimes of one's neighbor is held *in solidum* to repair the injured reputation and the other damages thence ensuing. It is clear, because he is an unjust cooperator.

2. He who rejoices in, and willingly hears and approves, grave detraction sins gravely against charity; indeed, in affection also against justice, because he consents to the detractor, who assuredly sins against justice. Hence St. Bernard says: "To detract or to hear one detracting, which of these is more damnable, I could not easily say."[416] Thus, at least objectively speaking. Subjectively, however, it is often only a venial sin, because that joy is accustomed to arise more from a certain disordered curiosity than from hatred against one's neighbor. But curiosity is a venial sin.

3. A superior who does not prevent the defamation of his subject (whether active or passive) fails in his office and therefore sins,[417] since he is held to correct the defaming subject, but to protect the defamed subject. The superior in these cases indeed sins against charity and piety, but not against strict justice, because by reason of his office he is not held thus to watch over the temporal good of his subjects. St. Alphonsus[418] calls this opinion perhaps the more probable. Lugo,[419] however, rightly observes that if the defamed person and the defamer are subjects of the same superior, and the defamed person implores the authority of the prelate that his reputation be restored to him, then the latter is held to this from justice, provided he can do it without fear of graver harm.

4. A private person who is displeased by the sin of detraction, but who "from fear or negligence or even a certain shame omits to repel the detractor, indeed sins, but much less than the detractor, and for the most part venially." Thus St. Thomas.[420] But he who for a reasonable cause does not correct the detractor in no way sins. Reasonable causes are, e.g., the uselessness of the correction, uncertainty whether the defamation is truly unjust, the great anger of the detractor, etc. The reason is that fraternal correction, which would have to be employed in this case of detraction, does not oblige with great inconvenience, such as would often occur if the detractor were corrected before others. Yet if it is a question of certain calumny, and not of simple detraction, even a private person is more easily bound under grave sin to resist the calumniator; because there can never be a cause excusing calumny, whereas there is often a sufficient reason for speaking about the true crimes of one's neighbor. He who hears an unnecessary narration concerning the crimes of others should at least show displeasure by his countenance; for "a sad countenance ... dissipates a detracting tongue."[421]

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[416] *De consid.* l. 2, c. 13 (Migne, *Patr. lat.* 182, 757).

[417] Cf. St. Thomas, *S. theol.* 2, 2, q. 73, a. 4.

[418] *Theol. mor.* l. 3, n. 980.

[419] *De iust. et iure* disp. 14, n. 131 sqq.

[420] L.c.

[421] Prov. 25, 23.

196. On the restitution of reputation.

1. **The obligation of the defamer.** An unjust defamer (whether he is a detractor or a calumniator) is held from justice to repair: a) as soon as possible, the injured reputation; b) all material damages which he foresaw, at least in a confused manner, would follow from the defamation.

For the defamer is an unjust damager. But an unjust damager is held to repair all damages culpably caused and foreseen at least in a confused manner, as is clear from what was said above, n. 93. The former obligation, namely, to repair the injured reputation, is a strictly personal obligation, and therefore does not pass to the heirs of the defamer.[422] But the other obligation is rather real and, when the defamer has died, falls upon his heirs, yet not beyond the goods received from the inheritance. Each of these obligations is grave if the defamation itself was gravely culpable; otherwise it is light. It must be recalled, however, that defamation does not become gravely culpable from the nature of the crime revealed or imputed, but from the evil effect ensuing and foreseen. Hence if someone, e.g., by unjustly narrating that a certain man is talkative, thereby brings it about that the office of secretary which was about to be conferred upon him is denied to him, there is a grave obligation of repairing that damage, provided it was foreseen at least in a confused manner.

Since the defamer is an unjust damager, the same principles concerning the obligation of reparation must be applied in defamation as in damaging. From these is resolved the controversy whether the defamer is held to repair the reputation not only among those to whom he himself narrated the hidden vices, but also among others to whom the same vices were afterward narrated by them. The answer is: If the defamer could and ought to have foreseen such spreading, and if reparation is morally possible for him, he is held; otherwise not. Yet there are authors who excuse the first defamer from this obligation, since he is not always the cause, but only the occasion, that his defamation is propagated further.[423]

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[422] S. Alph., ibid. n. 996.

[423] S. Alph., *Theol. mor.* l. 3, n. 991.

197. 2. The manner of repairing the effects of defamation.

Reparation must be made in one way by a calumniator and in another way by a detractor.

The calumniator is held openly and effectively to retract his calumnious lies, "confessing that he spoke falsely,"[424] unless sufficient excusing causes are present, concerning which there will immediately be discussion. - Hence he is held to say that he narrated something false; if he calumniated in public newspapers, he is held also to sing a recantation in the newspapers.

The detractor indeed cannot properly say that he lied, but he can and ought to excuse the crime revealed by all lawful means by which he can; he ought also deliberately to praise and treat honorably before others him from whom he detracted.

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[424] The Angelic Doctor briefly embraces the diverse modes of repairing defamation in *S. theol.* 2, 2, q. 62, a. 2 ad 2, where he seems also to teach that the defamer ought to compensate with money for the injured reputation if another restitution is impossible. St. Alphonsus holds the contrary opinion as the more probable, *Theol. mor.* l. 3, nn. 627 and 1000.

198. 3. Causes excusing from the reparation of reputation:

a) If no grave defamation actually followed from the unjust speech, e.g., because no one believed it.

b) If the defamation has already been given over to oblivion by the lapse of time.[425] It is self-evident.

c) If the defamed person has legitimately remitted the reparation either expressly or tacitly. Compensation can be held as remission, i.e., if the defamed person has also defamed the defamer, and neither wishes to repair the injured reputation. A man placed in public office often cannot remit defamation, and especially calumny, which has gravely injured not only his person but also his state; e.g., a priest, magistrate, etc., cannot gratuitously remit calumnies, because otherwise their state and also the public good would be injured.

d) If reparation is morally or physically impossible, e.g., if the hearers of the detraction are unknown or cannot be approached, if the crime has become public by another way, or if reparation cannot be made without far graver damage to oneself. Certainly the defamer (and especially the calumniator) is held to repair the injured reputation even with great damage; but nevertheless, if that damage far exceeds the harm caused to the defamed person, the latter is judged to renounce his right.[426]

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[425] Cf. Lehmkuhl, *Theol. mor.* I, n. 1438.

[426] Cf. S. Alph., *Theol. mor.* l. 3, n. 1002.

§ 7. On Rash Judgment

199. Notions. With respect to acts of the mind not externally manifested and concerning the evil of one's neighbor, it is useful to distinguish four degrees, which are: doubt, suspicion, rash opinion, and rash judgment.

Rash doubt is the suspension of judgment concerning the evil of another without sufficient reason.

Rash suspicion (*ungerechter Verdacht*) is a certain inclination of judgment concerning the evil of another without sufficient reason.

Rash opinion is a probable and non-firm assent of the mind concerning the evil of another without sufficient motive. - There is not so great a difference between rash opinion and rash suspicion; for suspicion is nothing

other than a weak opinion.[427]

Rash judgment (*ungerechtes, freventliches Urteil*) is the firm assent of the mind concerning the vice of another without sufficient reason.

These four acts of the mind are sinful for this reason, that they proceed not so much from an objective consideration of the matter as rather from an evil will bending the intellect without sufficient objective motives. The Angelic Doctor writes to the point: "Rash suspicion [the same holds for rash judgment] occurs from three things: in one way indeed from this, that someone is evil in himself; and from this very fact, conscious of his own malice, he easily thinks evil of others, according to that saying: *A fool walking in the way, since he himself is foolish, judges all to be fools.*[428] - In another way it arises from this, that someone is badly disposed toward another; for when someone contemns or hates another, or is angry with or envies him, from slight signs he thinks evil things concerning him, because everyone easily believes what he desires. - In a third way it arises from long experience...."[429]

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[427] Cf. Billuart, *De iure et iust.* diss. 7, a. 2.

[428] Eccles. 10, 3.

[429] *S. theol.* 2, 2, q. 60, a. 3.

200. Moral malice. *Rash judgment properly so called is from its genus a mortal sin against justice.*

I say: rash judgment *properly so called*, i.e., insofar as it includes firm assent and is distinguished from rash suspicion and opinion. For theologians dispute greatly whether rash suspicion and opinion also are from their genus mortal sins. Báñez, Sylvius, Medina, and others[430] are cited for the affirmative opinion; Cajetan, Ledesma, Navarrus, Lessius, and others stand for the negative. This controversy is theoretical rather than practical, because in practice it is difficult to distinguish between rash judgment and rash opinion. Billuart treats this controversy excellently, as also the matter of rash judgment in general, thinking that rash suspicion is more probably a mortal sin from its genus.[431] - At least that rash judgment is from its genus a mortal sin is proved from the fact that everyone has a strict right to a good reputation and the esteem of others so long as he is not proved evil. But he who rashly judges concerning a vice of his neighbor acts against that right and unjustly esteems his neighbor lightly. Nor let anyone say that justice, since it concerns exterior things and operations, cannot be injured by a judgment which is an interior act. For justice is truly injured by those interior acts which of themselves are ordered toward just or unjust external things and operations. Thus the will to steal is an act of injustice, but the will to restore is an act of justice.

Bourdaloue[432] demonstrates excellently the unlawfulness of rash judgment, teaching, with the Angelic Doctor preceding him, that three things are required for lawfully rendering a judgment: authority in the judge, accurate knowledge of the case, and perfect freedom from prejudices. But in rash judgment legitimate authority is lacking, since private men are so often deterred in Sacred Scripture from rendering judgment: "Judge not, and you shall not be judged; condemn not, and you shall not be condemned."[433] Accurate knowledge of the matter is lacking; otherwise there would no longer be a rash judgment but a just one. Freedom from prejudices is lacking, since judgments of this kind are accustomed to arise from envy, hatred, etc., as St. Thomas explained above.

All rash judgments are of the same moral species, because they all violate the same right, namely, the right to good esteem. Hence the particular matter of a rash judgment need not be set forth in confession.

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[430] The Angelic Doctor says: "From this very fact that someone has an evil opinion concerning another without sufficient cause, he injures and contemns him" (*S. theol.* 2, 2, q. 60, a. 4). But he who contemns another and injures him commits a sin which is from its genus mortal.

[431] L.c.

[432] *Carême*, "Sermon sur le jugement téméraire." St. Thomas had already taught the same, *S. theol.* 2, 2, q. 60, a. 2.

[433] Luke 6, 37; cf. Matt. 7, 1 sqq.; Rom. 2, 1; Jas. 2, 4.

201. Required conditions. For rash judgment to be a mortal sin in the individual case, three things are required: 1. that it be perfectly deliberate; 2. that it be fully rash; 3. that it concern a grave vice of one's neighbor.

Because the first condition, namely, perfect deliberation, is lacking, he does not sin gravely who is ignorant or does not advert that he is judging from insufficient signs concerning the existence of a grave vice in his neighbor. Hence in persons of timorous conscience, who are not blinded by hatred nor are accustomed to consent firmly to suspicions or judgments of this kind, grave sin occurs most rarely in this matter.

Because the second condition, namely, full rashness, is lacking, those judgments concerning a grave vice of one's neighbor which rest upon true, although insufficient, indications are not mortal sins. For lawfully forming a judgment, however, indications inducing moral, but not absolute, certitude suffice. Since no one is presumed evil, indications ought to be interpreted in the better part, unless all the circumstances compel the contrary. Hence, e.g., if a lascivious young man has been seen speaking or playing secretly with a girl in a somewhat dark place, there is a sufficient indication for judging that some evil lies beneath; on the contrary, if the same young man is seen conversing with a girl in an open place and at midday, there is not yet a sufficient indication for suspecting some evil.

Because the third condition, namely, grave matter, is lacking, all judgments, even rash and deliberate ones, which concern vices not so disgraceful, are not gravely evil. Grave matter in rash judgment, as also in detraction, is only that which, considering the quality of the persons and the fact, is very disgraceful and gravely harmful to the honor, reputation, and good esteem of one's neighbor. Wherefore, e.g., rashly to think that some unruly maidservant is also a liar is not a grave sin; but rashly to judge that some bishop is a liar is a mortal sin.[434]

Note. 1. Although it is not lawful rashly to suspect or judge that one's neighbor is vicious, nevertheless it is not necessary to hold him positively good. Hence it is lawful to judge that he can become evil, and therefore to forestall damage which perhaps could come from others. Therefore it is lawful, e.g., to lock up money, to carry defensive weapons, to bar doors, etc.

2. A rash judgment which is conceived only interiorly and in no way manifested exteriorly is rarely a mortal sin, because the three conditions enumerated above are rarely present. But when a rash judgment is manifested to others, it will more easily be a mortal sin, because then the character of defamation is added.

[434] Cf. Billuart, *De iure et iust.* diss. 7, a. 2.

Chapter IV. On Restitution Or The Reparation Of An Injured Right

We divide this chapter into four articles: 1. on the obligation of restitution in general; 2. on the roots of restitution to be made; 3. on the manner and circumstances of restitution; 4. on causes excusing from

restitution.

Article I. On The Obligation Of Restitution In General

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[1] Fr. J. Loenarts discusses this matter at great length in *Die Restitutionspflicht des Besitzes fremden Gutes* (Trier, 1885).

202. Notion. "To restore seems to be nothing other than to place someone again in the possession or dominion of his own thing."[2] But since certain things taken away can no longer be restored individually or specifically to the legitimate owner, e.g., an eye torn out, a member cut off, restitution hence includes also compensation for damage inflicted, and can be defined: *the return of a thing received or the restoration of damage inflicted.* According to St. Thomas,[3] restitution does not always suppose an unjust taking away of a thing, but can also have place in a contract of loan and deposit; modern theologians, however, are accustomed to take restitution in a stricter sense, namely, for the reparation of damage inflicted.

Restitution differs both from satisfaction and from payment of a debt.

It differs from satisfaction, since satisfaction properly regards the person to whom satisfaction is made; but restitution regards the thing which must be returned, either the same or an equivalent. Then satisfaction regards an injury inflicted or wounded honor, although no other damage was caused; but restitution principally regards material damage inflicted. Hence there can be satisfaction without restitution, e.g., when we make satisfaction to God for sins, or ask pardon from offended parents. Likewise there can be restitution without satisfaction, as in returning a deposit or loan. Both can also be together, as when we return a thing injuriously taken away and at the same time humbly ask pardon.

But payment of a debt requires that the thing which is paid be diverse from the thing for which it is paid, and that it was not yet in the possession of him to whom it is paid. Hence, e.g., he who returns a deposit truly restores, but does not pay; on the contrary, he who gives money for wheat purchased properly pays, but does not restore.[4]

[2] *S. theol.* 2, 2, q. 62, a. 1. If that thing was some personal right, there is the so-called *restitutio in integrum*, concerning which jurists speak; but if it was another thing, there is simple restitution.

[3] Ibid.

[4] Cf. Billuart, *De iure et iust.* diss. 8, a. 1.

203. Principle. *Restitution is the proper act of commutative justice*, or in other words: *the obligation of restitution arises only from a violation of commutative justice, but not of distributive or legal justice.*[5]

The reason is that it belongs to commutative justice alone to establish strict equality of thing to thing (between what was given and what was received, between damage and compensation). But in distributive and legal justice there is only an equality of proportion.[6] Restitution, however, establishes strict equality of thing to thing. Therefore it is the proper act of commutative justice. Distributive or even legal justice is often joined with commutative justice, and then certainly *per accidens* their violation also induces an obligation of restitution; e.g., a superior distributes taxes unjustly, so that on account of unjust favor toward one person another is held to pay more and suffers real damage.[7] - It must be noted that not every violation of commutative justice induces a strict obligation of restitution; e.g., a husband committing adultery violates commutative justice toward his wife, but nevertheless he is not held to restitution unless damage compensable by money has also arisen from the adultery.

[5] Thus the most common opinion, to which Cajetan, Molina, and Vasquez are said to contradict (in Vermeersch, *Quaest. de iust.* n. 156); Cajetan, however, is cited undeservedly. For although in his commentary on 2, 2, q. 63, a. 2 he teaches that an unjust distributor of ecclesiastical benefices is sometimes held to restitution toward him who had a right to the benefice, he constantly asserts that restitution is an act of commutative justice. But all theologians teach with St. Thomas (*S. theol.* 2, 2, q. 62, a. 1 ad 3) that an unjust distributor is sometimes held to restitution, yet not on account of distributive justice alone having been violated, but on account of the conjoined commutative justice having been violated.

[6] *S. theol.* 2, 2, q. 61, a. 2.

[7] Cf. Billuart, l.c.

204. Authors dispute greatly whether restitution, or at least some material compensation, must sometimes be made for merely personal damage, e.g., for defloration, contumely, defamation, mutilation, killing, etc.

It is indeed agreed among all: 1. that material restitution must be made if real damage was joined to personal damage, e.g., that restitution must be made for the expenses which a wounded person has for treatment; 2. that some material reparation is often to be counseled, since in this way the injured man is better satisfied; 3. that material reparation must be made if the judge has imposed it.[8] But apart from these cases, must restitution be made for purely personal damage? Must, e.g., an unjust wounder give material compensation to him whose face he gravely disfigured with indelible scars? For the affirmative opinion St. Alphonsus[9] adduces St. Thomas, Cajetan, and Sylvester Prierias, with whom Dominic Soto,[10] Sylvius,[11] and Billuart[12] agree. Here are the words of St. Thomas:[13] "In those things in which an equivalent cannot be recompensed, it suffices that what is possible be recompensed there, as is clear concerning honors which are toward God and parents. And therefore, when that which has been taken away cannot be restored by something equal, such compensation as is possible ought to be made; for example, when someone has taken a member away from another, he ought to recompense him either in money or in some honor, the condition of each person being considered, according to the judgment of a good man." - For the negative opinion St. Alphonsus cites Báñez, Lessius, Lugo, Laymann, Bonacina, Sanchez, Sporer, etc.; and the holy Doctor himself calls this negative opinion more probable and more common, and adduces this reason: "Because commutative justice obliges one to restore according to the equality of the damage inflicted. But where restitution must be made in a diverse genus, no equality is present, nor will there ever be any compensation of the damage; for by any amount of money whatever the damage will not be repaired at all, either in whole or in part."

As far as could be seen, other authors adduce the same or a similar reason for their negative opinion. But this reason does not seem convincing. For, granted but not conceded that the damager cannot repair personal damage according to equality, is it lawful to deduce logically from this: Therefore he is held to nothing? If someone has unjustly taken away 10,000 francs and is unable to restore the whole according to equality, is he not held at least to restore a notable part, if he can? - Then compensation for personal damage is not always and simply impossible. E.g., a rich hunter with a shotgun wounded a worker assisting in a driven hunt (commonly *Treibjagd*, *chasse à rabatteurs*), who from the injury has a disfigured face but no other material damage. If now the rich hunter spontaneously (or compelled by a judge) gives a sufficiently large sum to the injured worker, cannot there be sufficient compensation for the pains and disfigurement? Since these things are so, the opinion denying the obligation of restitution indeed does not seem sufficiently proved intrinsically, but nevertheless can be applied in practice: 1. since it is externally probable on account of the authority of theologians, and notably of St. Alphonsus, Doctor of the Church; 2. because he who has unjustly suffered personal damage is often judged to remit material reparation.[14] Moreover, material damage is almost always joined to personal damage, and then assuredly there is a strict obligation of restitution.

[8] German Civil Code §§ 253, 847, 1300; Austrian Civil Code §§ 1323-1330; Swiss Code of Obligations a. 47.

[9] *Theol. mor.* l. 3, n. 627.

[10] *De iure et iust.* l. 4, q. 6, a. 3.

[11] *Comm. in S. theol.* 2, 2, q. 62, a. 2.

[12] *De iure et iust.* diss. 10, a. 11, § 1.

[13] *S. theol.* 2, 2, q. 62, a. 2 ad 1.

[14] Billuart treats this question clearly, *De iure et iust.* diss. 10, a. 11, § 1.

205. The necessity of restitution. *The restitution, in reality when possible, otherwise in desire, of a thing unjustly taken away or at least now unjustly possessed, or of damage unjustly inflicted, is necessary for salvation if it concerns a notable thing or damage.*

It is proved 1. from Sacred Scripture. God prescribed restitution: "If anyone damages a field or vineyard, ... he shall restore according to the estimation of the damage."[15] Therefore He says that the wicked man will not die "if ... he does penance for his sin and performs judgment and justice, and that wicked man restores the pledge and returns the robbery";[16] and St. Paul admonishes: "Render therefore to all their dues."[17]

2. from the holy Fathers. Let one, St. Augustine, be heard: "For if another's thing through which the sin was committed is not returned when it can be returned, penance is not performed but feigned; but if it is truly performed, the sin will not be remitted unless what was taken away is restored; but, as I have said, when it can be restored."[18] These words of St. Augustine were inserted into the Decree of Gratian,[19] and Rule of Law 4 in the *Liber Sextus* has: "Sin is not remitted unless what was taken away is restored."

3. from reason. a) To preserve justice is necessary for salvation. But he who does not restore (when he can) what was unjustly taken away, unjustly possessed, and damage unjustly inflicted does not preserve but violates justice, because, namely, he does not preserve equality. Therefore such restitution is necessary for salvation.[20] b) Moreover, not to steal is necessary for salvation; but not to restore a thing taken away is continued theft. For it is the unjust detention of another's thing. Therefore, at least after another's thing has been taken away, it must be restored. c) Finally, natural reason dictates that to each one his own must be rendered. Therefore that which was unjustly taken from one's neighbor must be rendered to him.

But I said: *otherwise in desire*, because, if real restitution is impossible, a firm purpose of restoring as soon as this will be possible is required and suffices. For no one is held to accomplish the impossible. Therefore, when a penitent confesses a grave injury committed, the confessor cannot impart absolution to him unless he promises that restitution will be made as quickly as possible. But if the penitent cannot restore the whole, he ought at least to return the possible part according to that maxim: He who cannot restore as much as he ought is held to restore as much as he can. Hence, e.g., he who took away 1,000 francs by theft and cannot really restore except 100 francs is held under grave sin to make this partial compensation and, moreover, to have a firm purpose of restoring the remaining 900 francs if he can. He who, having made a purpose of making restitution, neglects to execute it, sins. This sin indeed is numerically one, unless, however, the sinner repeatedly elicits the purpose and neglects it. Yet let the confessor not question the penitent too troublesomely concerning a repeated purpose neglected; it suffices if the penitent says for how much time he had the purpose not to restore or culpably neglected restitution.

[15] Ex. 22, 5.

[16] Ezek. 33, 14 sqq.

[17] Rom. 13, 7.

[18] Ep. 153 *ad Maced.* n. 20, formerly ep. 54 (Migne, *Patr. lat.* 33, 662).

[19] c. 1, C. 14, q. 6.

[20] Cf. *S. theol.* 2, 2, q. 62, a. 2.

206. The character of this necessity. a) Theologians dispute whether the precept of restitution is an affirmative or a negative precept.[21]

St. Thomas[22] says: "The precept concerning restitution to be made, although according to its form it is affirmative, nevertheless implies in itself a negative precept by which we are forbidden to retain another's thing." In practice this controversy is of small importance, provided, however, that it is attended to that another's thing must be restored as quickly as this is possible.

b) Theologians likewise dispute whether restitution is necessary for salvation by necessity of means or of precept.

Without any doubt, actual restitution itself is not necessary by necessity of means; for even he who on account of inability cannot restore can be saved. But restitution in desire is necessary by necessity of means, insofar as no one can be saved who does not have a firm purpose of restoring a thing unjustly taken away or damage unjustly caused.

c) The obligation of restitution is grave if it concerns repairing damage absolutely or relatively grave.[23] Otherwise there is only a light obligation. - Moreover, formal injustice or theological fault is required to induce an obligation of restitution from unjust damaging committed. If, however, a sentence of a judge has intervened, juridical fault suffices.[24]

Popular error. Entirely unfounded is the frequent opinion of the common people believing that the souls of the deceased are detained in purgatory for so long as their debts are not paid by their heirs. For the deceased, while he was living, either strove according to his powers to repair injuries done, or did not. If the former, he will be saved; if the latter, either grave fault was present, and then he is punished in Gehenna, or there was only light fault, and then he is punished longer or more briefly in purgatory according to the quantity of that fault, but not on account of the negligence of the heirs.

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[21] Cf. Tanquerey, *Synopsis Theol. mor. de iust.* n. 463.

[22] L.c. a. 8 ad 1.

[23] Cf. above, n. 80.

[24] Cf. above, n. 93 sqq. Concerning the controversy whether light theological fault induces a grave, light, or no obligation of restitution, see n. 96.

Article II. On The Roots Of Restitution To Be Made

207. Preliminary observation. The Angelic Doctor[25] succinctly notes: "Restitution is not principally ordered to this, that he who has more than he ought may cease to have it; but to this, that what is lacking may be supplied to him who has less." In whatever manner, therefore, some thing has been taken away from its legitimate owner (whether by loan, by theft, by damaging, etc.), it ought to be restored to equality. This

restitution indeed is an act of commutative justice. But a thing taken away from its legitimate owner can either be detained by another or be unjustly destroyed. Hence a twofold root from which the obligation of restitution springs is most commonly assigned: *another's thing possessed* and *another's thing destroyed or damaged*.[26] A third root, namely, unjust cooperation, is undeservedly assigned by some authors. For cooperation induces the obligation of restitution not by reason of itself, but by reason of another's thing either possessed or destroyed, and therefore is reduced to one or the other of the roots assigned. We shall treat individually of the two assigned roots of restitution.

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[25] *S. theol.* 2, 2, q. 62, a. 6 ad 1.

[26] Cf. S. Alph., *Theol. mor.* l. 3, n. 548. St. Thomas and the older theologians, taking restitution in a somewhat broader sense, are accustomed to express the two roots of restitution in this way: A man is held to restore either 1. by reason of a thing received, or 2. by reason of the reception of a thing. By reason of a thing received, the possessor in good faith and in bad faith ought to restore another's thing; by reason of the reception of a thing, the obligation of restitution arises: a) from every delict which causes real damage to one's neighbor; b) from certain contracts, e.g., from a loan or deposit (cf. *S. theol.* 2, 2, q. 62, a. 6; Const. Hohenlohe, O.S.B., *Gründe der Schadenersatzpflicht* [1914], p. 170 sqq.; Fr. Schindler, *Quellen des Schadenersatzes*, in *Innsbrucker Zeitschrift für Theol.* 1915, p. 605 sqq.). There will later be a special discussion of the obligation arising from contracts, and therefore we omit it now.

§ 1. On The First Root Of Restitution, Or On The Possession Of Another's Thing

208. Notions. Someone can possess, or rather detain, another's thing in three ways: 1. in good faith; 2. in doubtful faith; 3. in bad faith. According to these modes and diverse conditions, diverse obligations of restitution also arise. - Since another's thing ought to be restored with its fruits, the expenses nevertheless being deducted, certain things must be noted beforehand concerning the diverse fruits and expenses.

Fruits are customarily distinguished as being of four kinds:

1. *Natural fruits*, which are produced by the thing without any or with little human industry, e.g., grass in fields.
2. *Industrial fruits*, which are acquired by human industry alone, although the thing itself is employed as an instrument, e.g., the profit of trading, an artistic work made with another's instrument or from another's material.
3. *Mixed fruits*, which are produced almost equally from the nature of the thing and from human industry; e.g., butter and cheese are such fruits of a cow.
4. *Civil fruits*, which arise from the letting of a thing, e.g., the price for the letting of a house, a beast of burden, hunting rights, etc. They are called civil for this reason, that the civil law regards them as fruits of the thing; but they are reduced to natural, mixed, or industrial fruits according as they proceed rather from the nature of the thing, from human industry, or from both together.

Expenses are distinguished as being of three kinds:

1. *Necessary expenses*, without which the thing either would have perished or would have become worse, e.g., the food of animals and necessary repairs.
2. *Useful expenses*, which indeed are not absolutely necessary, but nevertheless reasonably increase the value of the thing, e.g., the planting of trees.

3. *Voluptuary expenses*, which do not increase the fruits of the thing, but are only an ornament, e.g., fountains in a garden, paintings on walls, etc. Sometimes useful and voluptuary expenses are not so easily distinguished.

1. On The Possessor In Good Faith

209. There are few treatises of moral theology in which there exists so great a diversity and ambiguity of opinions as in this one concerning the rights and obligations of the possessor in good faith. This indeed seems to have arisen from the fact that the statutes of ancient Roman law concerning this matter are not so clear, nor do they agree with modern civil laws. That we may proceed with due clarity in a matter which is of such great importance and occurs so frequently, the following are proposed in order: the notion of a possessor in good faith; principles; rights and obligations; applications of the principles.

Notion. A possessor in good faith is one who invincibly did not know that the thing possessed by him was another's, but now by chance recognizes his error. Therefore, when the possessor in good faith first received the thing, he had a colored title[27] of ownership, e.g., purchase, inheritance, etc. But because of a hidden defect, this title was vicious and therefore did not confer true ownership of the thing, and this is now discovered. Therefore in the possessor in good faith there is no formal injustice, but only material injustice.

[27] Cf. above, n. 61.

210. Principle 1. *A thing cries out to, fructifies for, and perishes for its owner; nor ought anyone to be enriched through another's injury or loss.*

All theologians teach this in agreement with ancient Roman law. Modern laws, however, have introduced certain modifications in this matter, which may also be applied in the forum of conscience, as will be said below.

It is explained: a) *A thing cries out to its owner* (toward its owner). For a thing legitimately belonging to its owner is so connected with him that, if it has been unjustly separated from him, it always strives to return. Therefore the owner can claim his thing wherever at last he finds it, and the possessor is held to return it, unless he proves that he possesses it by a just title, e.g., by prescription, a just sentence of a judge, etc.

b) *A thing fructifies for its owner*, because a fruit is something accessory to the thing. But the accessory follows the principal. Therefore, if the thing belongs to the owner, the fruits of the thing must also belong to him. They ought, however, truly to be fruits of the thing, or natural fruits (mixed, civil), but not rather fruits of the person possessing, or industrial fruits. For these belong to the possessor and not to the owner. Modern laws are accustomed to grant to the possessor in good faith all fruits received, even natural and civil ones. Cf. below, n. 213.

c) *A thing perishes for its owner.* This follows from what has been said; for if the thing belongs to the owner, if it fructifies for the owner, it is equitable that it should also perish for the owner, provided that this loss was caused without injustice. But a possessor in good faith cannot commit injustice properly so called concerning a thing possessed which he invincibly thinks has been committed to his free disposal. Therefore, in whatever manner at last the thing perishes, it perishes for the owner, so that the possessor in good faith has no obligation toward the owner.

d) "Someone ought not to be enriched through another's injury or loss,"[28] because otherwise the thing would not fructify for the owner, but for the other possessing it.

[28] Rule of Law 48 in the *Liber Sextus*.

211. Principle 2. *In doubts concerning the ownership of a thing and its fruits, favor must be shown to the possessor in good faith.*

The reason is threefold. a) The maxim is most true (at least in the matter of justice): "The condition of the possessor is better"; this maxim indeed is notably acknowledged in favor of the possessor in good faith by modern civil laws.

b) The good of the commonwealth demands that possessions be stable and not easily exposed to challenge, and that no one be thrust out of his possession except for a certain and just cause. Therefore favor must be shown to the possessor in good faith.

c) The possessor in good faith received another's thing altogether without any fault. Therefore he merits no harshness or punishment. This indeed would occur if favor were not shown to him in doubts.

212. Principle 3. *The statutes of modern civil laws concerning the possessor in good faith are to be observed rather than the statutes of ancient Roman law.*

The reason is that ancient Roman law indeed merits the greatest veneration, but nevertheless is subject to change and even to abrogation. Modern civil legislators, however, can freely enact statutes concerning the transfer of private ownership, provided that they do not thereby injure natural law itself. But it is not established that the statutes of modern civil laws openly contradict natural law in this matter. Therefore they bind in conscience, and in a case of conflict with Roman law, subjects are held to follow the modern statutes, Roman law being left aside. Wherefore scarcely any theologian - so far as I know - has publicly taught that the statutes of modern laws concerning the possessor in good faith cannot safely be observed in conscience.[29] Certainly these statutes must be rightly understood, and therefore it is especially necessary to perceive whether a true right of ownership is established or only eviction is excluded.

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[29] Cf. Marc, *Instit. mor.* I, n. 937; Ferreres-Gury, *Compend. theol. mor.* I, n. 636.

213. Rights and obligations of the possessor in good faith.

a) The possessor in good faith acquires true ownership of another's thing possessed after legitimate *prescription*.

b) He acquires all the fruits of another's thing received in good faith, at least if he acquired the thing by an onerous title and if positive law so establishes.

c) He is free from every obligation when another's thing possessed by him perishes and he has not been made richer from another's thing.

d) He can demand compensation for all useful and necessary expenses made for the preservation of the thing.

e) As soon as he certainly recognizes the legitimate owner, he is held to return another's thing existing in his possession. If he received the thing by a gratuitous title, he ought to restore it without any compensation; but if he bought the thing, he can sometimes demand from the owner of the thing the price paid before its restoration, according as the civil laws establish.

The individual points are explained. a) The possessor in good faith has all five conditions required for legitimate prescription,[30] provided that he has peacefully possessed the thing for the time determined by law. What that time is, see above, n. 63. Hence if the owner of the thing appears after that time has elapsed, the

possessor is no longer held in conscience to hand over the thing possessed. But when the possessor in good faith certainly discovers before that time that the thing is another's, but that its owner is unknown, he can nevertheless retain the thing. For if, according to an opinion safe in practice, the finder can retain another's thing when the owner does not appear, *a fortiori* this is lawful for the possessor in good faith. E.g., Peter bought a thing in good faith; but after two months he discovers that it had been taken away by theft; the owner of the thing, however, is altogether unknown. Although in this case the title of legitimate prescription is not yet present, nevertheless he can retain the thing and use it until the legitimate owner is known.

b) The possessor in good faith can retain not only industrial fruits, as the older theologians taught according to Roman law, but also all other fruits received during peaceful possession. Thus almost all modern laws, e.g., the French,[31] Italian,[32] Spanish,[33] Austrian,[34] Dutch,[35] and Swiss,[36] contrary to Roman law. German law[37] makes a limitation: if the possessor in good faith acquired the thing by a gratuitous title, he is held to return the fruits; otherwise not. Modern laws greatly favor the public good, since innumerable difficulties and complaints which can continually be raised concerning fruits to be restored are thus avoided. Hence theologians commonly teach that these statutes of modern laws bind in conscience, as was already said above, n. 212.

c) The possessor in good faith is free from obligation when another's thing perishes and he has not been made richer from it. For "a thing perishes for its owner." The reason, however, is that no one is held to restore unless he either possesses another's thing or has culpably damaged it. But the possessor in good faith, invincibly thinking the thing to be his own, could freely dispose of it and committed no formal injury, even if the thing perished through his fault. - But what must be said if the possessor consumed another's thing in good faith, e.g., wore out another's garment by frequent use? The older authors responded by distinguishing: If by such use the possessor in good faith was made richer, because, namely, he thereby spared his own things, he is held to pay the price of the thing; otherwise he is held to nothing. Thus Sporer,[38] Elbel,[39] and, among the moderns, Noldin.[40]

Certain modern civil laws, however, even in this case are accustomed to exempt the possessor from any restitution;[41] nevertheless, in certain cases they do not admit good faith and therefore impose restitution, e.g., when a husband in good faith consumes the goods of his wife, or a tutor the goods of his ward. The confessor also in the tribunal of penance can ordinarily judge according to these civil statutes.

d) As a general principle having few exceptions, it is admitted in modern laws: the possessor in good faith ought to suffer no loss, provided that he is judged to have acted in good faith not only in fact but also juridically. Therefore he can demand not only compensation for all necessary and useful expenses for the preservation of the thing, but also full indemnity when he is held to return another's thing. According to French law,[42] he can demand from the owner the price paid if he bought the thing in a market, at a public sale, or from a merchant selling things of the same species. Similar things are contained in other laws.[43]

e) The legitimate owner can always vindicate his thing wherever at last it has been found. Thus natural law. Nevertheless, for the common good civil laws have brought certain modifications to this law. For not only after legitimate prescription does the owner no longer have any right in the thing, but also in certain other cases. Thus, e.g., German law establishes that a possessor in good faith acquires true proprietorship even in the following things taken by theft: money, bearer securities (*Inhaberpapiere*), and all things bought at public auction;[44] but in other stolen things the possessor does not acquire ownership. Therefore the statutes of the individual civil laws must be examined; these can ordinarily be observed, indeed ought to be observed, also in the forum of conscience, since they are just determinations of natural law made for the good of the

commonwealth. But if the possessor in good faith, according to the law of his country, has not acquired legitimate ownership of another's thing possessed, he is held to return it as quickly as possible, or at least to notify the owner, who can reclaim his thing. This is self-evident, because otherwise he ceases to be a possessor in good faith and becomes one in bad faith; and from delayed restitution he is accustomed to cause unjust damage to the legitimate owner.

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[30] Cf. above, n. 59 sqq.

[31] Article 549: "The mere possessor makes the fruits his own only in the case in which he possesses in good faith."

[32] Article 703: "The possessor in good faith makes the fruits his own, and is not held to restore except those which came to him after the judicial demand."

[33] Article 451: "The possessor in good faith makes his own the fruits received while possession has not been legally interrupted." - Several civil codes of Latin America establish similar things.

[34] § 330: "All fruits arising from the thing belong to the honest possessor as soon as they have been separated from the thing."

[35] Article 604. In four points Dutch law clearly determines the rights of the possessor in good faith. The third point establishes: "That he (the possessor in good faith) enjoys, until judicial recovery, the fruits which the thing yields."

[36] Article 938: "Whoever possesses a thing in good faith does not thereby become liable to compensate the person entitled by using and enjoying it according to his presumed right. What perishes or suffers damage in this connection he need not compensate."

[37] § 988; cf. also § 2020.

[38] *De iust.* tr. 4, c. 2, n. 113.

[39] *De restit.* n. 49.

[40] *De praeceptis* n. 439.

[41] Cf. Swiss Civil Code a. 938.

[42] Article 2280.

[43] Cf. Austrian Civil Code § 367 sqq.; Commercial Code §§ 306-308; and Swiss Civil Code a. 934.

[44] Civil Code § 935. The Swiss Civil Code, aa. 934-935, has similar things.

214. You will ask: Can he who bought a stolen thing in good faith return it to the thief in order to recover his price?

I respond: 1. If the owner appears and demands his thing, the possessor in good faith ought to hand over the thing, unless otherwise established by modern laws. 2. If the owner is indeed known, but is unaware of the thing, the possessor in good faith cannot sell the thing to others in order to recover his price, nor consume it by his own use, because then he uses another's thing in an illicit manner. - But can he hand it over to the thief (with the damage of the legitimate owner foreseen) if he cannot otherwise recover his price?

Theologians depart into two opposed opinions. Cajetan,[45] Concina,[46] Dominic Soto,[47] Billuart,[48] and several others cited by Billuart and by St. Alphonsus,[49] relying upon the principle, "A thing cries out to its owner," teach that the possessor is held to return the thing to the legitimate owner, even if he must thus lose his price. Other theologians, St. Antoninus,[50] Báñez,[51] Lugo, Lessius, Holzmann, and many others cited by St. Alphonsus,[52] assert that the possessor can return the thing to the thief if no other way is available for recovering his price; because this return is nothing other than the rescission of a contract invalid of itself. But this rescission from a reasonable cause is lawful, even if damage to the owner arises therefrom. St. Alphonsus favors this opinion; indeed he teaches that the same is probably lawful even for the possessor in bad faith.

Moreover, in practice it rarely occurs that another way of recovering the price is lacking besides returning the thing to the thief.

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[45] *Comm. in S. theol.* 2, 2, q. 62, a. 6.

[46] *De iure et iust.* diss. 2, c. 7, n. 11.

[47] *De iure et iust.* l. 4, q. 7, a. 2.

[48] *De iure et iust.* diss. 8, a. 10.

[49] *Theol. mor.* l. 3, n. 569.

[50] *S. theol.* P. 2, tit. 1, c. 12, § 16.

[51] *Comm. in S. theol.* 2, 2, q. 62, a. 6, dub. 1, concl. 2 and 4.

[52] L.c.

215. Applications. Almost all occurring cases can be reduced to four classes; namely, the possessor in good faith: 1. both received and handed over another's thing by a gratuitous title; 2. received it by a gratuitous title, but handed it over by an onerous title; 3. both received and handed it over by an onerous title; 4. received it by an onerous title and handed it over by a gratuitous title.

1. He who in good faith received another's thing as a gift or by another gratuitous title and handed it over gratuitously to another is held to nothing. Thus all laws. The reason is that he committed no injury and had no emolument from the substance of the thing. He is also held to nothing on account of fruits of the thing perhaps received, because according to modern laws the possessor in good faith is almost never held to restore fruits received in good faith.[53]

2. He who in good faith received another's thing as a gift or by another gratuitous title and afterward sold it or handed it over by another onerous title to another possessor is held to return to the buyer the price received, whether the owner has evicted his thing[54] or the thing has perished with the buyer. The reason is that here there ought to be applied: a) Rule of Law 48 in the *Liber Sextus*: "Someone ought not to be enriched through another's injury or loss,"[55] and b) the principle: A thing perishes for its owner. Thus the common opinion teaches if eviction has occurred; but outside the case of eviction certain theologians, such as Aertnys[56] and Gury,[57] teach that restitution of the price received must be made to the owner, since he has been unjustly despoiled of his thing. Other theologians, such as Noldin[58] and Bucceroni,[59] think that the price can be retained by the possessor in good faith, because neither the owner nor the buyer has the right of demanding it. In practice the civil laws of each region must be observed.

3. He who in good faith bought another's thing or received it by another onerous title and afterward sold it (although a little more dearly) is of himself held to nothing. For he no longer possesses another's thing, nor did he have notable profit from it. The same is valid *a fortiori* if someone in good faith received another's thing by an onerous title and afterward handed it over by a gratuitous title. - But if the owner has evicted his thing, then sometimes he himself is held to compensate the price paid;[60] but sometimes the last buyer can reclaim the price paid from the prior seller, and so on.

4. Modern civil and commercial laws in certain cases do not admit good faith, or at least do not concern themselves with good or bad faith, but simply determine the restitution or retention of the thing and its fruits. It cannot be said *a priori* that these statutes are unjust. Therefore, when the confessor must judge

in the tribunal of penance concerning some graver case of a possessor in good faith, let him first consult a jurist, and let him not easily impose upon the possessor in good faith an obligation of restoring, or grant freedom from restitution, contrary to the statutes of the civil law in force.

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[53] Cf., however, the exception above in German law.

[54] Eviction = dispossession; vindication = an action for ownership.

[55] Thus also expressly German law, § 816.

[56] *Theol. mor.* l. 3, n. 309.

[57] *Comp. theol. mor.* I, n. 639.

[58] *De praeceptis* n. 439 sqq.

[59] *Inst. theol. mor.* I, n. 1341.

[60] Cf. French law, a. 2280.

2. On The Possessor In Bad Faith

Notion. A possessor in bad faith is one who culpably received or retains a thing which he knows to be another's. Therefore he commits formal injustice and consequently must be treated much more gravely than a possessor in good faith. For he is held to restitution not only on account of another's thing received (as is the possessor in good faith), but also on account of the unjust reception.

216. Principle. *A possessor in bad faith is held to restore insofar as he has damaged; or in other words: The measure of restitution is the quantity of damage inflicted.*

The reason is evident. For restitution ought to repair the strict equality injured. But this equality is not reestablished unless the whole damage unjustly inflicted has been compensated.

217. The obligations of a possessor in bad faith can be considered with respect: a) to the thing itself received; b) to its fruits; c) to cessant gain and emergent damage; d) to expenses.

a) **Obligations by reason of the thing received.** The possessor in bad faith is held to restore the thing itself if it still exists, or to give an equivalent price if the thing has perished. - The reason is that a possessor in bad faith is equated with a thief, and therefore is held to restore the whole damage caused (and foreseen). But this restitution demands that first of all the thing itself still existing be restored. But if this is now impossible, an equivalent price ought to be handed over to the legitimate owner. If the thing taken away has perished, whether with or without the fault of the unjust possessor, nevertheless he is held to restore an equivalent price, even if he has in no way been made richer from the thing. For he is held to render the injured owner unharmed.

There is probably one exception: if the thing would have perished in the same manner and at the same time with the owner; because then the thief inflicted no real damage upon the legitimate owner. If, however, he received fruits from the thing, he is held to compensate them. E.g., a thief took away a sick ox which died after a month. It would have died in the same manner and at the same time even if it had remained with the owner. The thief indeed is held to restore the fruits perhaps received during the month, but not the price of the ox. Or a thief took away precious garments. On the following night the house of the thief and the house of the proprietor were together totally destroyed by a single fire. According to natural law the thief is held to no restitution, because he caused no real damage to the legitimate owner.[61] But if the thing did not perish at the

same time morally, the thief ought to restore it. Several civil laws,[62] however, establish that a thief is never exempted from restitution, in whatever manner at last the thing perished or was lost. These statutes do not seem to be unjust and therefore are valid in conscience at least after the sentence of a judge; but they do not seem to bind the heirs of the thief, because they were enacted rather as a personal punishment than for the reparation of damage caused.

He who saved another's thing from most certain and most evident destruction and consumed it in the very place of danger is held to nothing; for a thing not freed from danger and certain to perish in that very place is of no value to the owner. But if he consumed the thing after transferring it from that destruction to a safe place, then he ought to restore the price of the thing, compensation for the labor necessary to save the thing nevertheless being deducted.

Wherefore, e.g., he who in a burning house drinks a bottle of wine which otherwise would perish is held to nothing; but if he first carried that bottle to a safe place, he can indeed demand compensation for the labor undertaken, but he now has no right in the wine, because he saved the thing not for himself but for the legitimate owner. - There are, however, authors who exempt from restitution in this case.[63]

If during the time in which restitution obliges the value of the thing varies, generally the highest value must be restored, because the thing fructifies for the legitimate owner.[64] Hence if the thing has been made better with the possessor in bad faith, it must be restored to the owner with the increase, the price of labor and industry nevertheless being deducted; e.g., he who took away a calf by theft, which afterward became a cow, ought to restore the cow or its price, the emoluments received being computed, but the expenses made being deducted. But if the price of the thing first increased and afterward decreased, nevertheless the thief is held (at least theoretically speaking) to restore the greater price, because the thief ought to have restored at any moment. - In practice, however, ordinarily nothing is to be urged except the restitution of the thing or of its price according to the value which it had at the time of the theft, because those changes of price are often very uncertain, unless nevertheless there is question of natural increase, as in the example of the calf just adduced.[65]

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[61] Cf. S. Alph., *Theol. mor.* l. 3, n. 620; *Homo apost.* 10, 79; Billuart, *De iure et iust.* diss. 8, a. 11, § 2.

[62] French law a. 1302; Italian law a. 1298; Spanish law a. 457; cf., however, a. 1896.

[63] Cf. Tanquerey, *Synopsis theol. mor. de iust.* n. 507.

[64] Thus also Billuart, l.c. § 3. St. Raymond (*Summa* l. 2, tit. 6, *De furtis*, § 3) says: "When the valuation of a thing is returned, not only must the time in which the thing was taken by stealth and the time in which it perished be considered, but also the whole intermediate time, and the valuation is made according to that time in which the thing was of the greatest value."

[65] Cf. Göpfert, *Moraltheol.* II, 155.

218. b) Obligations by reason of fruits. By natural law the possessor in bad faith is held to restore: a) both natural and civil fruits of the thing which he himself received (even if perhaps the owner would not have received those fruits), and b) those which the owner would have received, even if he himself did not receive them. E.g., a thief who took away money ought, besides the sum taken away, also to pay interest if he himself had monetary emolument from the money taken away, or if the legitimate owner would have received interest from the money. - But if there are petty thefts and neither the legitimate owner nor the thief would have received or did receive any interest, it suffices to return the sum taken away without added interest.[66]

The thief is not held to restore industrial fruits, or those mixed fruits in which personal industry produced more than the thing itself. The reason is that those fruits arise principally from the industry of the person and

only secondarily from the thing taken away. Hence, e.g., he who took away eggs from which he obtained hens is not held to restore the hens or their price, but only the price of the eggs; he who took away money and staked it in a lottery with the greatest profit is not held to restore except the money taken away with due interest.

[66] Cf. Gury, *Comp. theol. mor.* I, n. 649.

219. c) Obligations by reason of emergent damage and cessant gain. "As often as there is question of restitution of cessant gain or emergent damage, the general rule handed down by all is that restitution ought to be made not integrally, but according to the greater or lesser certainty of such gain or of avoiding such damage, namely, according to how much that uncertain hope could be worth, all those things by which the effect could be impeded being considered." Thus Lugo deservedly.[67] But the possessor in bad faith ought to repair only that cessant gain and emergent damage which he foresaw at least confusedly. In this case those things which were said above in n. 93 concerning the unjust damager must be applied.

[67] *De iust.* disp. 18, n. 133.

220. d) Obligation with respect to expenses. The possessor in bad faith can deduct necessary and sometimes also useful expenses which the owner himself would have made to preserve and increase the thing if the thing had not been taken away. Thus the truer and more common opinion, which St. Thomas[68] favors when speaking of fruits unjustly received simoniacally. The reason is that then not only is no injury done to the legitimate owner, but his utility is provided for. But it would be too harsh if the possessor in bad faith were held not only to keep the legitimate owner unharmed, but also to bear the necessary and useful expenses. He cannot, however, deduct merely voluptuary expenses perhaps made, unless nevertheless they are separable from the thing without the thing itself being made worse.

[68] *S. theol.* 2, 2, q. 100, a. 6 ad 3.

3. On The Possessor In Doubtful Faith

Notion. A possessor in doubtful faith is one who, from a grave reason, positively doubts whether the thing which he possesses is his own or another's. Light doubts, therefore, since they are to be spurned, do not render the possessor one in doubtful faith. But a grave doubt concerning the ownership of a thing can either supervene afterward or be present from the beginning of the possession; or in other words: doubtful faith can be either supervening or antecedent.

221. 1. Obligations in the case of supervening doubtful faith.

The possessor, when a serious doubt has arisen, ought diligently to investigate the truth so that he may lay aside the doubt. For otherwise he exposes himself to the danger of retaining another's thing; indeed he also becomes a possessor in bad faith with the same obligations which were indicated in the preceding number. But after diligent inquiry has been made:

a) if it is morally established that the thing is another's, he ought to restore it as quickly as possible, according to what was said above concerning the possessor in good faith;

b) but if the doubt persists, he can retain the thing, because in doubt the condition of the possessor is better;[69]

c) if the owner afterward appears, he ought to restore the thing if it still exists; otherwise he ought to restore that in which he has been made richer, unless nevertheless in the meantime legitimate prescription has

procured true ownership for him. Generally he then has all the rights and all the obligations of a possessor in good faith;

d) if the possessor has a probable opinion in his favor and a more probable opinion against himself, he can still retain the thing for himself. The reason is that no one ought to be thrust from his possession unless it is morally certain that he is not the legitimate possessor. But in the case this moral certitude is not present.

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[69] S. Alph., *Theol. mor.* l. 3, n. 511.

222. 2. Obligations in the case of antecedent doubtful faith.

a) He who, from a doubtful title, despoils a possessor in good faith of his thing sins against justice and is held to restore the thing seized to the former possessor.[70] The reason is that in doubt the condition of the possessor is better.

b) But he who did not despoil the possessor against his will, but received the thing by a title legitimate of itself (purchase, donation, inheritance, etc.) from a possessor of doubtful or suspect faith, is held to make diligent inquiry. But if, after such inquiry has been made, he remains uncertain, he is more probably held to restore in proportion to the doubt, and indeed to the probable owner if he can be found; otherwise he ought to distribute the thing received to the poor or to pious causes. The reason is that he cannot retain the whole, since he began possession with doubtful faith; yet neither ought he to restore the whole, because it is not equitable to oblige him to so great a loss when it is truly doubtful whether the thing possessed is another's. Thus theologians commonly after St. Alphonsus.[71]

The contrary opinion, however, which exempts the possessor even in this case from the obligation of restitution, is defended by Cardinal d'Annibale, and indeed with arguments not to be spurned.[72] Hence, e.g., if someone buys some thing concerning which he greatly doubts whether it can legitimately be sold by the seller, he indeed sins; but if afterward, inquiry having been made, the doubt remains, he ought indeed to be admonished, but not compelled, to restore the whole or a part.

c) He who received a thing or right (e.g., an inheritance) from a possessor in good faith and began to possess with doubt can, while the doubt remains, protect himself by the right of his predecessor; namely, he can possess in good faith and therefore is held to nothing until the contrary is certainly proved.

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[70] Cf. Billuart, *De iure et iust.* diss. 8, a. 9, § 5.

[71] *Theol. mor.* l. 3, n. 625.

[72] *Summula Theol. mor.* II, n. 121.

§ 2. On The Other Root Of Restitution, Or On Unjust Damaging

223. The other root of restitution to be made is unjust damaging perpetrated either by one or by several. Concerning this twofold damaging and concerning damaging in diverse matters, sufficient has been said above. In all matters and cases that one principle must be applied: There is no obligation of restitution on account of damaging caused:

a) unless the damaging action was truly, efficaciously, and formally unjust; or in other words: unless it injured commutative justice by an external act and by an internal act morally culpable; or:

b) unless after the just sentence of a judge or after a valid contract entered into concerning restitution to be made.

A few things remain to be said concerning restitution to be made by unjust cooperators.

The measure and order of restitution among several damagers. When unjust damaging has been perpetrated by several, a difficulty can arise as to the measure and order in which the individual damagers are held to restore. The following things should be noted:

There is a threefold measure of this kind among several damagers: for some are obliged *in solidum* absolutely, others *in solidum* conditionally (or proportionately and *in solidum*), and others simply proportionately. Solidarity, or the obligation of restoring *in solidum*, is generally the burden incumbent upon each of the cooperators of repairing the *solidum*, i.e., the whole damage inflicted. This solidarity is: a) absolute, if someone is held alone to repair the whole damage, without having the right to seek compensation from the other cooperators; e.g., the solidarity of one giving a mandate; b) conditional, if someone is held alone to repair the whole damage inflicted, but only upon the failure of the other cooperators. But if he actually restores the entire damage, he has the right to exact compensation from the other cooperators. Such is sometimes the solidarity of a participant. c) The obligation of restoring simply proportionately is the burden incumbent upon each of repairing only that part of the damage which corresponds to his cooperation; e.g., several thieves divide the spoils taken away.

224. Principle 1. Whoever (with others only assisting) was the principal cause of the whole damage is held to restitution *in solidum* absolutely; or, as St. Thomas says: "He who is principal in the deed is principally held to restore."[73]

The reason is that he was the cause of the whole damage, and the other cooperators were only his instruments. This indeed appears most clearly in one mandating damaging with respect to the mandatary. For it would be exceedingly inequitable if one who mandates damaging to others, after the damaging has been done, exacted from them a part of the restitution to be made. Hence, e.g., one who commands a servant to cause damage to another is held alone to repair the whole damage caused, nor can he exact that the servant restore a part of the damage. But if the one giving the mandate does not restore, the servant, as a true cause (although secondary) of the damaging, is held to repair the damage caused. He who by force, fear, or threats induces another to violate commutative justice is to be equated with one giving a mandate.

[73] *S. theol.* 2, 2, q. 62, a. 7, ad 2.

225. Principle 2. He who together with others concurs efficaciously toward the whole damage is held to restitution *in solidum* conditionally.

He is indeed held *in solidum*, because his action really influenced the whole damage. But he is held only conditionally *in solidum*, because the same damage is also to be ascribed to the other co-causes. Now a cooperator is regarded as an efficacious cause of the whole damage in two cases, namely:

1. when his cooperation was so necessary for inflicting the whole damage that, had he not concurred, the damage would not have been done; e.g., someone cast a vote without which an unjust sentence would have been impossible;
2. when the whole damage caused arose from a common conspiracy; e.g., three men form a conspiracy, i.e., each morally moves the others to kill an enemy, who is in fact killed by one as the executor of that conspiracy.

In practice the uneducated are rarely to be obliged to restore conditionally *in solidum*, as will be said in the following number with St. Alphonsus.

226. Principle 3. He who, without a common conspiracy, together with others is a partial cause of the damage is held to restore proportionately to his influence.

Hence, if several concur in committing a theft, each one is held to restore proportionately to his influence and to the goods taken away.

A partial cause of damage is one which is neither sufficient nor necessary for perpetrating the whole damage, such that even without it the effect would have occurred, although perhaps not so easily. E.g., two thieves wish to enter a certain house by night in order to steal. A third thief joins them, and thus the theft is perpetrated more easily. All three are partial causes, and each one is held to restore only as much as he stole.

The three principles stated can be comprehended briefly thus: When several cooperate toward unjust damage: 1. the principal cause is held *in solidum* absolutely; 2. a secondary cause is held *in solidum* conditionally if it efficaciously caused the whole damage; 3. otherwise a secondary cause is held proportionately to its influence.

You will ask: What is to be done in doubt: a) whether someone was the total cause of the damage; b) whether the others restored their part?

In the first doubt he is held only to a part, because a certain burden, namely, of restoring the whole, cannot be imposed for an uncertain obligation. Except, however, if by his action he knowingly rendered the matter uncertain. E.g., when several men violated a woman by force or fraud, they are held conditionally *in solidum* to repair the material damages caused by those violations.[74]

In the other doubt, some answer that there is no obligation of restoring the whole. Thus Noldin.[75] St. Alphonsus writes to the point:[76] "The Salmanticenses and Roncaglia deny it, saying that each one is held to restore only his part, because it is to be presumed that the other associates have already restored. But this is by no means approved by me. It should nevertheless be noted that, although the uneducated are held *in solidum*, it is rarely expedient to oblige them to the whole, since they will with difficulty persuade themselves that they are held to restore the part taken away by their associates. - Indeed, it can quite well be presumed that the owners themselves, to whom restitution is owed, consent that they restore only the part taken away by them, since otherwise it is greatly to be feared that they would restore nothing if they were obliged to the whole." Therefore, the confessor should then commonly exhort the penitent to restore what he owes, without explaining the precise quantity, leaving that to the dictate of his conscience.

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[74] Thus at least more probably; cf. Lehmkuhl, *Theol. mor.* I, n. 1165. St. Alphonsus seems to favor the contrary opinion, *Theol. mor.* l. 3, nn. 562 and 658.

[75] *De praeceptis* n. 489.

[76] *Theol. mor.* l. 3, n. 579.

227. On the order to be observed among unjust cooperators.

This question is closely connected with the preceding one. For the measure of the restitution to be made and its order are ordinarily proportionate.

Principle. If the cooperators inflicted the damage in the same degree and manner, each ought to restore equally and indiscriminately; but if they exercised influence in a different degree, they are

held in the following order: 1. he who now detains the thing; 2. the one giving the mandate; 3. the executor; 4. the other positive cooperators; 5. the negative cooperators.

Explanation. An equal order is present if each cooperated in the damaging in an equal manner. E.g., five thieves took away the sum of 10,000 francs. Each one is held first and immediately, without regard to the other thieves, to restore 2,000 francs.

But when they exercised influence upon the damage in an unequal degree:

In the first place, he who detains another's thing, whether in good or bad faith, is held to restitution, because the thing cries out to its owner. If the thing no longer exists, he is regarded as the detainer who above the others obtained profit from another's thing.

In the second place, upon the failure of the detainer, the one giving the mandate is held to restitution, because he is the principal author of the damage. A counselor, however, is equated with one giving a mandate: a) if he induced the other into invincible error; b) if the damage which followed from the counsel was useful to the counselor alone and not to the executor.

In the third place, the executor is obliged, because he acts in some way in his own name and, after the one giving the mandate, has a more principal part in the damage than the other cooperators.

In the fourth place, the other positive cooperators are held, namely, the counselor, the consenter, the flatterer, the receiver, and the participant. Among these there is no order, provided, however, that they caused the damage in nearly an equal manner.

In the last place, the negative cooperators ought to restore, namely, the silent one, the one not obstructing, and the one not disclosing, because these ordinarily have less influence upon the damage than all the others.

Corollary. If the principal cause of the damage restores or obtains remission from the legitimate owner, all the secondary causes are then held to nothing. Conversely, if a secondary cause restores or obtains remission of his part, the principal cause is not thereby freed, nor are the other secondary causes. If one of the secondary causes restores his part, the principal cause is held to compensate him; but if he restores the whole, then, upon the failure of the principal cause, the other secondary causes also ought to compensate him according to a proportionate part.

Article III. On The Manner And Circumstances Of Restitution

We shall examine: 1. to whom; 2. at what time; 3. in what place; 4. in what manner restitution is to be made.

§ 1. To Whom Restitution Is To Be Made

228. General principle. Restitution is of itself to be made to him whose strict right was violated, and, when he has died, to his heirs.

This is clear from the notion of commutative justice, whose office is to render to each one what is his, or to restore the equality of thing to thing. In the practical application of this principle, attention must be paid to whether the injured owner is: a) certain and known; b) unknown; c) doubtful.

229. First rule. If the injured owner is certain and known, restitution is ordinarily to be made to him (or to his successor). For the thing cries out to its owner. There are, however, certain exceptions to this rule, or rather limitations introduced by positive law.

Exceptions. 1. If the thing was taken away from a just possessor and not from the proprietor himself, it is to be restored (at least commonly) to the possessor and not to the proprietor. E.g., Peter borrowed a book from Paul; if the book was stolen from Peter, it ought ordinarily to be restored to Peter and not to Paul, because otherwise Peter can suffer damage or inconvenience.

2. If a community or society was injured, restitution is commonly to be made to the administrators of that community. If, however, that community is wholly depraved, such as a Masonic sect or (at least in some regions) a Socialist sect, restitution is not to be made to the society itself or to its administrators, because this would be to give favor to a depraved end, but to the individual members of the society.[77] Since this is often impossible, however, it suffices if the sum to be restored is distributed to the poor. But when the society is not so evil, i.e., if its principal end is not depraved, e.g., certain heretical societies, then restitution is to be made to the society itself, which is not deprived of its right on account of incidental evil ends.

[77] Thus Christians who had stolen things offered to idols were ordered to make restitution to the pagan priests of the temple. S. C. de Prop. Fide, 10 February 1795, and S. Offic., 21 September 1842, ad 4.

230. 3. If damage was caused to the state or city, restitution is to be made to the state or city. This restitution can be made in diverse ways:

a) by paying the sum owed to those who have been unjustly injured in goods of fortune by the civil power and to whom restitution is consequently owed by the state. Hence, since in very many kingdoms the Catholic Church has been unjustly despoiled of her goods, it suffices to distribute the sum owed for the good of the Church. Nevertheless, in this case it is better to distribute the sum not to the Church in general, but to some determinate ecclesiastical institute which has truly suffered unjust damage from such a government and has not yet remitted it. The reason is that, according to the opinion now certain, the dominion of ecclesiastical goods does not belong directly to the whole Church or to the Supreme Pontiff, but to the individual juridical ecclesiastical institutes.

b) Restitution can also be made by destroying stamps by which the price for carrying letters and other things is paid,[78] provided, however, that those stamps belong to the government of the state. Or restitution can be made by destroying public-debt bonds,[79] but not by destroying notes of private banks.[80]

c) Finally, restitution can be made by distributing the sum owed to the poor; for since the obligation of assisting the poor is incumbent upon the state, its burdens are diminished in this manner.

[78] Postage stamps (*Briefmarken*); stamps (*timbres*); stamps.

[79] Commonly, government bonds (*Staatsobligationen*).

[80] Commonly, banknotes of private banks (*Banknoten von Privatbanken*).

231. 4. A special and indeed great difficulty can arise if restitution is to be made to an insurance company. When the insurance belongs to the treasury, restitution is then to be made to the treasury, as is clear from what was said above; but when the insurance is private, as it most often is, then, speaking of itself, restitution is to be made to the administrators of that insurance. Sometimes, however, this is not to be counseled, because many insurance companies have an agreement of reinsurance with other companies,[81] and then it is uncertain who truly suffered the damage. There is also not rarely a danger lest the restitution made be misappropriated by unfaithful administrators. Since, therefore, restitution to the legitimate owner is often morally impossible,

many authors, e.g., Göpfert[82] and Noldin,[83] deservedly teach that in these doubts the sum to be restored can be given to the poor or to pious causes.

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[81] Reinsurance (*Rückversicherung, réassurance*).

[82] *Moraltheol.* II, n. 126.

[83] *De praeceptis* n. 512.

232. 5. If restitution is to be made to someone who was compelled to make a cession of goods,[84] positive law then gravely commands that restitution be made not to the owner, but to the administrator of the goods appointed by public authority; for the owner's creditors have the right to be kept indemnified from all his goods. Nevertheless, if restitution was made not to the administrator but to the owner, provided the latter is an upright man and is in great necessity, it seems to be valid. The reason is that the disposition of positive law cannot in this case invalidate the natural law, which commands restitution to the owner. - Even outside a legal cession of goods, it is sometimes lawful to restore to the creditors and not to the owner, namely, when the latter is not reasonably unwilling that restitution be made in this manner. In practice, however, restitution is ordinarily not to be made to the creditors unless this is permitted by civil law.

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[84] Commonly, bankruptcy proceedings (*Konkurs*), bankruptcy (*Bankrott, faillite*).

233. 6. When the owner has died, restitution is to be made to his heirs; for all the real rights of the deceased pass to the heirs, who are reckoned as though one person with the deceased.[85] Upon the failure of heirs, the sum to be restored is given to the poor or to pious causes or to stipends for Masses to be said for the repose of the deceased. I say: upon the failure of heirs; for when there are legitimate heirs of the deceased, the sum to be restored cannot be distributed as stipends for Masses to be said for the deceased (unless, however, the heirs consent to this).

7. He who gave the thing to be restored to the poor or to pious causes, while the owner or his heirs were known and restitution could be made to them, did not satisfy his obligation, and therefore ought to restore again, because restitution ought altogether to be made to the legitimate owner or his heirs (Sacred Penitentiary, 7 February 1899).[86]

This is so, at least if it is morally possible. But a moral impossibility of restoring to the legitimate owner is regarded as present if he who is obliged to restitution would, by restoring to the legitimate owner, have to undergo damage twice as great. Authors, however, by no means agree in measuring this impossibility. Here are the words of St. Alphonsus:[87]

"If there is hope that the thing or its price may at another time be restored to the owner or his heirs without great damage to the debtor, then Bonacina, Lugo, and Lessius probably say that restitution can be deferred. But if such hope is lacking, so that the owner would be deprived of the thing, then Lessius and Dicastillus, cited by Croix (who does not disapprove it, with Lugo), still probably say that, if the thing is of small importance and the damage to the thief would be twice as great, restitution could then be applied to the poor or to pious works, because in this the owner is presumed to consent. But if the thing were of great importance, ... [several] excuse the thief from restoring immediately to the owner in the case in which the expenses to be made would be equal to the value of the thing. But Tamburini, Sporer, and Croix with Lugo, Vasquez, and Ilsung do not commonly admit this. - Scotus, Gabriel, and Richard, cited by Croix, excuse him, however, if the expenses were greater than the debt. This is also the opinion of the Gloss on the chapter *Cum tu*, *De usuris*,

where it is said that the thief is not held to send the thing to the owner if the expenses of conveyance exceed the value of the thing itself. More probably, however, Sporer, Tamburini, and Molina excuse only in the case in which the expenses would be much greater; indeed, Lugo obliges the thief even if he would suffer damage twice as great. But when the damage would be altogether excessive, it suffices to restore to the poor."

In so great a labyrinth of opinions (all of which do not exceed the limits of probability), let each choose whichever he wishes. In our times, since at least the price of the thing taken away can be sent even to distant regions without great expenses, the case is not so practical. It can happen, however, that the owner has migrated to a distant region and his domicile cannot be learned without great labor and expenses. If in that case the debtor would have to spend a sum greater than the debt itself in order to find the domicile, he can with a safe conscience omit the investigation and distribute the whole debt to the poor.[88]

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[85] St. Thomas, *S. theol.* 2, 2, q. 62, a. 5, ad 3.

[86] *Collect. de Prop. Fide* n. 2038.

[87] *Theol. mor.* l. 3, n. 598.

[88] St. Thomas seems to favor this opinion, IV, dist. 15, q. 1, a. 5, q. 4, ad 5. Cf. also Billuart, *De iust. et iure* diss. 8, a. 16.

234. Second rule. If the injured owner is unknown, the possessor of the thing ought to make diligent inquiry; when this has been carried out without effect, a possessor in good faith can retain the thing, as was already said above in n. 213; but a possessor in bad faith or an unjust damager is held to give the thing to the poor or to pious causes.

That a possessor in good faith can retain the thing when the legitimate owner remains unknown is probably taught, after St. Alphonsus,[89] by nearly all modern authors: Noldin,[90] Tanquerey,[91] Marc,[92] and Göpfert.[93] The reason is that, since a finder can probably retain a thing found if the owner does not appear after diligent inquiry, *a fortiori* this is lawful for a possessor in good faith, since the latter began to possess the thing by a colored title. The older authors, on the contrary, do not admit this.[94] St. Thomas says:[95] "If he to whom restitution ought to be made is altogether unknown, a man ought to restore according as he can, namely, by giving alms for his welfare, whether he is dead or living, diligent inquiry concerning the person to whom restitution is to be made having first been undertaken." These words of the Angelic Doctor, however, are understood by some authors of a possessor in bad faith alone, or as a counsel and not a precept.[96]

A possessor in bad faith or an unjust damager is held, when the owner remains unknown, to distribute the thing to the poor or to pious places. Thus theologians most commonly teach, although they do not agree concerning the foundation and reason of restitution, especially if there is question of restitution to be made by an unjust damager, some deriving this obligation from natural law, others from the law of nations, and others from ecclesiastical law.[97] We think it is derived from both laws: from natural law indeed, because it is repugnant both to the common good and to right reason that a wrongdoer (such as a possessor in bad faith or an unjust damager) should obtain utility from his malice and not be punished; and from ecclesiastical law, which compels the possessor to restore usurious and simoniacal goods.[98] For it must be noted that an unjust possessor or damager has injured not only a private person, but always also human society; and therefore, when he cannot satisfy the private person because the latter is unknown, he ought nevertheless to satisfy human society, either by the relief of the poor or by the assistance of pious causes.

If perhaps the possessor in bad faith or the unjust damager is himself poor, according to the probable opinion of many theologians he can retain the thing, or at least a part of it, for himself as alms, since he is not of a worse condition than other poor persons. Besides, in this case, when the debtor is so poor, he is in a moral

impossibility of restoring and is therefore excused, provided he has the purpose of restoring when sufficient fortune is present.

[89] *L. c.* n. 589.

[90] *De praeceptis* n. 503.

[91] *Synopsis theol. mor. de iust.* n. 555.

[92] *Instit. mor.* I, n. 999.

[93] *Moraltheol.* II, n. 170.

[94] Cf. Billuart, *l. c.* a. 14, § 2.

[95] *S. theol.* 2, 2, q. 62, a. 5, ad 3.

[96] Cf. what was said above in n. 49 concerning the acquisition of a thing found.

[97] Cf. Vermeersch, *Quaest. de iust.* n. 167. Almost Aertnys alone (*Theol. mor.* l. 3, n. 346, q. 4) favors the opinion that from unjust damaging there does not arise in this case an obligation of restoring to the poor.

[98] Cf. c. 5, X 5, 19; c. 16, X 5, 6; Code of Canon Law, canons 729 and 1543. By customary law these laws are extended to all debts arising from a delict.

235. Third rule. If the owner is uncertain or doubtful, inquiry ought first to be made, and indeed with that diligence which is proportionate to the value of the thing. But if the doubt remains, a distinction must be made:

a) If the doubtful owner is among a few[99] (three or four), i.e., if it is doubted which of three or four persons is the true owner, the thing or its price ought to be divided among them in the best manner in which this can be done, nor is it lawful to give the thing to the poor.

b) If the doubtful owner is among many (and the same applies if a few true doubtful owners are among many),[100] restitution is then to be made to the poor.

c) If there are several doubtful owners and they dwell in the same place, then, according to St. Alphonsus,[101] restitution ought altogether to be made to the poor of this injured community, because, since the community of that place was injured, the damage ought also to be repaired to it. In large cities, however, where citizens change their domiciles very easily, it does not seem necessary that restitution be made to the poor of the same city, but it can be made to any poor persons. Hence merchants who inflicted damage upon many buyers now unknown, by adulterating merchandise or diminishing weights and measures, can restore by increasing the weight and measure or diminishing the price of the merchandise, if the same buyers are still accustomed to return to the market; otherwise they are held to restore to the poor. Lehmkuhl deservedly says:[102] "Wherefore I judge that without any scruple restitution can immediately be made to the poor or to public pious and useful ends of the very place where the frauds were committed; and that it can also be made to any poor persons or pious causes, at least without grave sin, or, if a reasonable cause is present, without any sin." The reasons are: a) the continual change of citizens in large cities; b) the sufficiently small probability of restoring in this manner to the true injured owners; c) the arduous difficulty of restoring gradually over an excessively long time a sum perhaps great, which can much more easily be distributed to the poor once or in a few installments.

[99] E.g., someone took away a purse which belonged to one of three persons, and he does not know to which one.

[100] E.g., a certain merchant sold adulterated merchandise to one or a few inhabitants of a certain city.

[101] *Theol. mor.* l. 3, n. 589.

[102] *Cas. consc.* I, n. 746.

236. The question is connected here: To whom ought restitution first to be made, or in what order ought the creditors to be satisfied?

1. If the debtor can satisfy all his creditors, no order need necessarily be observed in restoring.
2. But if all cannot be satisfied, then the positive law in force at the place of restitution concerning the cession of goods (commonly, *Konkursordnung*) is to be observed, at least if the cession of goods has already been juridically declared. Positive law ordinarily distinguishes among privileged,[103] mortgage, and common debts, and determines in what order and proportion each debt is to be paid. All these statutes seem to oblige in conscience. Thus the common opinion of modern theologians.[104] Hence, if someone pays the creditors in another order, with notable damage to the others, he sins gravely and is held to make restitution to the others injured. But before the cession of goods is juridically declared, although it is certainly foreseen, the individual creditors are to be satisfied in the following order:

a) Goods which have not yet passed into the ownership of the debtor are to be returned, e.g., things lent for use and things deposited.

b) Poor creditors are to be satisfied. Thus from charity.

c) Creditors prior in time or first making demand are to be satisfied. Nevertheless, when a just cause exists, debtors unable to satisfy all creditors are not to be disturbed if, after first returning those goods which have not yet passed into their ownership, they do not observe the order indicated here and satisfy one creditor rather than another. Indeed, for a just cause they can warn some creditor to seek payment of the debt.[105] Sometimes, however, positive laws declare invalid payments made a short time before the juridical cession of goods. These laws, being very reasonable and just, seem to oblige in conscience. Hence, if some creditor secretly receives a notable sum contrary to the statutes of those laws from a debtor unable to satisfy all his creditors, he is held to restore the thing received. You may see the diverse opinions of theologians on this question in St. Alphonsus.[106]

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[103] E.g., funeral and medical expenses for the last illness and the wages of servants.

[104] Cf. Göpfert, *Moraltheol.* II, n. 121; Lehmkuhl, *Theol. mor.* I, n. 1219; Noldin, *De praeceptis* n. 519.

[105] Thus also Noldin, *l. c.* n. 507.

[106] *Theol. mor.* l. 3, nn. 691-694.

§ 2. At What Time Restitution Is To Be Made

237. Principle. Restitution owed is to be made as soon as it can be made, morally speaking.[107]

The reason is that it is not lawful to retain another's thing when the owner is reasonably unwilling. But the owner is reasonably unwilling that another possessor retain the thing longer than he can restore it here and now. Hence it is a grave sin, without cause, to defer for a notable time the restitution of grave matter. It is otherwise, however, if the delay is slight. What constitutes a notable time cannot be determined with certainty. If notable damage arises to the legitimate owner from an unjust delay, e.g., risk to the principal or gain or interest ceasing, then it seems to be a grave sin.

But he who for a just cause defers restitution does not indeed sin; he is nevertheless then held to repair all the damage which he foresees the creditor will suffer therefrom. Thus at least if the obligation of restitution arose from a delict.[108]

He who has the will not to restore and does not revoke it commits only one sin, although he adverts to the obligation of restoring more frequently; this sin, however, is aggravated the longer that depraved purpose endures.[109]

Note. The confessor ought to insist that restitution be made as quickly as is morally possible, and especially he should not permit restitution to be deferred until death. Moreover, he should urge that at least partial restitution be made if total restitution is impossible. If the penitent culpably omitted the restitution promised in preceding confessions, he ordinarily cannot be absolved before he has actually restored.

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[107] Cf. St. Thomas, *S. theol.* 2, 2, q. 62, a. 8.

[108] Cf. St. Alphonsus, *l. c.* n. 680.

[109] Cf. above, I, n. 378.

§ 3. In What Place Restitution Is To Be Made

238. 1. A possessor in good faith satisfies the obligation of restoring if, at the place of possession, he delivers the thing possessed by error to the free disposition of the legitimate proprietor.

Therefore, it suffices that he inform the proprietor of the existence of his thing, nor is he held to undertake the expenses or dangers of transmission. The reason is that the possessor in good faith possessed another's thing without fault and is not held to suffer any damage from that inculpable possession.

2. A possessor in bad faith or an unjust damager ought at his own expense to restore the thing in the place where the owner would have had it if it had not been taken away, deducting, however, the expenses which the owner himself would also have made in transporting it.[110]

The reason is that the damager and possessor in bad faith ought to repair the whole damage which the owner suffered. But if the very thing taken away cannot be transmitted without great expenses, it suffices to send the price of the thing.

If the thing to be restored perishes by chance or by the fault of a third party in transmission, before it reaches the owner, the possessor in good faith is held to nothing, because the thing perishes to the owner; but the possessor in bad faith and the unjust damager are not freed from their obligation, but ought again to take care that the legitimate owner is rendered indemnified. Certainly, if the owner himself had designated the manner of transmission, then, in the case of loss, the owner and not the possessor in bad faith would have to suffer the damage.

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[110] Cf. Billuart, *De iure et iust.* diss. 8, a. 16.

239. Scholion. On restitution made through the assistance of a confessor. "Many probably judge that he is immune from a new restitution who delivered the money to be restored to a confessor, with whom it perished by chance or by the fault of a third party; for the confessor can be regarded as a messenger chosen from the presumed consent of the creditor, since restitution often cannot safely be made in another way without danger of infamy, and, besides, the confessor is by office a trustworthy messenger. - Hence, in

practice, he who restores in this manner and thinks he has already satisfied his duty is not to be compelled to a new restitution." Thus Tanquerey.[111] This opinion is also defended by Lessius, Sporer, Tamburini, and more recently Frassinetti, Lehmkuhl,[112] and Noldin.[113] I do not indeed deny the probability of this opinion, but in practice one should nearly always proceed in another manner. In a case in which the good to be restored perished without any fault either of the confessor or of the debtor, the confessor who is able to prove this misfortune should seek remission from the creditor, which in these circumstances will not be obtained with such difficulty.

St. Alphonsus[114] poses the question: If a confessor imposed upon a thief that he distribute the thing taken away among the poor for the soul of the owner, notwithstanding that the owner is certain and known, has the thief satisfied the obligation of restitution? He deservedly answers in the negative, because it can in no way be presumed that the owner wills his thing to be distributed to the poor. Restitution ought therefore to be made again either by the thief or by the confessor who gave so false a counsel. Nevertheless, a subsequent confessor who learned this matter from the thief can leave him in good faith if he fears that grave inconvenience will arise from the admonition.

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[111] *Synopsis Theol. mor. de iust.* n. 559.

[112] *Theol. mor.* I, n. 1225.

[113] *De praeceptis* n. 501. St. Alphonsus treats this question excellently (*Theol. mor.* l. 3, n. 704), calling the opposite opinion common and to be held. But he concludes with these words: "Formerly I judged the first opinion [i.e., that which was expounded above from Tanquerey] truly probable; but after the reasons just adduced were subsequently better weighed, I greatly doubt its probability. - Yet, because Lessius and Sporer with Tamburini do not dare to condemn the first opinion, neither do I dare."

[114] *L. c.*

§ 4. In What Manner Restitution Is To Be Made

240. Principle. Generally it is required and suffices that restitution be made in that manner by which violated justice is repaired to equality.

This is clear from the notion of commutative justice and of restitution.

Corollaries. a) Restitution can be made secretly, without the owner noticing it, e.g., by secretly increasing the weight of merchandise.

b) It can be made under the appearance of a gift. If, however, the creditor, moved by this gift, should repay another gift to the debtor, care must be taken that by subsequent gifts or offerings the equality of violated justice is at length repaired. But when someone, forgetful of the debt, has gratuitously given something to the creditor, he can nevertheless reckon that gift toward satisfying his obligation of justice. Thus the more probable opinion. The reason is that in every liberal prestation each one is presumed to will first and preferably to satisfy obligations of justice. St. Alphonsus seems to favor this opinion, disputing at length about this question, although he calls the opposite opinion more common and very probable.[115] Hence, in practice, restitution is not still to be urged if the entire debt has already been paid to the creditor by gratuitous gifts. Indeed, when the legitimate owner is unknown and restitution is therefore to be made to the poor, a great part of alms made after (but not before) the obligation of restoring was contracted can then be reckoned toward restitution.

How restitution is to be made to the treasury or to juridical societies was already said above in n. 230.

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[115] *L. c.* n. 700, q. 2.

Article IV. On Causes Excusing From Restitution

The following is held as a general principle in this matter: Those causes excuse from making restitution which bring it about that the creditor is no longer reasonably unwilling that the restitution owed to him either be omitted altogether or at least be deferred for a time.

Therefore, causes exempting absolutely from all restitution and causes excusing for a time are distinguished.

§ 1. On Exempting Causes

241. Five exempting causes can be enumerated: remission, compensation, prescription, composition, and extreme necessity.

The express, tacit, or even presumed remission of the creditor exempts from restitution. It is required, however, that express remission be: a) altogether free, i.e., immune from every error, fraud, force, and fear; b) made by him who has the power of remitting according to both natural and positive law. Hence, e.g., remission is invalid if the creditor is deceived concerning the quantity of the debt, thinking it to be much less than it really is; likewise, if the debtor falsely pretends to be miserable and exceedingly poor in order to arouse the creditor's mercy; likewise, if a wife remits restitution to be made from her husband's goods, etc. - Sometimes a confessor can prudently seek express remission from the creditor in the name of the penitent if it is truly exceedingly hard for the penitent to make restitution. Nevertheless, let the confessor be very cautious lest the seal of confession be violated and lest great inconveniences arise for himself from such a request.

Tacit or presumed remission is regarded as present when it can prudently be judged that the creditor, if asked in a fitting manner by the debtor or by the confessor in the name of the debtor, would willingly remit the debt; e.g., in thefts committed by children of a family, at least if the thing taken away no longer exists; for parents ordinarily are not so unwilling on account of the thing itself taken away as on account of the furtive manner of its taking. Likewise, the husband's remission can sometimes be presumed in thefts by the wife, provided they were committed for reasonable expenses. Likewise, in petty thefts committed by servants in food and other things committed to their care. Likewise, in petty thefts (which did not coalesce into grave matter within a short time) committed by workers, e.g., by carrying away small things such as wood, metal, cloth, etc., the owner is not greatly unwilling, because he does not suffer great damage. Therefore, after the deed, remission can be presumed. Nevertheless, workers are to be deterred from thefts of this kind, both because of the bad example with respect to their other companions and because of the danger of gradually arriving at grave matter.

Compensation is the reciprocal extinction of two debts and is had when a creditor has exacted, either from the debtor himself or from that debtor's debtors, those things to which he had a right. E.g., Peter owes Paul 100 francs; Andrew owes Peter 100 francs. Paul, who cannot obtain the sum of 100 francs from Peter, exacts it (with the authority of civil law) from Andrew and obtains it. Both debts are now extinguished. In practice the statutes of civil law concerning this matter are to be observed.

Prescription extinguishes, after the legitimate time, the debt of a possessor in good faith, as was said above in n. 213; but it can never free a possessor in bad faith from the obligation of restitution, because the necessary condition, namely, good faith, is lacking.

242. Composition, which is a remission of debt made by the Supreme Pontiff, can have place only: a) in ecclesiastical goods; and b) in goods which are owed to uncertain owners. Since the Supreme

Pontiff has the high dominion of all ecclesiastical goods, he can for a just cause on account of the common good remit ecclesiastical goods usurped or acquired in another illegitimate manner both to civil governments and to individual persons.

Ecclesiastical goods usurped have many times been remitted to civil governments. Thus, e.g., all ecclesiastical goods occupied up to 15 July 1801 were remitted to the government of France. But the faithful who bought or acquired by another title these goods usurped up to that time, although this acquisition was made after 15 July 1801, can retain them rightfully and peacefully.[116] This is also established from the letters of Pius VII directed to the Bishop of Poitiers in 1822. But ecclesiastical goods usurped in the latest French persecution have not yet been remitted. For Spain remission was made both by the Concordat on 16 March 1851 and by the additional convention on 25 August 1859. - For Belgium remission was made on 16 December 1833 with respect to all goods usurped by the government. - For the Kingdom of Prussia remission was made on 7 February 1894 concerning all goods which were secularized up to the end of the year 1824 and are at present possessed by private persons as their own or will be possessed in the future.[117] - For Italy the faculty of making composition was granted to the bishops if the ecclesiastical goods occupied do not exceed the value of 30,000 francs.[118]

How one is to act with private persons who bought ecclesiastical goods usurped by the civil government or acquired them by another title cannot be determined by one general rule. The statutes enacted for the individual regions are to be consulted. But if some doubt remains, recourse is to be had to the Sacred Penitentiary.

If there is question not of ecclesiastical goods but of goods belonging to an uncertain owner and therefore to be distributed to the poor or to pious causes, theologians commonly teach that the Supreme Pontiff can for a just cause grant composition, because even the support of the poor in some manner belongs to the Church and is subject to the jurisdiction of the Supreme Pontiff, who can dispense in all things which are not directly contrary to natural or divine law. But no one will say that composition, when the legitimate owner cannot be found, is directly contrary to natural or divine law. The Supreme Pontiff ordinarily makes this composition in such a manner that he decrees that some part of the debt is to be applied to pious causes or to the poor, remits the remaining part, and finally from the treasury of the Church supplies the spiritual fruit which would have come to the unknown owner if he had given in alms or to pious causes all those goods taken away from him. To obtain this composition it is ordinarily necessary to have recourse to the Sacred Penitentiary, which grants it provided that: a) the owner is uncertain; b) the case is occult; c) the delinquent is poor. In Spain, Portugal, and other places where the Bull *Cruciada* is still in use, special faculties concerning this matter are had.[119]

But what is to be done if, by an unexpected event, after the debt to be restored has been distributed to the poor or to pious causes, the true owner appears? In that case: a) prescription can be employed, which, especially in movable things, does not require a long time according to modern laws. But if: b) the legally determined time has not yet elapsed, the debtor is nevertheless not held to restore that which he has already given in good faith to the poor or to pious causes,[120] and indeed, according to many theologians, not even that which the Supreme Pontiff remitted.[121]

Extreme or quasi-extreme necessity excuses, and indeed exempts from every obligation of restitution, when no hope appears of removing it. For then restitution is morally impossible. But no one is bound to the impossible.

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[116] Cf. the response of the Sacred Penitentiary, 20 March 1848.

[117] Cf. Vogt, *Kirchenvermögensrecht* § 20.

[118] Cf. Cardinal Gennari, *Consultazioni morali canoniche-liturgiche*, consultation I, pp. 17-54.

[119] *Acta Apostolicae Sedis* VII (1915), pp. 553 and 562.

[120] Cf. Tanquerey, *De iust.* n. 610.

[121] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 592.

§ 2. On Causes Excusing for a Time

243. The causes principally excusing from restitution for a time are temporary inability and cession of goods.

Temporary inability is either physical or moral. The former is present when the debtor has nothing from which he can make restitution; e.g., someone burned another's house and, on account of this crime, is cast into prison for ten years. Since he possesses no goods and cannot acquire new goods during the time of imprisonment, he is in a physical impossibility of making restitution, and consequently is excused, at least for a time.

Moral inability is present when grave damage would arise from restitution for the debtor or even for another person. But this damage which would arise must be much graver than that which arises for the creditor from the omission of restitution. This is evident of itself, because the creditor reasonably demands his goods, which he cannot lack without grave damage. Nevertheless, if the debtor by making restitution would fall into extreme necessity, he is not bound to restitution, even if the creditor, through the omission of restitution, should be in grave necessity.

Corollaries. An inability to make restitution is present:

1. If the debtor, by making restitution, would fall from his justly acquired state, e.g., from the state of a merchant to that of a servant, he can defer restitution; nevertheless, he must labor more diligently and diminish his expenses, so that he may be able to make restitution as soon as possible.
2. If the debtor, by making restitution at once, would suffer notable damage which would probably be avoided through delayed restitution, he is excused for a time; e.g., a merchant bound to restitution is not held now to sell his merchandise at a lower price in order to have money for making restitution, if there is hope that the price of the merchandise will soon be increased. Likewise, a workman is not held to sell the instruments necessary for working in order to pay his debts.
3. If restitution cannot be made without damage in goods of a higher order, e.g., without danger to reputation and honor, as if an adulterous wife cannot repair the damage caused without great infamy to herself. - On this occasion it is asked whether one burdened with debt can enter religion before he has made restitution. The answer is to be given with several distinctions: a) If within a short time he can satisfy the obligation of restitution, he is altogether bound to defer entrance into religion until after restitution has been made. b) If there is no founded hope that restitution can be made within several years, it must be seen whether the creditor is known and whether he knows or probably will come to know the debtor. In this case the debtor cannot enter religion, both because ecclesiastical law[122] gravely prohibits those who are burdened with debt from being received into religion, and because, on account of civil laws, the greatest inconveniences and scandals for religion and for the Catholic Church can easily arise. But if the creditor is unknown and there is no danger that the debtor will afterwards be discovered, then entrance into religion seems lawful.[123] The reason is that otherwise this man would suffer great spiritual damage through omitted entrance into religion, and moreover even after several years he will be incapable of making restitution. But the creditor, as being wholly unknown, suffers no

damage if restitution is omitted. Finally, as is supposed, inconveniences and scandals for religion cannot arise. - But if someone having an obligation of restitution has deceitfully entered and been professed in religion, the profession is indeed valid, but the religious institute is not bound to pay the debts contracted by its subject. The religious, however, is obliged to satisfy the creditors in the best manner he can.

4. If it is foreseen that the owner will abuse the thing to be restored for sin or for the unjust damage of a third party.[124]

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[122] Clement VIII, Constitution *In suprema*, 2 April 1602; and the Code of Canon Law, c. 542, n. 2, establishes: "Those burdened with debt who are not able to pay are illicitly, but validly, admitted to the novitiate."

[123] Cf. *S. theol.* 2, 2, q. 189, a. 6 ad 3.

[124] Ibid., q. 62, a. 5 ad 1.

244. Cession of goods is said to be that act by which a debtor, unable to pay in full, cedes his goods, so that the creditors may receive at least according to some proportion the money owed to them.

1. A twofold cession of goods is distinguished: judicial and extrajudicial. Judicial cession is had when either the debtor himself (judicial cession strictly so called) or one of his creditors (necessary cession) denounces to the judge the debtor's inability to pay. Extrajudicial cession, however, is a cession of goods offered by an insolvent debtor and freely accepted by the creditors. This extrajudicial cession is wont to have place when the debtor, without any fault and from mere misfortune, has been reduced to straits in paying and gives hope that he will pay later; or also in a case in which, through judicial cession, the creditors would suffer even greater damage.
2. Cession, both judicial and extrajudicial, can on the part of the debtor be either culpable or fraudulent, or inculpable.

245. Principle 1. The statutes of civil laws in the judicial cession of goods ordinarily seem to oblige in conscience, so that their violation easily induces an obligation of restitution.

Thus the common opinion. The reason is that those statutes are just determinations of natural law, preserving in the best manner they can the rights of the individual creditors and avoiding excessive harshness toward the debtor. Therefore, it is not lawful for the debtor secretly to withdraw goods, nor to enter contracts, make donations, etc., prohibited by civil law.

246. Principle 2. A debtor ceding his goods can, by both natural and positive law, retain for himself those goods which are altogether necessary for decent and humble support, and indeed also those goods which are necessary means for beginning a new small business. The same holds for the debtor's wife and children.

The reason is that everyone has a right to fitting support, since no one is held to beg.[125]

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[125] Cf. Billuart, *De iure et iust.* diss. 8, a. 20.

247. Principle 3. Every cession of goods of itself does not extinguish the obligation of restitution in conscience, but only suspends it for a time.

The reason is that the creditors consent only under compulsion to receiving merely a part of the goods owed to them. Consequently, if the debtor afterwards is again able to make restitution, he is ordinarily bound to

indemnify all the creditors.[126] I say, however: *he is ordinarily bound*. For if the civil laws of some region not only exclude the creditors' judicial action, but also render the debtor altogether immune from every future obligation of making restitution and paying, the creditors are considered to consent to these laws and to renounce their rights. Crolly contends that the laws of England are of this kind.[127] Civil laws, however, seem truly able to extinguish every obligation of paying debts, since this is sometimes very useful for the employment of diligence in commerce. But all theologians teach that the obligation of restitution always remains when the cession of goods was made fraudulently or with grave fault through negligence in administering the goods.

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[126] Cf. Billuart, *De iure et iust.* diss. 8, a. 20.

[127] *De iure et iust.* III, n. 1232; cf. Stephen, *Commentaries on the Laws of England* II, 183 (ed. 11).

Question IV. On Contracts

248. Preliminary Note. As is evident from what was said above in n. 39, a contract is the principal mode of acquiring dominion and draws its origin from the very nature of human society. For man, as a social animal, cannot acquire happiness without the help of other men. Hence no man can truly say that he is sufficient to himself and needs the aid of no one. But in the state of fallen nature, the precept of charity alone does not suffice for aid always to be granted in necessities; hence another means had to be added, namely contracts, by which the works and things of others yield to our utility under certain conditions. Thus, e.g., a poor man needs food; but since he does not have money, he must enter into a contract of labor in order to acquire money. Having obtained money, he enters into a contract of purchase and sale to procure food. Even the richest man needs a contract of purchase to procure for himself many necessities of life. Therefore the origin of contracts is to be derived from natural law itself, with the division of goods, however, presupposed. For if all goods were altogether common, contracts would now be superfluous, since their principal effect is to transfer dominion of some determinate thing from one man to another. Positive laws have further determined the diverse contracts and their conditions.

The tract on contracts is very long, since there are almost innumerable species of contracts and a very great number of statutes of positive laws which seem to oblige in conscience. But it is neither necessary nor possible for a confessor to know all those statutes enacted for the legitimacy of individual contracts. Therefore, studying brevity, we divide this whole tract into two chapters: 1. on contracts in general; 2. on the principal contracts in particular.

Chapter I. On Contracts in General

We treat: 1. of the notion and division of contracts; 2. of the requisites for a contract; 3. of the effect or obligation of contracts.

Article I. On the Notion and Division of Contracts

249. Notion. A contract is the consent of two or more persons in the same determination, manifested by a sensible sign, giving rise to an obligation in at least one of the contracting parties; or, briefly, according to Roman law: "it is the pact and consent of two or more persons in the same determination."[1]

It is said, 1: *of two or more persons in the same determination*, to signify the subject of the contract, which cannot exist unless at least two persons consent in the same determination, i.e., something known and approved. Therefore acts of the intellect, i.e., the determination, and of the will, i.e., consent, are required for a contract.

It is said, 2: *consent*, because without true internal consent no contract obliging in the internal forum can arise, just as a son does not arise without a father. Consent is both the efficient and formal cause of a contract, as is especially worthy of note for the matrimonial contract.

It is said, 3: *manifested by a sensible sign*, because interior consent does not yet induce an obligation unless it has been manifested to the other contracting party by some sensible sign. Thus, at least, if there is question of a contract between men; for in contracts which are made between God and man, e.g., in a vow, which is a contract of promise, sensible manifestation is not required.

It is said, 4: *giving rise to an obligation in at least one of the contracting parties*. For a contract is: a) a promise given and accepted; but such a promise gives rise to an obligation, at least unilateral (indeed bilateral, if it was mutual or reciprocal); b) it is a private law which one voluntarily imposes upon himself and which is confirmed by both civil and natural law.[2]

There is a twofold source from which the right of contracting flows: 1. from natural law, because human society cannot suitably be preserved unless there is a free faculty of entering contracts; and 2. from human law, which establishes and governs diverse modes of contracting, so that all things may be arranged according to justice and equity.

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[1] L. 1, § 2, D. *de pactis* 2, 14.

[2] Cf. Billuart, *De contract.* diss. 1, a. 1.

250. Divisions. Among the many divisions of contracts, the following seem more necessary for the confessor's use:

1. A *formal or express contract* and a *virtual or tacit contract.*

The former is that which is made by words, writings, and other signs formally manifesting the consent of the contracting party. The latter, however, is that which is had implicitly in the undertaking of some office or function; e.g., a physician exercising his art makes an implicit contract of doing all those things which his profession requires. A tacit contract is wont to be called a *quasi-contract.*

2. A *named contract* and an *unnamed contract.*

A named contract has a special name, such as purchase, lease, etc.; an unnamed contract, however, lacks its own name in law and is fourfold: *I give that you may give; I give that you may do; I do that you may give; I do that you may do*. Note, however, that what is given or returned in an unnamed contract ordinarily cannot be money; otherwise it would be a named contract. Therefore unnamed contracts are rather exchanges; e.g., I give you my book that you may give me your vote. Frequently they also induce an obligation of fittingness rather than of strict justice.

The older authors were accustomed to subdivide the named contract into that which is for the utility of both contracting parties and that which is for the utility of only one. Of the first kind there are nine: purchase, to which sale is opposed; leasing; hiring; census; exchange; emphyteusis; fief; insurance. - Contracts of the

second kind are: loan for consumption, loan for use, precarium, pledge, mortgage, suretyship, deposit. - In our times a loan for consumption and a mortgage now tend to the utility of both contracting parties, since they are not wont to be granted without interest.

3. A *unilateral contract* and a *bilateral or synallagmatic contract.*

The former causes an obligation on the part of only one of the contracting parties, e.g., a contract of gratuitous promise; the latter produces a strict obligation for both contracting parties, e.g., purchase, lease, etc. - A bilateral contract is wont to be subdivided into commutative and aleatory. A commutative contract, which is also wont to be called a contract of certain outcome, is that in which something is to be given or done independently of a fortuitous event, e.g., purchase and sale. An aleatory contract[3] is that in which something is promised or given only under a fortuitous event, e.g., in gaming, a wager, insurance.

4. A *gratuitous contract* and an *onerous contract.*[4]

A gratuitous contract yields to the utility of only one contracting party, e.g., donation; an onerous contract imposes a burden upon both contracting parties, e.g., sale, in which one is bound to deliver the merchandise and the other the price.

5. A *principal contract* and an *accessory contract.*

A principal contract does not depend upon another contract, e.g., a free sale; an accessory or subsidiary contract depends upon another contract and strengthens it, e.g., a mortgage.

6. A *solemn contract* and a *simple contract.*

A solemn contract observes all formalities prescribed by positive law, e.g., a testament made before a notary. The other observes only the conditions of natural law, e.g., an informal testament, but one clearly expressing the will of the testator.

7. A *clothed contract* and a *naked contract.*

A solemn contract is almost the same as a clothed contract, the execution of which is compelled by a civil judge because it was entered according to civil law. A simple contract, however, is the same as a naked contract, which indeed induces a natural obligation but is not recognized by positive law.

8. A *pure (or absolute) contract* and a *conditional contract*, according as no condition or modification, or some condition or modification, is appended to the contract.

9. A *consensual, verbal, literal,* and *real contract.*

This distinction was very celebrated in ancient Roman law and is also found in certain modern codes. A consensual contract is perfected in the manifestation of consent alone, whether this is done according to the formalities prescribed by positive law (a solemn contract) or without them (a simple contract). A verbal contract is the same as a stipulation and requires a determinate form of words. A literal contract requires for validity that it be drawn up in writing. Of this kind is a contract of espousals according to the new law. Finally, a real contract is that which is perfected not by consent alone but by the actual delivery of the thing, such as a loan for consumption, a pledge, or a deposit.

[3] A contract of chance (*Glücksvertrag*).

[4] In German: gratuitous and onerous contracts (*unentgeltliche und entgeltliche Verträge*).

251. Scholion. On the force of civil law in contracts. Since it is of the greatest interest to human society that all contracts be duly entered, the civil laws of all nations have established many things concerning the modes of contracts. Hence there arises the truly momentous question: how far do these statutes of civil law oblige in conscience? It is indeed certain that the power of invalidating, for a reasonable cause, acts of subjects which otherwise would not be invalid by natural law belongs to the civil authority. For a power of this kind is necessary for the effective direction of society. Hence authors also most commonly attribute to the civil ruler the power of establishing diriment impediments in the marriages of the non-baptized.[5] But the invalidation of contracts valid by natural law can be made by civil law in a twofold manner: namely, 1. by directly affecting the acting person; or 2. by more directly affecting the act itself. In the former manner, the will of the agent is rendered ineffective either absolutely[6] or relatively.[7] Thus, e.g., according to German law, one who has been judicially declared such on account of defect of mind,[8] or one who is civilly dead, is absolutely incapable of any contract. According to French law, however, a minor who has not completed sixteen years is absolutely incapable of disposing of his goods by donation or testament.[9] - In the latter manner, numerous civil statutes concerning prescribed formalities directly affect the act of the contract itself, e.g., in the sale of immovable things, in making a testament, etc. But whether these prescribed formalities so affect the act that without them it is invalid even in conscience is an arduous question which cannot be resolved by a general rule and which in individual cases depends upon the mind of the legislator. Moreover, this mind is often doubtful. For since legislators have not only Catholic subjects but also unbelievers who care little about obligations of the internal forum, they generally abstract from obligation in conscience.

Nevertheless, it seems better if even then an obligation in conscience is attributed to civil laws, unless the legislator expressly determines that the act is merely rescindable or merely unrecognized in the public forum. The reason is that the common good cannot be sufficiently consulted, nor the indemnity of the weak provided for, when no obligation in conscience is attributed to laws invalidating a contract except after the sentence of a judge. For then those laws would profit the wicked and harm the good; for the good, who hear the voice of conscience, would not use them against others, while the wicked, who attend only to the external forum, would use them whenever they favored themselves. - Furthermore, from such a divorce between the internal and external forum, occasion would be furnished for many sins and quarrels, because some would claim goods for themselves according to civil law, while others would compensate themselves secretly according to natural law. The so-called informal testament, which according to natural law is valid but according to civil law is invalid,[10] furnishes a classic example of nearly insoluble difficulties. Finally, there is also the fact that not only great doubts but even dire persecutions can arise for the confessor if, in this matter, he denies to civil law every obligation in conscience before the sentence of a judge. Since these things are so, the confessor acts more prudently and more truly if in the matter of contracts he inculcates observance of the civil laws, and all the more so since the Code of Canon Law, c. 1529, expressly decrees: "What civil law establishes in a territory concerning contracts both in general and in particular, whether named or unnamed, and concerning payments, shall be observed in canon law in ecclesiastical matters with the same effects, unless they are contrary to divine law or otherwise provided by canon law."

[5] Below, in the tract on matrimony, III, n. 651.

[6] Legally incapable (*geschäftsunfähig*).

[7] Limited in contractual capacity (*geschäftsbeschränkt*).

[8] German Civil Code § 104.

[9] French Civil Code, art. 903.

[10] Cf. below, n. 277.

Article II. On the Requisites for a Contract

Four things are essentially required: 1. suitable matter; 2. a capable person; 3. legitimate consent; 4. a fitting form.

§ 1. On Suitable Matter

252. 1. Since a contract is a mode of acquiring or transferring dominion, as was said above, whatever falls under dominion can be suitable matter for a contract. But since dominion over some thing or action can be limited, to that extent the faculty of contracting is also limited.[11] The conditions required that some thing or action be suitable matter for a contract are enumerated as follows: the matter or action must be possible, existing, proper to the contracting party, estimable by a price, honorable, and lawful:

a) *possible*, both physically and morally. For no one can oblige himself to the impossible. Hence if the thing is physically impossible, the contract is null (as happens, e.g., if someone sold a determinate horse which suddenly dies from being struck by lightning). But if the thing is morally impossible, i.e., exceedingly difficult, the contract is not valid unless it was expressly stipulated that the thing was to be furnished in any event whatsoever. - If the matter of the contract is divisible and cannot be furnished in its entirety, the obligation of furnishing the possible part remains, unless it is evident from the mind of the contracting parties that they wished to oblige themselves either to the whole or to nothing. One who by his own fault brings it about that the matter of the contract is rendered impossible, e.g., an architect who through culpable carelessness does not finish a building at the appointed time, is bound to repair the damage thence arising for the other contracting party.

b) *existing* in reality or at least in hope. The reason is that a right cannot be transferred in a thing which does not exist and is not hoped ever to exist. In stock-exchange speculations, great injustices are sometimes committed when certain things are sold as existing which nevertheless exist either not at all or only in hope.[12]

c) *proper to the contracting party*. For no one can transfer to another a right which he himself in no way has. Hence a sale which a thief makes of another's thing unjustly taken is invalid. But if someone has a thing of his own in hope, he can sell this hope, unless positive laws invalidate such a contract. - When something is already owed to another from justice, a second contract cannot be made concerning the same thing with the same person. Thus, e.g., a judge cannot enter a contract to receive something for pronouncing a just sentence. For this obligation already exists from the office undertaken; therefore he cannot dispose of it freely; but if he nevertheless disposes of it, he acts concerning a thing which is no longer his. I say, however: *with the same person*, because a second contract can be made with a third person to whom nothing is owed from justice. E.g., someone hired by Peter to carry a message to Rome can exact money from Paul in order to conduct some business of Paul's there, because, even if Peter has paid all the expenses of the journey and the salary owed, Paul nevertheless thereby acquires no right that Peter's agent should transact some business for him. - But if something is owed from charity or from another virtue, a contract made concerning this thing is valid but illicit; e.g., to show the right way to one who is lost is an act of charity, but if someone exacts money for this service (without labor being furnished), he sins against justice.[13]

d) *estimable by a price.* A contract cannot be made concerning a thing which is not estimable by a temporal price. This indeed especially has place in onerous contracts, and: 1. in spiritual things, which cannot be sold for a temporal price (it is lawful, however, to exchange one spiritual thing for another; e.g., to say a rosary for another under an agreement that the other hear Mass); 2. in contracts concerning a base thing; for since a base act cannot be estimated by a price, all contracts concerning an illicit thing are invalid from the beginning.

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[11] Cf. above, n. 15 ff., on the limited dominion of wives, children of a family, etc.

[12] E.g., forward transactions (*Termingeschäfte*).

[13] Cf. Billuart, *De contract.* diss. 1, a. 9.

253. e) honorable and lawful. For no one can oblige himself to anything evil, nor demand that an illicit thing be done. Hence all authors teach that a contract concerning a base thing, before the evil work has been committed, produces no obligation, and therefore neither contracting party is bound to fulfill the stipulated work; indeed, both are bound to withdraw from the contract entered. But a great controversy exists among theologians as to whether, *after* the evil work has been committed, the other contracting party is bound to pay the stipulated price.[14] It is certain that prostitutes can retain, and indeed exact, their shameful gain after fornication has been committed. Thus St. Thomas expressly teaches with the most common opinion,[15] and it is also evident from the response of the Sacred Penitentiary of 22 April 1822.

Question: "A prostitute who obtained a large sum of money by granting the use of her body to various lovers has very recently been converted. Is she bound to restore the entire price of her crimes, or only a part, or to expend it on pious works? And if she is bound to one or the other, is it from strict justice or only from counsel? N.B. This prostitute, if restitution were made, would not be reduced to extreme poverty."

The response was: "The penitent woman is not to be compelled, but is to be exhorted, according to the judgment of a prudent confessor, to expend the price of prostitution upon pious uses."

But for other illicit actions several authors, e.g., Comitolus,[16] Beusch,[17] Collet,[18] Gousset,[19] Carrière,[20] and Tanquerey,[21] deny the validity of a base contract even *after* the evil work has been committed. For, they say, that contract was invalid before fulfillment of the work. Therefore, even with the work completed, it remains invalid, because of Rule of Law 18: "That which from the beginning does not subsist in law is not made firm by the passage of time."

But the more common and far more probable opinion, which St. Thomas[22] and St. Bonaventure, St. Antoninus, St. Alphonsus,[23] and very many ancient and modern authors certainly hold, teaches: "A contract under the condition of a base work, whether repugnant to justice or to another virtue, whether to be punished by the laws or not, once the condition has been fulfilled, obliges by natural law." The reason seems to be that in those illicit acts there is a twofold constituent: the one material, namely the physical act; the other formal, namely the culpability of that act. The second constituent is not estimable by a price and consequently can never be matter for a contract. The first constituent, however, is estimable by a price, and when it has in fact been performed, the other contracting party is bound to pay the promised price.[24] Hence one who promises marriage to a girl under the condition of carnal intercourse is bound, once this base condition has been fulfilled, to marry her. One who promises a sum of money to a malefactor for betraying his country,[25] is bound, once the betrayal has been committed, to pay the promised money. One who, from hatred of religion, promised wages so that servile works might be performed for him on Sunday must give these wages once the servile works have been performed.

Sometimes, however, base contracts of this kind are by positive laws declared absolutely invalid, both before and after the deed, e.g., a simoniacal agreement. Then they certainly do not oblige.[26]

Because the opinion affirming the complete nullity of those contracts is extrinsically probable, and because modern civil laws[27] admit a civil action neither for obtaining nor for restoring a base price, in practice the possessor is to be favored,[28] and consequently, if someone refuses to pay the promised price for a base thing furnished, sacramental absolution cannot be denied to him.[29]

Cases Resolved. 1. A merchant promised the editor of a very celebrated newspaper 1,000 francs if by artful lies he would recommend some business in his newspaper; but afterwards he refuses to pay this promised sum. The condition of the possessor is better in a base contract, and consequently the merchant cannot be strictly obliged, but only admonished, to give the promised money.

2. A young man promised a girl 100 francs if she would permit intercourse. Once this has been done, he refuses to give the 100 francs. He cannot be compelled in the forum of conscience to pay the promised money. The reason is the same: the condition of the possessor is better in a base contract. But if the girl afterwards secretly carried away the promised 100 francs, neither can she be compelled to restitution for the same reason: the condition of the possessor is better in a base contract.[30]

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[14] Ferdinand Maurer, S.J., treats this controversy learnedly and profoundly in *Zeitschrift für katholische Theologie*, vols. 33 and 34 (1909 and 1910).

[15] *S. theol.* 2, 2, q. 32, a. 7; q. 62, a. 5 ad 2. Even Concina himself (*De restit.* diss. 2 in comm., c. 11) concedes this, but falsely thinks that the sole title by which prostitutes can demand and retain the price is civil law, which punishes fornicators as by a fine, so that they pay the price of fornication.

[16] *Respons. mor.* l. 3, q. 5. Concina, l.c., explains well the reasons alleged by him.

[17] *Tract. canonico-legalis de pact. et contract.* c. 4, sect. 3, n. 271ff. (Migne, *Curs. theol.* vol. XVI, col. 427ff.).

[18] *De restit.* c. 3, a. 1, sect. 4.

[19] *Theol. mor.* n. 753.

[20] *De contract.* nn. 331-338.

[21] *De iust.* n. 648.

[22] *S. theol.* 2, 2, q. 87, a. 2 ad 2; *Sent.* 4, dist. 15, q. 2, a. 4, q. 2.

[23] *Theol. mor.* l. 3, n. 712.

[24] The response of the Holy Office of 14 January 1846 (*Collect. de Prop. Fide* n. 1003) is also to be noted: "A certain Bonze, ready to renounce the errors of pagan superstition and give his name to the Holy Catholic Church, asks that he be permitted to retain what he had formerly received in the pagan office which he exercised and what he had acquired in the practice of medicine. - Response: He is not to be disturbed, provided no certain injustice intervened from another source.... Likewise, what the Bonze acquired for himself from pagans in his priestly office, although it flowed from a superstitious source, nevertheless seems to have come to him legitimately, as being proper to the pagan nation and, with its consent, attributed to its priests in place of an honorarium."

[25] Commonly called espionage (*Spionage*).

[26] Cf. below, n. 565; German Civil Code §§ 138 and 817.

[27] German Civil Code § 138; Swiss Code of Obligations, arts. 20 and 66.

[28] Roman law also establishes thus: "If the cause both of the giver and of the receiver is base, the possessor is to be preferred, and therefore recovery ceases, even though payment was made by stipulation." L. 8, D. 12, 5; German Civil Code § 817; Swiss Code of Obligations, art. 66.

[29] Billuart treats this controversy excellently, *De contract.* diss. 1, a. 8.

[30] Cf. Génicot, *Cas. consc.* I, *de contract. in gen.* c. 3.

§ 2. On Persons Capable of Contracting

254. Principle. Every man can contract, provided that: a) he possesses the use of reason; and b) he is not specially prohibited by positive law.

The reason for the first is that no one can impose an obligation upon himself unless he truly knows it. Hence, by natural law itself, the following cannot contract: a) infants who have not yet attained the use of reason. Ordinarily, before the seventh year infants are considered to lack the perfect use of reason. After the first seven years, sufficient use of reason is presumed, and consequently a contract then entered is indeed valid by natural law, but is often declared rescindable by positive law; b) the perpetually insane; c) the drunken, lunatics, etc., during the time in which they lack the use of reason.

The reason for the second is that positive laws (whether civil or ecclesiastical), for the common good, can licitly limit the freedom of contracting. And thus this has been done by all systems of law with respect to minors, wives, interdicted persons, those civilly dead, etc. The statutes of several civil codes were already sufficiently explained above when there was discussion of the subject of dominion.[31] The general rule is: Minors, wives, and all those limited in the faculty of contracting can rescind a contract entered; but those with whom they contracted cannot do the same, or, as Roman law establishes: "Age comes to the aid of minors in losses and does not harm them in things prosperously conducted."[32]

But if it is asked whether these statutes have force also in conscience, so that contracts entered can safely be rescinded if civil law so permits, the general response is affirmative. The reason is that, by a just general statute, civil law can validly and licitly grant, on account of the common good, the rescission of some contract. But if some suffer damage through such a rescission, they must impute this to themselves, because they knew or ought to have known that they could not validly contract with minors, wives, etc.

Minors, wives, and other interdicted persons must, however, repair damages arising from rescission of a contract: 1. if they used fraud, pretending that they were free to contract, for then they are unjust damagers or possessors in bad faith; 2. if they were made richer thereby.

Cases Resolved. The following cases are easily resolved from what has been said:

1. A minor son contracted many debts and squandered the money received. If the civil laws establish that a minor cannot enter any valid contract, neither the parents nor the son himself are bound to pay the debts contracted, provided that: a) the son employed no fraud toward the creditors; b) he was not made richer from the debts contracted.[33]
2. A minor son borrowed 1,000 francs from a very wealthy Jew, promising interest of 50 percent annually, and moreover swearing that he would faithfully execute the contract and would never make use of the benefit of civil law. This contract is not firm, and after a legitimate dispensation from the oath has been obtained, it can be rescinded with the aid of a civil judge.[34]
3. A minor son (without the consent of his father and of civil law) bought something. The contract can be rescinded by the minor, but not by the seller, who can be compelled to return the price received and take back the thing sold. The reason is that one who (even in good faith) contracted with a minor cannot prevent the rescission of such a contract.[35]

4. A wife (without the consent of her husband and of civil law) bought a house. Afterwards she advises her husband to rescind the purchase, even though the seller suffers damage thereby. The wife can use the benefit of civil law and does not injure justice by the rescission of the contract,[36] unless she was made richer by the contract itself.

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[31] Cf. nn. 18ff. and 29ff.

[32] Cf. § 9, *Inst.* 3, 19; L. 44, *Dig.* 4, 4.

[33] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 757. Cf. also German Civil Code §§ 107-113; Austrian Civil Code § 865; Italian Civil Code art. 1303; Swiss Civil Code art. 17ff.

[34] Cf. Génicot, l.c., tr. 9, c. 5; Billuart, l.c., a. 5.

[35] Cf. Noldin, *De praeceptis* n. 529.

[36] Cf. Lehmkuhl, *Cas. consc.* I, n. 296ff.

§ 3. On Legitimate Consent

The consent of the contracting parties is truly the soul of the contract, because when legitimate consent is lacking, the contract is dead.

We shall treat the qualities and defects of consent.

255. A. Qualities of consent. Consent must be: 1. true or internal; 2. free and deliberate; 3. externally manifested; 4. mutual.

1. *True or internal*, not merely external or feigned. Hence consent in external words alone does not suffice for the validity of a contract in the forum of conscience. Thus the common opinion against a few older authors.[37]

The reason is that a contract gives rise to a truly human obligation, i.e., one morally affecting not only the body but also the soul. I say, however: *in the forum of conscience*, because in the external forum (especially the civil forum), where interior things are judged by exterior things, a contract entered even with feigned consent is regarded as valid. Therefore, one who feigns consent, i.e., without the intention of contracting, is not bound in conscience by reason of the contract, since it is null; nevertheless, he is bound to indemnify the other who suffered damage from this deception. Indeed, if no other means of repairing the damage is available, the one feigning consent is bound to furnish true and valid consent. This can especially happen in matrimonial consent feignedly furnished. - But what is to be said if a contracting party indeed had the will to contract but by no means wished to oblige himself? St. Alphonsus thinks more probable the opinion which affirms that even in this case the contract is invalid, because that will existing from the beginning is contrary to the substance of the contract and consequently invalidates it.[38] But if someone has the will indeed to oblige himself, but not to stand by the promise, then the contract is valid, because the will to oblige oneself suffices for the essence of a contract. It is evident, however, that a contracting party of this kind sins on account of the deception caused to the other contracting party.

2. *Free and deliberate*, i.e., furnished with that advertence and freedom which are required for a perfectly human act.

Complete freedom from every fear is not always required for the validity of a contract, as will be evident below. Since a contract is a human act inducing a moral obligation, it is manifestly evident that it requires sufficient deliberation. Hence the insane, infants, etc., lacking sufficient deliberation, cannot enter a contract.

3. *Externally manifested*, so that it can be clearly perceived by the other.

For since contracts are entered between men who do not know the secrets of hearts, merely internal consent does not suffice for a valid contract. Hence consent offered to another does not perfect the contract at the time when the latter consents, but when the offerer clearly perceives and accepts the other's consent. The manner in which consent must be manifested is wont to be determined by positive laws: whether by orally pronounced words, or in writing, or before witnesses, etc.

Silence is generally not held for consent unless this is evident from the circumstances. But this is presumed to be evident: a) if the contract is favorable to the one remaining silent, as in a donation; b) if the contracting party could very easily contradict it and does not do so. - Nevertheless, even in these cases silence furnishes nothing except a presumption, which must sometimes yield to the opposite truth. Hence, e.g., if publishers of newspapers or books send their works and declare that those who do not return them are considered subscribers, silence can by no means be held as consent, at least where civil law establishes nothing concerning this matter. But a civil law establishing the contrary seems burdensome and ought to be abolished.

4. *Mutual*, i.e., furnished by both contracting parties concerning the same object.

This holds even in gratuitous contracts. For although someone can by his own will alone cast off dominion over some thing, he nevertheless cannot bring that same thing under the dominion of another unless the latter consents. But it is not required that the consent of both contracting parties be elicited at the same time; it suffices that the internal and manifested consent of one virtually persevere when the other elicits and first manifests his consent. One who offers a contract can also determine the time within which his consent virtually endures and the other must furnish consent. If the other has consented within this time and has expressed this, the contract is valid; but once this time has elapsed, new consent of both is required. As is evident, many disputes can easily arise from this source; hence positive laws are wont to establish when a contract is perfected, especially if it was offered between absent persons by letters or by procurators. These statutes indeed are to be observed even in conscience. Hence the commercial codes of the various regions are to be consulted.

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[37] Cf. Billuart, *De contract.* diss. 2, a. 2.

[38] *Theol. mor.* l. 3, n. 710.

256. B. Defects of consent are said to be those impediments which either remove or diminish the consent of the contracting parties and consequently either invalidate the contract itself or render it rescindable. They are commonly enumerated as: a) error and fraud, by which the intellect is deceived; b) force and fear, by which the freedom of the will is injured. We shall speak of error together with fraud, and of force together with fear.

257. a) On error and fraud. Error is a judgment discordant with objective truth. Error which has place in contracts can be either substantial or accidental, according as it concerns either the very substance of the contract or only its accessories. Moreover, the substance of the contract is that which the contracting party intends primarily or at least as a condition without which not. It can be either the substance itself or a quality

of the thing or both together; e.g., substantial error is present if someone wishes to buy wine from grapes and wine from apples is sold to him. - On the contrary, an error is regarded as accidental when it concerns qualities which do not redound to the substance and consequently are not primarily willed; e.g., if someone thinks he is buying pure milk, but in fact receives milk to which a very small part of water has been added. In practice it is not always easy to distinguish between accidental and substantial error. Therefore attention must be paid both to the intention of the contracting parties and to the individual species of contracts.

When the error of one contracting party is caused by the frauds or fallacies of the other or of a third person, there is malicious fraud (*arglistige Täuschung*). Therefore fraud is often the cause of error, although error can be present without fraud. When fraud is on the part of one and error on the part of the other contracting party, the following principles hold *a fortiori*, although they are also verified concerning error alone without malicious fraud.

Principle 1. Substantial error renders a contract invalid.

Thus all systems of law establish.[39] The reason is that one who errs concerning the very substance does not give true consent. But without true consent no contract exists. Hence, e.g., if someone wishes to buy wine from grapes and receives wine from apples, the contract is invalid; or if someone wishes to buy a painting of Raphael and receives a painting of another painter, the purchase is invalid. - In the external forum, substantial error must be strictly proved before the contract is invalidated.

Principle 2. Accidental error does not of itself render a contract invalid; nevertheless, it often renders it rescindable.

The reason for the first part is that consent to the substance suffices for the validity of a contract. But accidental error does not necessarily destroy this consent to the substance.[40] - The reason for the second part is that it greatly concerns the common good that contracts be free in every respect. But even accidental error in some manner renders a contract not free. Hence in several cases positive laws permit rescission of a contract when it can be proved that accidental error or fraud intervened. - By natural law, however, there is considered rescindable on account of accidental error: 1. a gratuitous contract which was made for the utility of one who caused the accidental error. E.g., a donation made to a poor man who pretends to be upright but in fact is wicked is indeed valid, but can be invalidated by the donor. 2. An onerous contract which was caused by the fraud of the other contracting party, or when enormous injury was deceitfully caused to one of the contracting parties, e.g., by a truly excessive price or by corrupted or damaged merchandise. In practice the statutes of positive law are to be followed, since many cases are insoluble from natural law alone.[41] Concerning error in a contract of espousals and matrimony, cf. below in the tract on matrimony.

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[39] Cf. Code of Canon Law, c. 104; German Civil Code § 119; French Civil Code art. 1109ff.; Swiss Code of Obligations, art. 23ff.

[40] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 715.

[41] Cf. Billuart, *De contract.* diss. 1, a. 3; German Civil Code § 123; Swiss Code of Obligations, art. 28. Ecclesiastical law establishes that one who, from error in a contract, has suffered grave injury, i.e., beyond one half, can seek rescission of the contract within two years. Code of Canon Law, c. 1684, § 2.

258. b) On force and fear. Force or violence proceeds absolutely from an extrinsic principle, so that the one suffering force wholly resists but is overcome by the greater power of the one inflicting force. Since force or violence entirely removes voluntariness, as is evident from what was said above, I, n. 65, concerning human acts, it also removes consent and consequently invalidates every contract.[42] Sometimes, however, force or violence is not so absolute that the one suffering force cannot resist in any way, and then the same is to be

said of it as holds concerning fear. Since enough has already been said above, I, n. 67ff., concerning the notion and division of fear, the following propositions are briefly set down here in the matter of contracts:

1. Fear so grave that it disturbs the use of reason invalidates every contract.

This is evident of itself, because it totally removes consent.

2. Grave fear inflicted by a natural cause, or even justly inflicted by a free cause, neither invalidates nor renders a contract rescindable.

The reason is that such fear neither removes consent nor inflicts any injury upon the contracting party. Hence, e.g., one who, from grave fear lest he be defamed, marries a girl deflowered by him validly effects the matrimonial contract; or one who enters religion on account of grave fear of hell emits a valid religious profession.

3. Slight fear unjustly inflicted by a free cause is not regarded in the external forum, but in the internal forum: a) more probably invalidates gratuitous contracts (because the greatest freedom is required for them); and b) probably renders onerous contracts rescindable.

For the rest, authors are by no means in agreement in this matter.[43] In practice attention must be paid to the matters concerning which the contract was entered. Thus, e.g., espousals entered on account of slight fear can more probably be rescinded.[44]

4. Grave fear unjustly inflicted by a free cause *in order to extort consent* ordinarily does not indeed invalidate a contract, but renders it rescindable.[45]

I say: *ordinarily does not invalidate*, because there are several cases in which contracts of this kind are invalid by positive law, as was said above, I, n. 71. The far more common and more probable opinion teaches that contracts entered from such fear are not invalid by natural law itself. The reason is that this fear removes neither voluntariness nor consent, and consequently the essence of the contract remains intact. Certainly, if a contracting party under the influence of grave fear unjustly inflicted furnishes external consent only, but internally dissents, then the contract is invalid. - Billuart[46] thinks that, by natural law itself, a contract is invalid whose object is liberation alone from grave and unjust harassment. For this liberation, or cessation from such unjust harassment, is not salable, because it is already owed from justice itself. For everyone has a strict right not to be harassed by unjust fear, and the one harassing is bound from justice to cease from harassment. Therefore, just as a judge cannot validly contract concerning the pronouncement of a just sentence, to which he is already bound by force of his office, so such an unjust harasser cannot validly contract concerning cessation from that harassment. This opinion indeed seems to be subtle rather than true. For in every contract entered on account of unjust fear, the contracting party intends to free himself from unjust harassment. Therefore it would have to be said that all such contracts are invalid, which nevertheless Billuart himself does not admit. - Some theologians teach that all gratuitous contracts entered from grave fear unjustly inflicted are altogether invalid.[47]

Authors teach most commonly that contracts entered from grave fear can be rescinded. The reason is that "things which are done by fear and force ought by law to be called into nullity."[48] For one who has suffered grave fear unjustly can petition a competent judge[49] that the injury inflicted upon him be repaired; but this cannot be done sufficiently unless he is held harmless, or unless the contract entered is rescinded. Whether

this rescission can be made even by one's own authority is disputed. St. Alphonsus[49a] calls the affirmative opinion more common and to be held, but the negative opinion is more conformable to the Code of Canon Law, c. 103, § 2, and also safer for avoiding illusions. The permission of the confessor suffices, however, for the internal forum.

For the rest, the whole controversy concerning contracts entered under grave fear unjustly inflicted is not of such great moment for practice; for whether these contracts are called invalid or rescindable, their effect can always be forestalled by rescission. Nor is there any further difficulty concerning a contract of espousals, of which there will be discussion elsewhere.[50]

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[42] Code of Canon Law, c. 103, § 1.

[43] Cf. St. Alphonsus, l.c., n. 718.

[44] Ibid., l. 6, n. 844.

[45] Code of Canon Law, c. 103, § 2.

[46] L.c., a. 4.

[47] Cf. Marc, *Instit. mor.* I, n. 1051, and Tanquerey, *De iust.* n. 636.

[48] c. 2, X 1, 40; Code of Canon Law, cc. 103 and 1684.

[49] Cf. Code of Canon Law, l.c., and c. 1688, § 2. Civil codes are wont to determine one year for this action.

[49a] *Theol. mor.* l. 3, n. 712.

[50] Cf. below, III, n. 719.

§ 4. On the External Form of Contracts

259. By natural law it suffices that contracts be effected by the legitimate and clearly manifested consent of the contracting parties. But by positive laws (whether ecclesiastical or civil), some determinate form or solemnity is often established under pain of nullity. But are contracts entered without that form which is held essential in the external forum valid? If the essential form required by ecclesiastical law is lacking, then the contract is null even in the forum of conscience. Hence, e.g., espousals, matrimony, alienation of ecclesiastical goods, etc., made without the essential form established by the Church are invalid. But if there is question of an essential form required by civil laws, then there is a threefold opinion: the first affirms validity; the second denies it; the third says that the matter is doubtful, since so many authors of great name dispute on either side, and therefore that the possessor is to be preferred until he is condemned to restitution by decree of a judge. Certainly this third opinion is to be followed in practice;[51] but the second opinion, denying validity when the essentially prescribed form is lacking, seems to us more true. For if ecclesiastical law can declare certain contracts null unless they were entered under a determinate form (e.g., espousals, religious profession), there is no reason why the same right should not be granted to civil law in purely material contracts. Hence authors most commonly grant such an invalidating faculty to the civil power.

The only doubt remaining is whether the civil power truly intended to annul contracts without the prescribed form. But this is a mere question of fact. When civil law simply and without any restriction declares those contracts null, the words of the law are to be taken as they sound, and the contracts are to be held as null. Thus also Lugo.[52]

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[51] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 711.

[52] *De iust. et iure* disp. 22, n. 252.

Article III. On the Effect or Obligation of Contracts

260. The obligation of a contract is the bond by which someone, by force of a contract, is bound to give, do, or omit something. A threefold obligation is distinguished: *natural*, which binds from the very nature of the contract, but only in conscience; *civil*, which arises from civil law and gives rise to an action in a civil court, but does not oblige in conscience; *mixed*, which has force both in the forum of conscience and in the civil forum.

1. Every valid contract gives rise to a true obligation in the forum of conscience. The reason is that the intention of truly obliging oneself is of the essence of a contract, which on this account is held as a private law with respect to the contracting parties. The gravity of this obligation is of itself to be measured from the gravity of the matter; therefore the obligation is grave in grave matter, light in light matter.
2. In a qualified contract, the obligation is to be determined from the nature of the clause added. The principal clauses which are wont to be added are the following: under a condition, under a mode, under a day, under a demonstration. - A few things are to be said concerning each.

261. A contract under a condition. A condition added to a contract can be either of the present, or of the past, or of the future. If it is of the past or of the present, then, when the condition is verified, the obligation of the contract begins at once; otherwise, it does not. But a condition of the future is twofold: the one *suspensive*, when the obligation is suspended until the condition is fulfilled; e.g., I shall give you ten francs if you procure that book for me; the other *resolutory*, when the obligation of the contract already existing is afterwards revoked upon the fulfillment or non-fulfillment of the condition; e.g., I sell you this book unless it displeases you within a week, or in other words: within a week you can dissolve this contract entered.[53]

The effects of a suspensive condition are the following: before the event, the obligation of the contract is suspended, but it obliges one to await the event and not impede it; after the event of the condition, the obligation of the contract arises at once without new consent, and the obligation is then ordinarily considered to have existed from the day the contract was entered; but if the condition fails, no obligation arises, nor is it ever considered to have been present.[54]

The effects of a resolutory condition are the following: before the event and if the condition fails, the contract is valid; but when the condition is fulfilled, the contract is immediately dissolved without any sentence of a judge.

If a condition concerning a base thing is added to a contract, i.e., concerning doing something evil or omitting something good, then such a contract, as concerning a morally impossible thing, is null by natural law; nevertheless, in the external forum these conditions are sometimes held as not added, or rather are presumed as modes and not as true conditions. Ecclesiastical law establishes this for the matrimonial contract and for espousals,[55] and Roman law establishes the same for testaments.[56] Hence, e.g., when an uncle in a testament bequeaths 1,000 francs to his nephew under the condition that he become a Calvinist, or that he not become a religious notwithstanding a divine vocation, this condition, as being base, is held as not added, and consequently the nephew can retain the 1,000 francs although he does not fulfill the condition. But several modern civil laws do not recognize this statute of Roman law. In practice it is necessary first of all to

investigate the true intention of the contracting party or testator. If it is not altogether certain that he *primarily* intended the base condition, the contract or testament can be ratified even if the base condition will not be verified. For then it is not a contract under a condition, but under a mode, concerning which something will be said immediately.

[53] Cf. Noldin, *De praeceptis* n. 541.

[54] Cf. Billuart, *De contract.* diss. 1, a. 7, § 1; German Civil Code § 158ff.; Swiss Code of Obligations, art. 151ff.

[55] Cf. below, III, n. 664.

[56] L. 9, D. 28, 7.

262. A contract under a mode,[57] or a modal contract, is that in which the end or use of the matter concerning which the contract is made is stipulated, or in which a special burden is imposed upon one contracting party. This mode is wont to be expressed by the particles: *that, for, under this law, for the purpose of*, etc. E.g., I give you 100 francs that you may enter a monastery; I give you 100 francs for buying books; I lend you this garment under this law, that you may use it on such a day, etc. - A contract under a condition differs from a contract under a mode in this, that the condition suspends the obligation of the contract until the condition is fulfilled, but the mode does not suspend the effect of the contract and imposes only the obligation of observing the mode. For a mode is nothing other than a burden added to an absolute and substantially complete contract, to which it stands as the accessory to the principal.[58] Therefore, a mode is never the primary motive of the contracting party. Consequently, a properly modal contract is not revoked if the mode is not observed. In practice, however, a modal contract is often distinguished from a conditional contract only with difficulty. If the mode imposed was held by either contracting party as the principal motive or at least as a condition without which not, the contract is to be considered conditional and not modal; but if the mode imposed was a secondary motive, the contract is held as modal.

[57] In German: contracts with an imposed charge (*Verträge mit Auflage*).

[58] Billuart, l.c., § 2.

263. A contract under a day or to a day[59] is that whose execution is delayed to a determinate day; e.g., I give 100 francs to a monastery when my father dies. A contract under a day immediately gives rise to an obligation, but not for immediate execution. Therefore, if the one promising dies before the day for executing the contract, the heirs must execute the promise made. But if the promise was made *for an uncertain day*, i.e., one not certainly future - e.g., I shall give you 100 francs on the day on which my daughter enters a monastery - such a contract is not under a day but under a condition, and consequently does not oblige immediately. Hence if I die before my daughter's entrance into a monastery, my heirs are not bound to pay the 100 francs promised. For the rest, in practice the intention of the one promising must first of all be attended to.

[59] In German: with a determination of time or a time limit (*mit Zeitbestimmung oder Befristung*).

264. A contract under a demonstration is called that in which the matter of the contract is designated not accurately but rather in a broad manner. For the quantity of the thing can be designated either *demonstratively*, if the thing itself is first expressed and then the quantity of the thing only secondarily; or *taxatively*, if first the quantity and then the thing is expressed. E.g.: I give you such a chest, which contains 100 francs. This is a demonstrative designation. I give you 100 francs, which are contained in that chest. This is a taxative designation. Now if an error occurs in designating the quantity, a contract entered under a demonstration is valid, but not one effected under a taxation. Thus the common opinion. E.g., if an uncle says

to his niece: I give you this chest, which contains 100 francs, the niece can retain the chest with the money even if perhaps 200 francs are enclosed. On the contrary, if the uncle had said: I give you 100 francs, which are enclosed in this chest, the niece could not retain the 200 francs which were in fact found in the chest. For the rest, in practice all things depend upon the intention of the contracting party, and the principles set forth above concerning error occurring in a contract are to be applied.

265. On an oath which is joined to a contract.

Sometimes a promissory oath is added to a contract, by which the contracting party, under invocation of the divine name, obliges himself to fulfill the contract; e.g., a young man promises marriage to a girl and swears that he will keep the promise made. Very rarely is an assertory oath added to a contract.[60] Concerning the efficacy of this promissory oath added to a contract, the following holds:

Principle: All contracts are not changed in their character as contracts by an added oath.

I say, however: *in their character as contracts*, for in a valid sworn contract there is a twofold obligation: the one of justice by force of the contract, the violation of which induces an obligation of repairing the damage inflicted; the other of religion by force of the oath, the violation of which is indeed a grave sin but by no means of itself imposes restitution. The reason for the stated principle is that a promissory oath is added to a contract as an accident. But the common adage says: "The accessory follows the principal." Hence the Code of Canon Law, c. 1318, § 1, also establishes generally: "A promissory oath follows the nature and conditions of the act to which it is added."

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[60] Cf. Billuart, *De contract.* diss. 1, a. 6.

266. Corollaries. 1. Neither the contract nor the oath is valid if there is question of a thing or action which cannot be furnished without sin. The reason is that no one can oblige himself to a sinful act. Hence all base sworn contracts are invalid, so that they ought not to be executed.

2. An oath appended to a contract which is invalidated and prohibited: a) by natural law; or b) by positive law on account of the common good, is null. - Hence an oath of a cleric by which he renounces the privilege of canon is null, because such a privilege was given for the common good rather than private good; likewise, an oath by which someone under grave fear obliges himself to enter marriage is null, because the Church placed the impediment of fear in matrimony on account of the common good, namely, for avoiding hatreds, scandals, etc.

3. An oath appended to a contract which indeed induces a natural obligation, but is rescinded by positive law principally *in favor of the contracting party*, is valid. The reason is that the obligation of an oath is to be sustained as long as it is licitly observed. But in this case the oath can licitly be observed. Therefore Alexander III already said: "It is not safe for anyone to act against his oath unless it is of such a kind that, if observed, it would tend toward the destruction of eternal salvation."[61] Hence a minor who promised by oath that he would not rescind the contract must observe it unless a legitimate dispensation has been obtained. When and how dispensation can be obtained in a promissory oath will be said below, n. 454, in the tract on religion.[62]

4. An oath and a contract extorted by fear are valid (unless declared invalid by positive law), but they can be rescinded by legitimate authority. It has already been said above, n. 258, that a contract entered through fear is commonly valid, because fear does not remove freedom. Likewise, an oath extorted by fear is valid, and therefore the Code of Canon Law, c. 1317, § 2, establishes: "An oath extorted by force

or grave fear is valid, but it can be relaxed by an ecclesiastical superior." Hence, if someone from fear of death swears that he will give a sum of money to a robber, he is bound to give it both by force of the promise and by force of the oath; nevertheless, he can petition legitimate authority either for rescission of the contract and dispensation from the oath, or for punishment of the robber. Thus St. Thomas,[63] and St. Alphonsus[64] calls this opinion far more probable. For the general rule is that every oath which can be fulfilled without sin is to be observed in the forum of conscience. - Cf. Billuart,[65] who rightly insists greatly upon the difference between the obligation arising from a contract and that arising from an oath. The first obligation is real and passes to the heirs. Its violation induces a debt of restitution. The second obligation is personal and does not pass to the heirs, nor does its violation bring with it a debt of restitution. Hence, e.g., if someone swore that he would never revoke a testament and nevertheless afterwards revoked it, he is indeed perjured, but the revocation of the testament is valid, and neither the perjurer nor his heirs are bound to restitution.

[61] c. 8, X 2, 24.

[62] Cf. Göpfert, *Der Eid*, n. 276ff.

[63] *S. theol.* 2, 2, q. 89, a. 7 ad 3.

[64] *Theol. mor.* l. 3, n. 174.

[65] L.c.

Chapter II. On Contracts in Particular

Preliminary Note. It would be excessively long to treat all contracts, which especially in our times have increased to a very great number. But this is not even necessary, because the confessor does not need to know all those contracts. Hence we shall treat only the more principal ones, and indeed: 1. gratuitous contracts; 2. onerous commutative contracts; 3. aleatory contracts.

Article I. On Gratuitous Contracts

[1]

Gratuitous contracts are either *unilateral*, such as promise and donation, or *bilateral*, such as loan for use, precarium, deposit, sequestration, mandate, management of affairs, and finally loan for consumption, which nevertheless is accidentally an onerous contract. A few things concerning each.

[1] In German: gratuitous contracts (*unentgeltliche Verträge*).

§ 1. On Gratuitous Promise

[2]

[2] In German: promise of a gift (*Schenkungsversprechen*).

267. Notion. A gratuitous promise is a contract by which someone liberally and spontaneously obliges himself to furnish or omit something for another; or more briefly: A promise is the free and spontaneous giving and acceptance of faith concerning a lawful, possible, and useful thing. Nevertheless, an onerous promise is also given,[3] which can intervene in other contracts. We do not treat it

here. He who promises something is called the *promisor*; but he to whom something is promised is wont to be called the *promisee*. The following are required for a gratuitous promise:

1. The intention of truly obliging oneself. Hence a promise differs from a *purpose*, by which someone indeed intends to do something but does not wish to undergo a true obligation; it also differs from a *donation*, which is a giving of a thing, while a promise is only a giving of faith.
2. A spontaneous and free will, i.e., free from every error, force, or fear. In a gratuitous promise, even slight fear is excluded, because otherwise it is no longer altogether gratuitous and spontaneous. It is otherwise in an onerous promise.
3. Manifestation and acceptance of the promise. For a promise is a contract. But no contract between men is perfected unless the will of each contracting party is manifested and accepted by each. Authors dispute whether acceptance must always be express. Sometimes, from the circumstances, even the silence of the one to whom the promise is made is sufficient acceptance, since some benefit is conferred upon him from the gratuitous and liberal promise; and then the adage holds: "He who is silent seems to consent."[4]

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[3] It is sometimes called an offer of reward (*Auslobung*; cf. German Civil Code § 657) and is had if someone promises some gift to one who produces some determinate result.

[4] Cf. Billuart, *De contract.* diss. 2, a. 1.

268. Obligation of a promise. Concina[5] notes excellently concerning this matter, saying: "The discussion is not about an *onerous promise*, inducing an obligation on each side; nor about a *civil promise*, producing, besides the obligation of fidelity, a legal debt. A civil promise (inducing a legal debt) is said to be that which is made before a notary and witnesses, or by means of a signed document, by force of which the promisor or donor can be compelled in the external forum to fulfill what was promised. All agree that these two promises give rise to a grave obligation from justice. The dispute is only about a simple private promise made in words and accepted."

Violation of a legitimate and accepted gratuitous promise is a sin opposed to truthfulness and fidelity. Thus all. If this violation accidentally causes unjust damage to the promisee, it is a sin grave in its genus against justice. Thus also all. E.g., one who culpably does not keep a promised secret and thereby causes grave damage to another sins mortally against justice and is bound to restitution. - But if someone does not keep a promise made without sufficient reason, yet without causing notable damage to the promisee, is this a mortal sin in its genus? There are three opinions.[6]

The first contends that one who does not fulfill an accepted promise sins mortally, and indeed against commutative justice. The reason is that the virtue of fidelity is a potential part of justice and, as the foundation of all obligations, is especially necessary to the republic and to human society. St. Antoninus,[7] Silvester Prierias,[8] Dominic Soto,[9] and Billuart[10] defend this opinion. But if it is asked according to this opinion what matter is grave in the violation of a promise, these authors respond that matter four times greater than in theft is required before a grave obligation of restitution arises.

The second opinion teaches that the gravity of the obligation depends upon the intention of the promisor. For a promise is a certain private law which the promisor freely imposes upon himself. Therefore, he can bind himself gravely or lightly, from justice or from fidelity. Thus Lugo[11] (who says that this opinion altogether pleases him), Molina,[12] and others. But this opinion does not reach the point of the difficulty. Certainly a

liberal promise does not oblige beyond the explicit intention of the promisor, and consequently the promisor can oblige himself either under grave sin or under light sin, just as the obligation of a vow, which is a promise made to God, can be light or grave according to the particular intention of the one vowing. Therefore the knot of the difficulty is how great the obligation of a promise is *from its own nature*, abstraction being made from any particular intention of the promisor. A particular intention of gravely obliging oneself is considered to be in the promisor: 1. when he confirms the promise by an oath; 2. when he promises by stipulation, e.g., I promise 1,000 francs to him who discovers such a criminal; 3. when he promises before a notary, or before witnesses explicitly assumed for this, or by a written document; 4. when he says: I oblige myself as much as I can, or something similar.

The third opinion defends that a simple accepted gratuitous promise obliges of itself only under light sin. The reason is that the violation of a promise of this kind is as it were a simple lie. But a simple lie is only a venial sin in its genus, as was proved above, n. 170. Therefore the same is true of the violation of an altogether gratuitous promise. There is added the common estimation of men, who do not think that they have committed a mortal sin when they have broken a simple and wholly liberal promise given, yet without damage to their neighbor. St. Thomas seems to favor this opinion, saying: "According to moral rectitude, from every promise a man is obliged to a man."[13] Thus also teach Cajetan,[14] Bañez[15] (but nevertheless not so clearly), Peter de Ledesma,[16] John of St. Thomas,[17] and many others. Since every question in which there is question of mortal sin is perilously determined unless the truth is expressly had, and since a sin is not to be asserted as mortal unless it is certainly established, hence this third opinion seems to us to be preferred in practice. Nevertheless, a frivolous violation of a promise made is truly detestable and not rarely causes grave enmities.

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[5] *De iust. et iure* l. 3, diss. 4, c. 20, n. 6ff.

[6] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 720.

[7] *S. theol.* P. 2, tit. 10, c. 1, § 4.

[8] *Summa*, s.v. "Pactum," q. 4.

[9] *De iure et iust.* l. 7, q. 2, a. 1 ad 1.

[10] L.c., § 2.

[11] *De iust. et iure* disp. 23, n. 90.

[12] *De iure* disp. 262, n. 11.

[13] *S. theol.* 2, 2, q. 88, a. 3 ad 1.

[14] *Comm. in* 2, 2, q. 113, a. 1, dub. 4.

[15] *Comm. in* 2, 2, q. 62, disp. 5, dub. 2.

[16] *De matrim.* q. 45, a. 5, dub. 2.

[17] 1, 2, q. 88, disp. 29, a. 9.

269. Cessation of the obligation. St. Thomas enumerates two reasons on account of which a promise made ceases: 1. when the thing promised is illicit; 2. when the thing promised, or the circumstances of the thing or person, are notably changed.

"Nevertheless, [the promisor] can be excused for two reasons: in one way, if he promised that which is manifestly illicit, because he sinned in promising but does well in changing his purpose; in another way, if the

conditions of persons and affairs have changed. For, as Seneca[18] says, in order that a man be bound to do what he promised, it is required that all things remain unchanged; otherwise he was neither mendacious in promising, because he promised what he had in mind, with the due conditions understood; nor is he unfaithful in not fulfilling what he promised, because the same conditions do not exist. Hence even the Apostle did not lie, who did not go to Corinth, whither he had promised that he would go, as is said in 2 Cor. c. 1, and this on account of the impediments which supervened."[19]

Modern authors, besides these two reasons, add two others, namely: a) if the promisee freely remits; b) if, a mutual promise having been made, the other did not stand by what was promised. For faith given is also broken with impunity toward one who has broken faith.

You will ask: What are the obligations if the promisor or the promisee dies before the promise has been completed in execution?

a) If the *promisee* dies and the promise was made principally for his personal favor, then the obligation of the promise also dies; it is otherwise if the promise was made principally, or at least equally principally, in favor of the promisee's family and his heirs. For then the obligation remains.

b) If the *promisor* dies, a personal promise, i.e., concerning a personal action to be furnished, ceases; but a real promise, i.e., concerning a thing to be given, passes to the heirs. - In practice, however, it is safer to follow the statutes of the civil code.

Note. Since a gratuitous promise does not cause a *right in the thing*, it is not lawful to employ hidden compensation in a case in which the promisor did not stand by what was promised without sufficient reason. If, however, the promise was from justice or was remuneratory, one who in good faith occupied the thing promised can retain it unless a judge establishes the contrary. E.g., a niece serves, without an explicit contract, a sick uncle who explicitly promised that he would give a gift of 1,000 francs. When through sudden death the uncle cannot stand by this promise, the niece can be left in good faith if she took the promised 1,000 francs.[20]

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[18] *De benef.* l. 4, c. 34ff.

[19] *S. theol.* 2, 2, q. 110, a. 3 ad 5.

[20] Thus Göpfert, *Moraltheol.* II, n. 99; Marc, *Instit. mor.* I, n. 1062; Aertnys, *Theol. mor.* l. 3, n. 404.

§ 2. On Donation

270. Notion. Donation or gift can be defined as "the liberal giving of one's own thing to another who accepts it."[21] He who gives is called the *donor*; but he to whom something is given is called the *donee*.

Divisions. The more principal divisions of donation are the following:

1. A *purely liberal donation* and an *antidoral or remuneratory donation*. The first is that which supposes no obligation in the donor, either of justice or of gratitude. This alone is donation in the strict sense; hence, when in positive law several donations are prohibited or invalidated, e.g., those between spouses, donations of religious, or when donations are declared revocable because of the ingratitude of the donee, purely liberal donations alone are understood. The latter is that which supposes an obligation of gratitude.[22]
2. A donation *inter vivos*, *in prospect of death*, or *by testament*. A donation *inter vivos* actually and irrevocably transfers ownership, at least radical ownership, of the donated thing to the donee; e.g., I

give you this book. A donation in prospect of death transfers ownership indeed, but revocably until the donor's death; e.g., I give you the sum of 1,000 francs, to be possessed after my death; if, however, I shall otherwise have need of it, you will not have it. A donation by testament transfers no ownership until after the death of the testator, who during life can freely change his will. Therefore, in a donation *inter vivos*, ownership is transferred immediately and absolutely; in a donation in prospect of death, immediately but conditionally; and finally, in a donation by testament, only for the future.

3. A *real or complete donation* and a *verbal or incomplete donation*. The former is the real delivery of the donated thing, and consequently confers upon the donee a perfect *right in the thing*. E.g., an uncle gives his nephew 100 francs and immediately delivers this sum to him. The latter is that which is not accompanied by delivery of the donated thing and consequently confers only a *right to the thing*. E.g., I give you the salary which I myself shall have at the end of the month.
4. A *pure donation* and a *qualified donation*. The former is an absolute donation lacking every modification. The latter is a donation affected by some modification, of which there was discussion above, n. 261ff.; e.g., a donation under a condition, under a mode, under a demonstration, under oath, etc.

We shall treat: 1. donation in general; 2. donation *inter vivos* and donation in prospect of death; 3. donation by testament; 4. presumed donation, or intestate succession.

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[21] Cf. Billuart, *De contract.* diss. 3, a. 3.

[22] Reward or remuneration (*Belohnung*).

1. On Donation in General

271. Five things are required for an efficacious donation: 1. a capable donor; 2. a capable donee; 3. a suitable thing; 4. acceptance by the donee; 5. sometimes a prescribed form of donation.

1. A *donor capable* of making a donation is only one who has ownership and free administration of the good to be donated. Therefore neither ownership alone nor administration alone suffices for making donations licitly. Hence a wife cannot, at least without limitation, make donations from goods of which she has retained ownership; nor can a husband make them from his wife's goods of which he has the administration. Civil codes are wont to determine who in particular are incapable of making donations.[23] Commonly, the following are wont to be more or less incapable of making donations: infants, the insane, spendthrifts, minors, and wives. By positive ecclesiastical law religious also are incapable of making donations. Concerning this matter see canon law, and especially canon 537. But in favor of pious causes the Code of Canon Law grants the broadest faculty of giving, and does not seem to admit restrictions made by civil laws; for it establishes in canon 1513, § 1: "One who by natural and ecclesiastical law can freely dispose of his goods may leave goods to pious causes, whether by an act *inter vivos* or by an act in prospect of death."
2. A *donee capable* of receiving donations is everyone who is capable of ownership. Hence by natural law every conceived human being can receive donations. By civil law, however, limitations are often imposed;[24] thus, e.g., according to French law,[25] physicians and ministers of worship cannot accept donations properly so called from the sick when these are made during the illness and treatment. Ecclesiastical communities especially are often prohibited by civil codes from accepting larger donated

legacies without a special license of the prince or civil government. In this case civil laws do not bind in conscience according to the most common opinion, which is confirmed from c. 11, X 3, 26. Cardinal D'Annibale[26] teaches the contrary, saying: "I judge that those outside the Papal States who do not render what was left to pious causes in a testament invalid by civil law ought not to be disturbed."

3. A *suitable thing*, or the object of a donation, can be all goods of which the donor has free disposition. By positive laws parents are prohibited from giving donations which injure the legitimate portion of their children. But a debtor unable to pay cannot give donations of great importance, because he thereby becomes still more unable to pay and unjustly injures his creditors. Therefore both he himself and one who knowingly receives larger donations from one already unable to pay are bound to repair the damage caused to the creditors. Thus, at least, the more probable opinion.[27]

4. *Acceptance of the donation* is necessary, and therefore no donation, even for pious causes, is perfect and valid before acceptance. The reason is that donation transfers ownership to the donee. But no one is considered to acquire ownership without consent; this consent, however, can sometimes be presumed, e.g., in infants.

5. No determined *form of donation* is established by natural law, but civil laws are wont to prescribe special forms for making donations, e.g., that the donation be made by a public instrument, which form in ancient Roman law was called *insinuation.*[28] Forms of this kind do not seem to induce a direct obligation in conscience, but only an indirect one, i.e., after the sentence of a judge or in order to avert greater evils. Therefore, if someone freely, without having suffered any fraud, transferred his thing to another by donation, this donation is valid in conscience, at least until it has been rescinded by competent authority, although the statutes of civil law were not observed. The reason is that such illegal donations are indeed rescindable, but they are not invalid by natural law itself.

Revocation. Both modern laws and ancient law permit a donation already made sometimes to be revoked. The principal cases are: a) if the donation is inofficious, i.e., contrary to filial or familial duty, injuring the legitimate portion of children or even of parents; b) if unexpected offspring is born to the donor; c) if the donee has shown great ingratitude toward the donor, e.g., by afflicting him with grave injuries, causing him great damage, or failing to support him in need.[29]

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[23] E.g., French Civil Code art. 901ff.; German Civil Code § 104ff.; Swiss Code of Obligations art. 240ff.; Austrian Civil Code § 944; Spanish Civil Code art. 624; Italian Civil Code art. 1052. For England and North America, cf. Tanquerey, *Suppl.* 20-21.

[24] Cf. French Civil Code art. 906ff.; Swiss Code of Obligations art. 241. Cf. also Tanquerey, *De iust.* n. 710.

[25] Art. 909. Cf. Dutch Civil Code art. 953.

[26] *Summula Theol. mor.* II, n. 339.

[27] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 722.

[28] Cf. L. 36, Code 8, 53.

[29] Cf. French Civil Code art. 953; Austrian Civil Code § 947ff.; German Civil Code § 528ff.; Spanish Civil Code art. 644; Italian Civil Code art. 1078; Swiss Code of Obligations art. 249.

2. On Donation Inter Vivos and in Prospect of Death

272. A donation *inter vivos* immediately and absolutely transfers ownership, at least radical ownership, to the donee. Everything said in the preceding paragraph applies to it. But a donation in

prospect of death indeed immediately transfers ownership to the donee, yet not absolutely, but only if the donor has not revoked the donation before death. It therefore confers a *right in the thing*, although a conditional one. A donation in prospect of death differs somewhat from testamentary legacies, because the latter confer only a *right to the thing* and depend entirely upon the validity of the testament; on the contrary, a donation in prospect of death is valid even if a testament that may have been made is wholly invalid. In most modern laws, donations in prospect of death, insofar as they are distinct from testamentary legacies, are no longer recognized.[30] Wherever they are still recognized, the civil law of that region is to be followed.[31]

[30] Cf. Swiss Code of Obligations art. 245; Staudinger, *Kommentar zum Bürgerlichen Gesetzbuch* I, 355; German Civil Code § 2301. Authors do not agree in assigning everything required for a true donation in prospect of death according to ancient Roman law. Lugo discusses this matter quite clearly (*De iust. et iure* disp. 24, sect. 15, n. 318), saying: "A donation in prospect of death is that by which something is delivered or promised so that, if the donor's death occurs before the donee's death, it becomes irrevocably the property of him to whom it is given.... Sometimes this donation begins with delivery, by which the donor transfers ownership to the donee, but revocably unless he confirms it by death; hence, in whatever way the donation is revoked, both the donated thing and all fruits received from it must be restored.... Sometimes, however, it begins from a promise alone without delivery; and then it is not valid unless acceptance by the donee follows." Cf. H. Vering, *Geschichte und Pandekten des römischen und heutigen gemeinen Privatrechts*[2] § 11.

[31] Cf. Austrian Civil Code § 956.

3. On Donation by Testament

273. Preliminary notions. Although hereditary succession, strictly speaking, is not a contract, because the consent of the one conferring and of the one accepting the inheritance does not exist at the same time, nevertheless it is rightly reduced to donation.[32] For through it, and notably through a testament, ownership of an inheritance is transferred gratuitously to others. For the sake of clarity, certain preliminary notions must be explained:

Hereditary succession is called the right of succeeding to the goods and rights of a deceased person. It is twofold: the one *legal or intestate*, by which the right of succeeding arises from the disposition of law even without the expressed will of the deceased; the other *testamentary*, by which that right of succeeding arises from the last will expressly manifested by the deceased himself.

An *inheritance*[33] is the universality of goods pertaining to the deceased.

An *heir* is one who receives the goods of the deceased; and if he receives all his goods, he is called the *universal heir* (or heir to the whole estate); but if he receives only a part, he is an *heir in part*. Furthermore, there are distinguished: 1. an *intestate heir*, who succeeds to the goods of one who died without a testament; and a *testamentary heir*, who receives the goods of the deceased by force of a testament; 2. a *necessary heir*, who by force of positive law cannot be omitted from hereditary succession except in cases determined by law, and an *arbitrary heir*, who is freely called to the inheritance by the testator. In modern codes there are still other divisions of heirs,[34] but knowledge of those divisions is not so necessary for the confessor.

The *legitimate part or portion*[35] is that part of the inheritance which must be left to the necessary heirs[36] by statute of positive law.

The principal *modes of acquiring an inheritance* are two, namely, by testament, under which an inheritance pact can be included, by which someone declares his last will concerning his goods; and by *intestate succession*, if someone has died without a testament. We shall treat the latter at n. 280ff.

[32] Thus also Noldin, *De praeceptis*, before n. 546; Tanquerey, *De contractibus* c. 2.

[33] In German, *Erbschaft*.

[34] E.g., prior heir, subsequent heir, substitute heir, forced heir (*Vorerbe, Nacherbe, Ersatzerbe, Noterbe*), etc.

[35] In German, *Pflichtteil*.

[36] In German, *Noterben*.

274. The right of making a testament is indeed founded in natural law, but it is determined by positive law.[37]

Theologians and jurists dispute greatly concerning the origin of this right. Some, and indeed nearly all Catholics, say that the right of making a testament arises from natural law itself; others teach that the faculty of making a testament arises from civil law alone. Thus Pufendorf,[38] Schmalzgrueber,[39] Zallinger,[40] and, in addition, those who deny the existence of natural law. Finally, others teach that the faculty of making a testament is indeed founded in natural law, but receives its full force and determination from positive law. Hence it follows that positive law can indeed restrict the faculty of making a testament, but cannot abolish it entirely. This controversy pertains more to Moral Philosophy than to Practical Moral Theology. Hence there is no leisure to discuss it at greater length.[41] Let it be said briefly: the right of making a testament seems to flow from natural law in almost the same manner as private ownership, of which it is a necessary complement. For private ownership includes the perfect faculty of disposing of one's own goods, and indeed not only concerning what ought to be done with them here and now, but also after the testator's death. Nevertheless, positive law can for reasonable causes limit this faculty of making a testament more or less, as in fact has been done in all civilized regions. Indeed, this limitation is excessive in some codes. On the contrary, elsewhere there is excessive freedom of making a testament, and great inconveniences are wont to arise from it. For it is unreasonable that, e.g., a father can without an urgent reason disinherit one or more children and transmit his entire fortune to one child.

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[37] Cf. Billuart, *De contract.* diss. 2, a. 3, § 4, and Tanquerey, *De iust.* n. 688ff.

[38] *De iure nat. et gent.* l. 4, c. 3.

[39] On book 3 of the Decretals, tit. 26, n. 38ff.

[40] *Inst. iur. nat.* l. 1, q. 720.

[41] Cf. Cathrein, *Moralphil.* II, 339ff.

275. A determined mode of making a testament is not required by natural law; positive law, however, has wisely established norms for making a testament legitimately. For thus many frauds are avoided which otherwise could easily occur. The principal modes are the testament, codicil, and legacy.

A *testament* is, as it were, an attestation of the mind, and according to ancient Roman law is called that last will by which an heir is instituted; according to several modern laws, however, a testament is called generally the total final disposition of one's own goods after the testator's death.[42]

A *codicil* is an explanatory or modifying addition appended to a testament already made. A codicil, however, does not have the same meaning in the different modern laws.

A *legacy* is a determinate thing which, according to the will of the testator, must be delivered from the so-called mass of the inheritance to some determinate person. It is called a legacy strictly so called if the testator directly bequeaths something to someone; e.g., I bequeath my books to Titius. It is called a *fideicommissum*,[43]

however, if the testator indirectly, i.e., through another, bequeaths something; e.g., I give my fortune to Peter with the burden of paying 5,000 francs after three years to my nephew Caius.

[42] Cf. *Institutes* 2, 10. Ulpian says: "A testament is the lawful attestation of our mind, solemnly made for this purpose, that it may have force after our death." *Fragments*, tit. 20, 1.

[43] From this *fideicommissum* there must be distinguished the so-called family *fideicommissum*, which cannot be constituted without the consent of the government and which consists in a determinate part of a fortune that cannot be alienated from the family.

276. Form of a testament. In different regions different norms have been established for the making of testaments. The individual codes must be consulted. Since difficult cases concerning the validity and mode of testaments occur not rarely, the confessor should endeavor to learn at least the principal forms of testaments in force in his country. Only a few divisions or forms of testament are given here:

1. An *ordinary and extraordinary testament.* The first is that which is legally completed in ordinary circumstances. The latter is that which by privilege, and therefore is also called a privileged testament, is recognized as legal in extraordinary circumstances, e.g., a testament made by soldiers on a military expedition, or during an epidemic, or if a notary or judge cannot be summoned, etc.
2. A *written, nuncupative, and holographic testament.* A written testament is sometimes understood to be that which is written by a notary or judge according to the legal forms and is signed by the testator. A nuncupative testament is that which is established orally by the testator before witnesses.[44] A holographic testament is that which has been written entirely in the testator's own hand, signed with his name and surname, and marked with the addition of the place, year, month, and day. Several modern laws admit a holographic testament, e.g., German, French, Austrian, Swiss, Italian, Spanish law, etc.
3. A testament is called *legal* if all the norms required for the legal validity of the testament have been observed; otherwise it is an *illegal or informal testament* and is declared invalid by the civil judge.

[44] Cf. German Civil Code § 2250; French Civil Code art. 981; Swiss Civil Code art. 506.

277. Value of an informal testament. The most grave question concerning the value of an informal testament is answered briefly as follows:

1. If the mind of the testator is certain, every informal testament before the sentence of a judge can be regarded as valid. Thus the truer and more common opinion. The reason is that the faculty of making a testament arises primarily from natural law, while civil laws seem to decree the rescindability rather than the very nullity of such testaments. But if the civil law certainly and clearly determines that informal testaments are not only rescindable but also wholly null from the beginning, then assuredly this has force also for the forum of conscience. Billuart[45] writes excellently: "Laws invalidating less solemn [i.e., informal] testaments are not received by common usage to the extent that one who possesses through such a testament is despoiled before the sentence of a judge.... For whom will you find who voluntarily gives up that which he possesses by title of a less solemn testament or other contract, without force or fraud, while it is claimed by no one?" Hence one who received something from an informal testament can retain it and is not bound to warn the intestate heir concerning the defect of the testament. Nevertheless, it is not lawful to use any fraud to deceive the judge or the intestate heir, e.g., by supplying a signature or designation of the day or year which was omitted

through forgetfulness. For by such fraud others are unjustly prevented from exercising their right of seeking rescission of the testament. But if someone by such fraud really prevents another from being able to use his right, he is bound to restitution, according to the more common and more probable opinion.[46]

2. After the sentence of the judge, testaments of this kind are invalid even in conscience; indeed, anyone can licitly seek their rescission, provided, however, that there is question of testaments for profane causes. The reason is that these invalidating laws are founded on the presumption of common danger. But laws founded on the presumption of common danger bind in conscience. Hence Billuart[47] rightly adds: "Who is there who restores that which he obtained by the sentence of a judge against the disposition of a less solemn testament or other contract?"

3. If there is question of a testament for pious causes, i.e., for the good of the Church or the salvation of souls, it is disputed whether it is valid in conscience even if the sentence of a civil judge has invalidated it because of a defect. The more common opinion affirms this, both a) because testaments for pious causes are considered as sacred things which are not subject to civil laws, and b) because the Church has the right to acquire temporal goods independently of the civil government and civil laws. This opinion is confirmed from c. 11, X 3, 26 and from the response of the Sacred Penitentiary of January 10, 1901, declaring: "The practice of this Sacred Tribunal is that, generally, pious legacies are regarded as valid and obligatory in the forum of conscience. Heirs, however, are readily admitted to a composition with the Church or the pious cause to which the legacy was made."[47a] A probable opinion denies this, and it is held especially by Cardinal D'Annibale,[48] Daelman,[49] Haine,[50] and Retzbach.[50a] In practice Archbishop Kenrick of Baltimore[51] prudently says: "For the rest, I would scarcely dare deny the sacraments to one unwilling to pay those things which lack the protection of civil law." This is approved by Tanquerey,[52] and seems to conform to the Code of Canon Law, which establishes in canon 1513, § 2: "In last wills for the good of the Church, the solemnities of civil law are to be observed if this can be done; if they have been omitted, the heirs are to be admonished to fulfill the will of the testator."[53] Therefore, at least after the Code of ecclesiastical law obtained force, there no longer seems to be a strict obligation of justice to observe an informal testament for pious causes which has been declared invalid by civil law. Thus, at least, if the civil formalities prescribed in making a testament could have been observed and nevertheless were neglected. For greater security, however, it is preferable to seek from the Sacred Penitentiary a composition which, by its own testimony, is readily obtained.[54]

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[45] *De contract.* diss. 2, a. 5, § 3.

[46] Cf. Dominic Soto, *De iure et iust.* l. 4, q. 5, a. 3; Bañez, *Comm. in* 2, 2, preamble to q. 62; Billuart, l.c.; and, among the moderns, Tanquerey, *De iust.* n. 697ff.

[47] L.c.

[47a] *Collectanea de Prop. Fide* II, n. 2099.

[48] *Summula theol. mor.* II, n. 339.

[49] *De iust.* P. 2, q. 2, obs. 8.

[50] *De contract.* q. 53.

[50a] Cf. A. Retzbach, *Die Verbindlichkeit formloser letztwilliger Verfügungen zu frommen Zwecken*, Freiburg, 1917, p. 47f.

[51] *Theol. mor.* tr. 11, n. 37.

[52] *De iust.* n. 700.

[53] The words in canon 1513, § 2, "the heirs are to be admonished," are preceptive and not merely exhortative, as the Pontifical Commission declared on February 17, 1930 (*Acta Ap. Sed.* XX, 196). Canon 2348 establishes: "One who has obtained a legacy or donation for pious causes, whether by an act *inter vivos* or by testament, even through a trust, and neglects to fulfill it, shall be compelled to do so by the Ordinary, even through a censure."

[54] Cf. above, n. 271, and *Linzer theol.-prakt. Quartalschrift* LXV (1912), 841; LXXVII (1924), 299.

278. Acceptance of a testament. No one is bound to accept a testament made for his own advantage. I say, however, *made for his own advantage*, for sometimes civil laws prohibit, e.g., tutors from refusing testaments made for their wards.[55] When someone has accepted the entire inheritance of another, he is bound also to pay all the debts of the deceased, although these exceed the resources of the inheritance; e.g., sons accepting the paternal inheritance must also pay all the real debts of the father. Thus at least in the external forum, for authors commonly excuse the heir from this obligation in the forum of conscience,[56] and this even after the sentence of a judge.[57] But in order to avoid so harsh an obligation, civil laws are wont to grant the universal heir time for deliberating, e.g., one or three months, whether he wishes to enter upon the inheritance purely or "under benefit of inventory," i.e., not beyond the value of the inheritance.

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[55] Cf. German Civil Code § 1822, 2.

[56] Cf. St. Alphonsus, *Theol. mor.* l. 1, n. 150.

[57] Cf. Lehmkuhl, *Theol. mor.* I, n. 1398.

279. Revocation of a testament can always be made freely by the testator, unless, however, a so-called "inheritance pact"[58] has been made, such as is in force in some regions, e.g., between husband and wife, between brothers or sisters, etc. Even the testator's promise not to change the testament is no obstacle to a reasonable change; indeed, neither is an oath added to it, at least if there is question of a testament for profane causes. The reason for all these things is that revocability pertains to the very essence of a testament. On the part of the heirs, civil codes sometimes permit the contesting of a testament, especially if it lacks legal form.

The testament of a deceased person, or rather his last will, *can be commuted* for a reasonable cause by the civil prince, as possessing high dominion over the goods of subjects, if there is question of merely profane causes; by the Supreme Pontiff, if there is question of pious causes. For testaments concerning pious causes are considered as sacred things accepted by God and are equated with vows and oaths.[59] Bishops and other prelates cannot by their own authority change last wills, unless, however, the testator himself has expressly granted this;[60] they can also by their own authority *interpret* testaments. Those cases in which, according to several authors,[61] a bishop would be able by his own authority to commute the last wills of a testator are, according to present practice, better resolved by the authority of the Supreme Pontiff, who judges pious legacies through the Sacred Congregation of the Council.[62] Such cases are: 1. if money bequeathed for some use is not sufficient;[63] 2. if the thing bequeathed cannot serve the destined use because of an impediment of law or fact; 3. if the legacy was made for a use not so necessary; e.g., if a legacy was made for buying a chalice and the chalice is no longer so necessary, while, on the contrary, the church greatly needs chasubles.

The Sacred Congregation for the Propagation of the Faith in 1807 explained the whole doctrine concerning the commutation of a last will for pious causes excellently in these words: "The wills of the faithful can indeed be commuted by the authority of the Apostolic See, ... but commutations ought not to be made except for a just and reasonable cause, so that the Supreme Pontiff may be regarded as, and may be, a faithful and prudent

administrator. Since the same Supreme Pontiff is bound by this law, *who alone has the power of effecting commutations of this kind*, it belongs to him to know and judge concerning the cause which intervenes in individual cases."[64] From these words two things clearly follow: 1. only the Supreme Pontiff can commute last wills; 2. not even the Supreme Pontiff can do this except for a just and reasonable cause.

Note. Ordinaries are the executors of all pious wills, both in prospect of death and *inter vivos*; and therefore other executors, after discharging their office, must render an account to the Ordinary.[65]

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[58] Inheritance pact (*Erbvertrag*). Cf. German Civil Code § 2289ff.

[59] Cf. Council of Trent, sess. 22, c. 6, *De reform.*

[60] Code of Canon Law, canon 1517, § 1.

[61] St. Alphonsus, l.c., l. 3, n. 931; Aertnys, *Theol. mor.* l. 3, n. 424; Noldin, *De praeceptis* n. 556.

[62] Constitution *Sapienti consilio*, June 29, 1908; *Acta Ap. Sedis* I, 11.

[63] Cf. Code of Canon Law, canon 1517, § 2.

[64] *Collect. de Prop. Fide* n. 689.

[65] Cf. Council of Trent, sess. 22, c. 8, *De reform.*; Code of Canon Law, canon 1515.

4. On Presumed Donation, or Intestate Succession

280. The right of succeeding. From natural law itself, which institutes the family, is derived the right of succession between parents and children, unless in a particular case that right is derogated for a legitimate cause. Therefore Sacred Scripture calls a son by that very fact an heir: "But if a son, then also an heir."[66] Concerning intestate succession, almost the same thing is to be said as was proposed above, n. 4, concerning private ownership. Just as private ownership is necessary in the present order of things, since otherwise the public welfare could not be preserved, so also is intestate succession; for if children did not succeed their parents in the goods of the family, the bond and perpetuity of the family would be most greatly endangered. Therefore parents sin if without a just reason they disinherit a child or leave him only the legitimate portion. Nevertheless, some freedom is to be granted to parents concerning the disposition of their goods, especially in a case in which the children are disobedient and bring dishonor upon the family. This freedom is limited by civil laws in different ways for different regions. It is complete in England and in several States of the United States of America, where parents can dispose freely of all their goods.[67] In Germany,[68] Italy,[69] and Austria,[70] one half is disposable. In Spain[71] parents are permitted to dispose at will of one third of their goods. In France the disposable part depends upon the number of children: if there is one child, the parents can dispose of one half; if two children survive, of one third; if three or more children are present, of one fourth of their goods.

Neither jurists nor theologians agree concerning the social utility and moral obligation of legal limitation in hereditary succession, some defending complete freedom of making a testament and others defending a legal reservation. There is no leisure to dispute which mode is better for social utility.[72]

A strict right of succeeding indeed does not seem to exist either among collateral blood relatives or between spouses, but from filial or familial duty they must often be assisted. Hence the following can be held as a general rule: almost the same obligation presses in life and in death. Therefore, just as in life we are gravely bound from filial or familial duty to assist near collateral relatives living in true need, so in death we ought to designate goods for relieving their need, insofar as this is possible while other obligations are preserved. This

applies much more to the support of the surviving spouse, who is wont to be numbered among necessary heirs by modern laws.[73]

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[66] Gal. 4:7.

[67] Cf. Tanquerey, *De iust.* n. 617; Slater, *De iust.* c. 6, a. 3; Stephen, *Commentaries on the Laws of England* II, 194.

[68] Civil Code § 2203.

[69] Civil Code art. 805.

[70] Civil Code § 765.

[71] Civil Code art. 2303.

[72] Tanquerey, l.c., n. 719.

[73] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 946.

281. Obligations of the testator and of the heirs.

1. Obligations of the testator.

a) By natural law itself the testator is bound to leave a suitable part of his fortune to children, spouse, and other relatives living in need. For this is demanded by the virtue both of filial or familial duty and of charity. For although neither children nor others have a strict right to the entire inheritance, nevertheless a fortune or private ownership pertains not only to the possessor but, after his death, in some manner also to his family. Well-ordered filial or familial duty and charity demand that a man have care for those of his household, especially the needy. Consequently the testator sins both against charity, against filial or familial duty, and against just civil law if, without a sufficient reason, he withdraws the inheritance due to necessary heirs, or if he makes an "inofficious testament."[74]

b) Sufficient reasons for withdrawing the legitimate portion from necessary heirs are not only those determined in the different civil codes,[75] but also any other reasonable cause; e.g., if some necessary heir is disobedient and does not have so much need of the inheritance, the testator can distribute his legitimate portion otherwise.

c) More probably, the testator is not bound to restitution if by donations, squandering, etc., he has withdrawn the legitimate portion of necessary heirs. The reason is that, by disposing of his own things, he has not injured commutative justice.[76]

d) Unless truly grave reasons are present, it is highly expedient that the testator exclude no legitimate heir and withdraw nothing from the inheritance. Otherwise, great quarrels and enmities are wont to arise.

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[74] A testament contrary to duty and devoid of affection (*pflichtwidriges, liebloses Testament*).

[75] German Civil Code § 2339ff.; Swiss Civil Code art. 477; French Civil Code art. 725ff.

[76] Thus also Marc, *Instit. theol. mor.* n. 1083; Tanquerey, l.c., n. 725. Noldin, *De praec.* n. 562, teaches the contrary.

282. 2. Obligations of the heirs.

a) Necessary heirs cannot employ hidden compensation if their legitimate portion has been diminished by the testator. The reason is that they do not have a strict right to this legitimate portion, as has already been said. These heirs can, however, approach a judge, and then after a favorable sentence of the judge they obtain a strict right to the legitimate portion, in whatever manner it may have been injured, even by pious legacies.

b) Necessary heirs are bound to bring into the mass of the inheritance those goods which they already received during the life of the testator, unless, however, they received those goods by title of an entirely gratuitous donation. In practice, account must be taken both of the laws of the country,[77] of legitimate customs, and of the intention of the testator. Hence it cannot be determined by a general rule whether expenses for studies, military service, marriages, and dowries must be brought into the mass of the inheritance or not. It is very fitting that heirs joined to the testator in an equal degree of relationship also obtain an equal part of the inheritance, unless the expressed will of the testator stands in the way.

[77] Cf. German Civil Code § 2050; Swiss Civil Code art. 626ff.; French Civil Code art. 829ff.

§ 3. On Loan for Use, Precarium, Deposit, Sequestration, Mandate, and Management of Affairs

283. We treat all these gratuitous bilateral contracts very briefly, because it is sufficient for the confessor to apply the principles given concerning contracts in general.

A *loan for use*[78] is the gratuitous concession of some non-fungible thing for a sole and determinate use and for a fixed time.[79] If money is demanded for that concession, then it is already an onerous contract and is rather called letting and hiring, which will be discussed below, n. 305. The obligations of the lender and borrower for use are to be weighed a) from the agreement freely entered into; b) from the civil laws.

A *precarium*[80] is the same as a loan for use, with this difference: in a contract of precarium the thing lent can be demanded back at any moment at will, while in a loan for use this is not permitted until the stipulated time has elapsed.[81]

A *deposit*[82] is a contract by which a movable thing is delivered to someone to be guarded gratuitously, on the condition that it be returned at the will of the depositor. According to modern practice, a thing to be guarded is often not received gratuitously, but some remuneration is demanded for its custody.[83] Positive laws are to be observed, especially if there is question of baggage deposited in railway stations, things entrusted to innkeepers, shares and bonds deposited in some bank, etc.

Generally it can be said:

1. The depositary, i.e., he with whom a thing is deposited, must exercise over the deposited thing that care which prudent and conscientious men have concerning such a thing. If he does not do this, he is compelled by a competent judge to repair any damage that may have arisen; indeed, he is bound even before the sentence of a judge, at least if his negligence was gravely culpable.
2. The depositary cannot use the deposited thing without the permission of the depositor, whether express or at least prudently presumed. This is evident of itself, for it is not lawful to use another's thing without the owner's permission. But if the depositary has illicitly used the deposited thing, e.g., money for trading, and has thereby taken profit, it must be seen whether such profit is an industrial fruit or a civil or natural fruit of the deposited thing. If it was an industrial fruit, he can retain the profit for himself; otherwise he must restore it to the owner according to the adage: "A thing bears fruit for its owner."[84]

A *sequestration*[85] is a species of deposit; for it is a contract by which a thing in litigation is deposited with a third person under the condition that, when the litigation has been decided, it be restored to the victor.[86] It is *conventional* when it is made by the mutual will of the litigants; *judicial* when it is decreed by a judge. He with whom the thing in litigation is deposited is called the *sequestrator*. His obligations are: 1. in guarding and

preserving the thing he must employ no less diligence than he employs for his own things; 2. he must not return the sequestered thing unless the judge so establishes or all the litigants so consent.

A *mandate*[87] is a contract by which one person undertakes to conduct a business in the name of another. Although this contract by its nature is gratuitous, it is nevertheless generally entered into for an agreed compensation. Civil codes are wont to establish very precisely the rights and obligations both of the mandator and of the mandatary. These statutes are to be observed also in the forum of conscience.

The *management of affairs*[88] is a quasi-contract by which someone undertakes the business of another without an express mandate indeed, but from the presumed will of the absent owner. The management of affairs is nothing other than a presumed mandate. It takes place, e.g., if someone finds a thing which he is bound to guard faithfully by the presumed will of the legitimate owner until the latter appears and pays all necessary expenses.[89]

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[78] Loan for use (*Leihvertrag, prêt à usage, commodat, loan*).

[79] Cf. German Civil Code § 598ff.; Swiss Code of Obligations art. 305ff.

[80] Gratuitous loan at will, a loan revocable at will (*Bittleihe, Leihe auf Widerruf*).

[81] A *precarium* is defined in Roman law (L. 1, Dig. 43, 26) as that which is granted for use to one asking by entreaties for as long as he who granted it permits. In present-day laws, precarium is not wont to be considered a contract distinct from loan for use. Precarium must not be confused with the *precaria* of canon law. For *precariae*, or *precaria* in the singular, is a contract introduced by canon law by which, at entreaty and generally by reason of remuneration, the usufruct of some estate or other ecclesiastical immovable thing is granted to someone for the days of his life or for another time, under the law that every five years renewal of this concession or contract is to be sought (c. 1, 2, X 3, 14; cf. Ferraris, *Prompta Bibl.*, s.v. "Precarium," n. 11). These *precariae* are the precursors of ecclesiastical benefices. Nevertheless, *precariae* were sometimes also granted to laymen (cf. Wetzer and Welte, *Kirchenlexikon*, s.v. "Precarium").

[82] Contract of safekeeping or deposit (*Verwahrungs- oder Hinterlegungsvertrag*). German Civil Code § 688ff.; Swiss Code of Obligations art. 472.

[83] Cf. German Civil Code § 688ff.; French Civil Code art. 1917ff.

[84] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 748; French Civil Code art. 1936.

[85] Deposit of a disputed thing (*Hinterlegung einer strittigen Sache*).

[86] Cf. French Civil Code art. 1955ff.; Swiss Code of Obligations art. 480; Code of Canon Law, canon 1672ff.

[87] Power of attorney, authorization (*Vollmacht, Ermächtigung*).

[88] Representation without authority (*Vertretung ohne Vollmacht*).

[89] Cf. above, concerning finding, n. 48.

§ 4. On Loan for Consumption and Usury

Preliminary note. The doctrine concerning loan for consumption and usury today presents almost no practical difficulty for the confessor. Therefore we treat this matter briefly, indicating the summary heads of this doctrine. Almost innumerable works have been written concerning loan for consumption and usury. Among modern moralists Tanquerey[90] has treated this matter most sufficiently.

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[90] *De iust.* n. 864-906.

284. A loan for consumption[91] is a contract by which ownership of a thing consumable by its first use and fungible is delivered to another with the obligation that a thing of the same value be

returned at its proper time.

It is said: "of a thing consumable by its first use and fungible," to distinguish a loan for consumption from a loan for use and from hiring, in which a non-consumable thing is given with the obligation of returning the same thing individually. A loan for consumption is likewise distinguished from a deposit and the other contracts enumerated in the preceding paragraph for the same reason, and furthermore because the thing lent, under this its individual form, immediately passes into the ownership of the recipient, which does not occur in contracts of loan for use, deposit, etc.

Therefore the object of a loan for consumption is a thing consumable by its first use and fungible, e.g., wine, oil, and especially money. Every such thing, however, is unfruitful in itself. A thing can be fruitful: 1. naturally, as a tree produces fruits; 2. artificially or industrially, as a merchant with the aid of money buys merchandise, from the sale of which he makes profit; 3. civilly, as a leased house produces the price of the lease. Cf. above, n. 208.

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[91] Contract of loan for consumption (*Darlehensvertrag*).

285. Usury is defined by St. Thomas as "the acceptance of a price for the use of a thing lent for consumption,"[92] or, considered objectively, "the price of the use of a thing lent for consumption." The Fifth Lateran Council, session 10, explains this definition more broadly: "For this is the proper interpretation of usuries: when, namely, from the use of a thing which produces nothing, without labor, without expense, and without risk, gain and offspring are sought to be acquired." Therefore the essence of usury consists *in the acceptance of gain from a pure loan for consumption*. For if gain is accepted by reason of another extrinsic title, e.g., emerging loss, risk, etc., it is not usury. Likewise, it is not usury if gain is indeed accepted from a loan for consumption, but by a gratuitous and not an onerous title.[93]

Although according to the force of the words *usury* and *interest* are not distinguished, nevertheless, for the sake of clarity, it is better that *usury* always be taken in a bad sense, but *interest* (or *return*, or *increase*) in a good sense. Therefore usury is either gain from a pure loan for consumption or excessive gain[94] received from money lent, e.g., 30 percent. But interest is gain licitly received from a loan for consumption. Interest is distinguished as either *legal*, which is determined by the law of the country; *customary*, which is established by common usage in some business; or *conventional*, which is determined by agreement of the lender and borrower. Legal and customary interest is judged to be just. Conventional interest, however, is not just unless, after consideration of the circumstances of places, times, and persons, it corresponds to the gain ceasing and the risk to the principal which the lender must undergo. No other more exact measure can be given concerning the amount of interest. On April 18, 1889,[95] the Sacred Penitentiary, to the question whether it was lawful to receive eight or ten percent interest, responded: "Since it is dangerous to determine the fruit of money by way of a rule, the Venerable Father in Christ, the bishop making the request, is to decide the matter in individual cases according to the common practice observed by men of conscientious conscience in the respective places and times." I think that in our times, under ordinary conditions, interest exceeding 20 percent is usurious and unjust,[96] because it greatly exceeds the amount established in public banking institutions, commonly called banks. From this, however, I do not wish to condemn shares of industrial companies which give 30 percent or even 50 percent annually, because such an increase is not interest properly so called, but the fruit of commerce conducted. Usury taken in this evil sense is gravely punished also by civil codes[97] and induces an obligation of restitution.

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[92] *S. theol.* 2, 2, q. 78, a. 1.

[93] Cf. Billuart, *De contract.* diss. 4, a. 1 and 2.

[94] Usurious interest (*Wucherzins*). Usury is often taken in a broader sense for the abuse of any need of one's neighbor. Thus, e.g., we speak of a usurious price, a usurious wage, etc.

[95] *Collect. de Prop. Fide* n. 1702.

[96] In his time D'Annibale taught (*Summula Theol. mor.* II, 535): "As a rule, I would say that interest of seven percent is not immoderate; above ten percent, immoderate."

[97] Cf. German Penal Code § 302.

286. Principle. Usury properly so called is contrary to positive divine law, ecclesiastical law, and natural law.

Thus the most common opinion, which Benedict XIV in the book *On the Diocesan Synod*[98] calls the doctrine of the Catholic Church, and which almost only D'Annibale[99] contradicted in these words: "It is established by no manifest law, whether natural or divine, that usuries are illicit in themselves or otherwise forbidden. Indeed, rather, the contrary is inferred from the manner of acting of the Catholic Church."

Proof 1. It is contrary to positive divine law. From the many texts of Sacred Scripture[100] we select only two. It is said in Psalm 14: "Lord, who shall dwell in Thy tabernacle?" Among others there is enumerated: "He that hath not put out his money to usury." Therefore usury excludes from heaven. In the Gospel[101] it is said: "Lend, hoping for nothing thereby." Concerning the meaning of this passage, see Billuart.[102]

Proof 2. It is contrary to ecclesiastical law. There are five ecumenical councils which prohibited usury, namely, the Third, Fourth, and Fifth Lateran Councils, the Second Council of Lyons, and the Council of Vienne.[103] Likewise, Sixtus V reproved "the abyss of usuries, hateful to God and men, condemned by the sacred canons, and contrary to Christian charity." Alexander VII proscribed proposition 42: "It is lawful for the lender to demand something beyond the principal if he obliges himself not to reclaim the principal until a determinate time."[104] Cf. also propositions 41 and 42 condemned on March 2, 1679, by Innocent XI.[105] But Benedict XIV especially established a certain doctrine concerning usuries in his encyclical *Vix pervenit* of November 1, 1745.[106] The Code of Canon Law, canon 1543, also proposes the same doctrine.

Proof 3. It is contrary to natural law. Therefore St. Thomas says: "To accept usury for money lent is in itself unjust."[107] He proves this thesis in this manner: it is contrary to justice, and consequently to natural law, to sell that which does not exist or to sell the same thing twice. But the usurer does this. Therefore he sins against justice and natural law and consequently is bound to restitution. The major is evident. The minor is proved: in fungible things consumable by their first use, which are the proper object of usury, the things themselves and their use are morally the same. Therefore, just as it would be plainly ridiculous and unjust if a merchant, after selling wine for a just price, wished in addition to sell the use or consumption of the wine, so would one act unjustly if, besides the wine lent for consumption, he demanded something else for the use of that wine. Moreover, money, concerning which usury principally exists, is manifestly not morally distinguished from its use. Therefore nothing can be sought for the use of money lent for consumption; and if something has nevertheless been accepted, it must be restored. St. Leo the Great says beautifully: "Interest on money is the funeral of the soul."[108]

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[98] L. 10, c. 4, n. 2.

[99] L.c., n. 533.

[100] E.g., Ex. 22:25; Lev. 25:35-37; Deut. 23:19f.; Ez. 18:8 and 13.

[101] Luke 6:35.

[102] L.c.

[103] The texts are cited by Lehmkuhl, *Theol. mor.* I, n. 1302.

[104] Denz. n. 1142.

[105] Ibid., n. 1191f.

[106] Ibid., n. 1425ff., or better in the instruction of the Sacred Congregation for the Propagation of the Faith of 1873, where several decrees concerning usury are given (*Collect. de Prop. Fide* n. 1393).

[107] *S. theol.* 2, 2, q. 78, a. 1.

[108] Sermon 17 (16), Migne, *Patr. lat.* 54, 181.

287. Extrinsic causes legitimating interest. Although usury is never lawful and a loan for consumption properly so called must always be gratuitous, nevertheless extrinsic causes are present on account of which some increase or interest can be demanded in a contract of loan for consumption. St. Thomas[109] already sets forth such causes, and Benedict XIV[110] expressly teaches this. Four causes or titles are wont to be enumerated: 1. risk to the principal; 2. a conventional penalty; 3. gain ceasing or emerging loss; 4. civil law or legal premium.

1. *Risk to the principal*[111] is a special, not general, danger by which it is prudently feared that the lender may not recover his property. Such a special danger is often present, especially if someone entrusts his money to certain banking institutions or debtors who are not very secure. It is evident that some interest can be accepted on account of such danger.[112] For a thing possessed outside danger is valued more than the same thing placed in danger.
2. A *conventional penalty* is established for the case in which the borrower, through culpable delay, defers the repayment of the principal beyond the stipulated time. For this cause to be sufficient and just, it is required that the penalty imposed be moderate and that the delay in payment be truly culpable.
3. *Emerging loss and gain ceasing.* Gain ceasing is the failure of some proximately expected gain which the lender certainly would have had if he had assigned the money lent to other uses at hand. Emerging loss, however, is the positive detriment which the lender must undergo because of the contract of loan for consumption. That these causes also suffice for demanding proportionate interest in a loan for consumption is evident of itself and is admitted by all today.[113]

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[109] *S. theol.* 2, 2, q. 78, a. 2 ad 2: "He who gives a loan for consumption can without sin bring into the agreement with the one who receives the loan compensation for loss."

[110] *De synod. dioec.* l. 10, c. 4.

[111] The principal (*sors*) is the same as what today is commonly called "capital."

[112] Thus also the Sacred Congregation for the Propagation of the Faith declared in 1645 (*Collect. de Prop. Fide* n. 117 ad 3).

[113] Older authors disputed very subtly concerning these two titles of a loan for consumption. Cf. Cajetan, *Comm. in* 2, 2, q. 78, a. 2. Indeed, some doubted whether St. Thomas admitted gain ceasing as a sufficient title for a loan for consumption. Today those disputes are of little practical usefulness, since in the lending of money sufficient titles for moderate interest are always present. Billuart, *De contract.* diss. 4, a. 5, discusses the individual titles of interest excellently. D'Annibale (*Summula theol. mor.* II, n. 531) quite undeservedly cites St. Thomas (*De malo* q. 13, a. 4 ad 14) as though not even emerging loss were a sufficient title for receiving interest.

288. 4. Legal premium or civil law. From the sixteenth century onward it was sharply disputed whether civil law, in the absence of other titles, could render usury lawful. Today this dispute seems to be ended. For to the doubt: "Whether penitents who, on the title of law alone, received moderate gain from a loan for consumption in doubtful or bad faith can be sacramentally absolved without any burden of restitution imposed, provided they sincerely repent of the sin committed because of doubtful or bad faith and are prepared with filial obedience to stand by the mandates of the Holy See," the Holy Office responded on January 17, 1838: "Affirmatively, provided they are prepared to stand by the mandates of the Holy See."

In the same sense the Sacred Penitentiary responded several times, e.g., August 14, 1831; November 11, 1831; February 11, 1832; November 23, 1832.[114] The Sacred Congregation for the Propagation of the Faith, gathering almost all the resolutions of the Sacred Congregations issued up to the year 1873, concludes in these words: "Although all other titles may be lacking ... the title of civil law alone can also be regarded as sufficient in practice, both by the faithful and by their confessors, who consequently are not permitted to disturb their penitents concerning this matter so long as this question remains under judgment and the Holy See has not explicitly defined it."[115] The Code of Canon Law, canon 1543, establishes the same: "In the furnishing of a fungible thing, it is not in itself illicit to agree upon legal gain, unless it is clear that this is immoderate, or even upon greater gain if a just and proportionate title supports it."

The reason is that, by force of high dominion and by reason of the public good, there belongs to the supreme legislator the right of transferring ownership of this increase from the borrower to the lender; and this all the more because the subjects consent spontaneously. And in truth, in present times commerce would be impossible and the public good would be gravely injured if a moderate increase or interest were not permitted.

Other authors[116] proceeded otherwise, thinking moderate interest to be lawful even without extrinsic legitimating titles. For in present times an increase or interest is demanded and accepted almost solely for *money lent*. But money today is not altogether sterile, but is truly, as it were, fruitful. Certainly money does not beget money as a cow begets a calf; but just as a rented house produces gain, so in almost the same way does money lent. Furthermore, money today is the principal instrument of trade and can immediately and without any difficulty be converted into fruitful things. Hence a contract by which money is delivered to another under the condition of legitimate interest is no longer a proper loan for consumption or usury, in which a sterile thing is delivered, but a contract of its own kind.[117] Consequently, the most grave prohibitions enacted against usury can no longer be applied to money lent. Whether this opinion is true does not clearly appear. For although money today can much more easily be converted into fruitful things than in ancient times, it does not yet follow from this that it has changed its nature and of itself has become fruitful.

For practice. All, whether clerics or laity, can with a safe conscience receive moderate interest, indeed even compound interest or interest upon interest,[118] from money lent, so that there is never an obligation of restoring such interest received. For today the extrinsic titles indicated above are always present. But what interest is moderate depends upon risk to the principal, gain ceasing, and emerging loss. Therefore, in regions where there is a legal rate or an admitted custom, this is to be followed. Indeed, something more can be accepted if the money is delivered to those companies commonly called joint-stock companies, *sociétés par actions*. But it is never lawful to abuse the need of the borrower in order to extort immoderate interest, since otherwise both justice and charity are injured.[119]

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[114] Cf. Denz. n. 1612 and note 1.

[115] *Collect. de Prop. Fide* n. 1393.

[116] Lehmkuhl, *Theol. mor.* I, n. 1313; Weiss, *Apologie des Christentums* IV, 794ff.; Tanquerey, *De iust.* n. 902; Henry Pesch, *Lehrbuch der Nationalökonomie* V, 226ff.

[117] It is called a contract of credit (*Kapitaldienstvertrag*).

[118] Compound interest (*Zinseszins, intérêt d'intérêt, compound interest*).

[119] Since in ancient times grave penalties were established against every usury, some attempted to evade these penalties through disguised usury by entering into the triple contract or the "Mohatra" contract. The *triple contract* is one contract of partnership and two contracts of insurance. E.g., Peter asks Paul for 10,000 francs to carry on some business, promising him a portion of the gain, namely, 1,000 francs. Behold the contract of partnership. For Peter and Paul conduct a business in which Paul furnishes the money and Peter the work. When this contract has been made, Paul, who fears risk to the principal, offers Peter 300 francs so that he may be willing to insure the principal. Behold the first contract of insurance. Paul, furthermore fearing for the profit, offers Peter another 200 francs so that he may be willing also to insure the profit; and this is done. Behold the second contract of insurance, by which the triple contract is completed. Therefore, for the 10,000 francs lent, Paul receives 500 francs, or 5 percent; cf. the constitution of Sixtus V, *Detestabili avaritiae*, 1586. - The *Mohatra* is a species of purchase for disguising usury. Behold an example: Peter asks Paul for 1,000 francs. Paul responds that he can neither lend this money gratuitously nor with usury, since usury is gravely prohibited; but he proposes this manner of acting: I sell you my horse for 1,100 francs, and you give me a promissory note in which you promise that after a year you will pay this sum. Immediately you sell the horse back to me for 1,000 francs, which sum I deliver to you. Therefore Peter has the 1,000 francs sought, but after a year he must pay 1,100 francs, or 10 percent, for the money lent. On March 2, 1679, Innocent XI condemned proposition 40: "The Mohatra contract is lawful, even with respect to the same person and with a contract of resale entered into beforehand, with the intention of gain" (Denz. n. 1190).

289. Scholion 1. On montes pietatis, savings banks, and banks.

A *mons pietatis* is a fund of money or other lendable things collected for this purpose: that the poor, upon giving a pledge and moderate interest, may receive from it on loan those things which are necessary for them. Today they are called pawnshops, *Pfandhäuser*, *monts de piété*. The Fifth Lateran Council[120] and the Council of Trent[121] approved *montes pietatis*, first established at Orvieto in 1463 or Perugia in 1467. At that time they existed for the relief of the poor, since only very moderate interest was demanded; but now, since these *montes pietatis* have often passed to private persons and the interest demanded is not rarely excessive, for various reasons *montes pietatis* are sometimes rather mountains of iniquity. It is greatly to be desired that the government diligently supervise and restrain institutions of this kind.

Savings banks (*Sparkasse, caisse d'épargne, savings-bank*) are established either by municipalities or by private persons to receive sums of money, not of such great quantity, and to pay suitable interest for the money received. The purpose of these institutions is to foster thrift, especially among persons of moderate fortune; this is certainly excellent. It is lawful to place money in these savings banks, as the Sacred Penitentiary expressly declared on February 25, 1836.

Banks (*Bank, banque, bank*) exist everywhere in the world and are of great service to commerce of different kinds. Nevertheless, as experience proves, they can also produce no small inconveniences and losses. Since it happens not rarely that a priest, especially if he is a pastor, must administer money or that his counsel is sought in monetary affairs, it will be very useful if he endeavors to know the different kinds of banks. According to modern practice all persons, even priests, can place money in these banks and purchase both "shares" and "bonds,"[122] provided scandal, cooperation in evil, and speculation on the stock exchange properly so called are avoided. Whether money belonging to churches and other pious causes can be placed in savings banks or banks depends both upon the condition of those institutions and upon particular ecclesiastical statutes.

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[120] Session 10 (Denz. n. 240).

[121] Session 24, c. 8ff., *De reform.*

[122] Cf. Holy Office, April 15, 1885.

290. Scholion 2. On the contract of census. A *census* (*Rente*) is a right of receiving an annual pension from a thing or person. This annual pension was called a canon or revenue. There was distinguished a *reservative census*, arising from the delivery of an immovable thing; a *consignative census*, or census simply so called, purchased by delivery of some "capital," e.g., I deliver 10,000 francs to you on the condition that until death I receive 800 francs annually; a *real census*, which is, as it were, a servitude imposed upon some thing and is almost the same as *emphyteusis*,[123] e.g., I deliver these fields to you so that you and your heirs may pay me 100 francs annually from their fruits. There are still other divisions, such as personal, pecuniary, and fructuary census, redeemable and irredeemable census, etc.[124] Whatever may be true of the old laws, today a census is lawful, provided there is a just proportion between the census and the price. For a census is after the manner of interest. But today interest or a loan for consumption is lawful, provided it is moderate.

[123] Hereditary lease (*Erbpacht*).

[124] Cf. Billuart, *De contract.* diss. 5, a. 1.

Article II. On Onerous Commutative Contracts

Having explained gratuitous contracts and acts, we approach onerous contracts, and first onerous commutative contracts. There are very many onerous contracts, but a perfect knowledge of all of them is not so necessary for the confessor. The principal ones are purchase and sale, letting and hiring. We shall treat them specially, adding, however, by way of a scholion something concerning certain other onerous commutative contracts, or contracts of certain outcome.

§ 1. On Purchase and Sale in General

291. Definition. Purchase is defined in Roman law as "an agreement for a price in exchange for merchandise"; sale, however, as "an agreement for merchandise in exchange for a price."[125] Therefore purchase and sale are two correlative contracts constituting one whole, which is called "purchase-sale" and can be defined as: an onerous contract constituted by mutual consent for giving merchandise for a determinate price and the price for merchandise. Therefore, besides the mutual consent of buyer and seller, two elements are required for the contract of purchase and sale: a thing as merchandise, and a price, which is a sum of money to be paid for acquiring some thing. Money, which in civilized regions today is made of gold, silver, etc., in ancient times was constituted by many other things, e.g., cattle, skins, ivory, shells, etc. Money, therefore, is a medium established by universal agreement for effecting exchanges of ownership.[126] The mutual consent which in this contract transfers ownership both of the thing and of the price must sometimes, by civil laws, be expressed under a determinate form, e.g., before a notary. Otherwise the contract is considered null.

By natural law a sale is perfected as soon as the parties have agreed concerning the thing to be delivered and the price to be paid. But before the actual delivery of the thing, consent does not produce the same effects in different positive laws. In German[127] and Austrian[128] law, ownership of the thing is transferred to the buyer only by delivery; before delivery he has only a *right to the thing* and consequently a personal action against the seller. On the contrary, in French,[129] Spanish,[130] Italian,[131] English, North American,[132] and Swiss[133] law, ownership of the thing purchased, together with its risk and advantage, passes to the buyer by the consent of the parties alone. There are, however, exceptions which can be seen in the places cited.

For the sake of clarity we shall now treat separately: 1. the thing saleable, or the merchandise, and the obligation of the seller; 2. the price and the obligation of the buyer; and finally, in a proper paragraph, certain sales in particular.

[125] From L. 5, § 1, D. 19, 5.

[126] After Aristotle, the Angelic Doctor (*lect.* 9 on book 5 of the *Ethics*) explains excellently how money, and indeed coin, is not only a suitable medium for effecting exchanges of ownership, but also a measure of the value of individual things.

[127] Civil Code § 446.

[128] Civil Code § 1053.

[129] Civil Code art. 1583.

[130] Civil Code arts. 1452, 1468.

[131] Civil Code art. 1448.

[132] Cf. Tanquerey, *Suppl.*, p. 21ff.

[133] Code of Obligations art. 185.

1. On Merchandise and the Obligation of the Seller

292. Merchandise, or the object of sale, can be any thing estimable in money and belonging to the seller, unless a special prohibition of positive law is present.

It is said, 1. "*any thing estimable in money*," whether that thing be corporeal or incorporeal, such as a right of nobility. It is not lawful to buy or sell spiritual things for a temporal price, for this would be simony. The thing must be valued in money, because otherwise there is no longer a sale properly so called, but an exchange. Hence if someone gives, e.g., ten sheep for a horse, it is an exchange rather than a sale. These three contracts must be accurately distinguished: exchange, purchase-sale, and currency exchange. For if one thing is delivered for another, there is an exchange; if a thing is delivered for money as a price, there is purchase-sale; if one kind of money is delivered for another, there is currency exchange.[134]

It is said, 2. "*belonging to the seller*." Therefore the sale of another's thing is invalid; compare, however, civil laws which sometimes establish otherwise, as was said above, n. 213, concerning a possessor in good faith. Those laws can be observed also in the forum of conscience. It is not required, however, that the seller actually possess the thing; it suffices that he have it in expectation, e.g., grain which is still growing in the blade. But nearly all modern laws prohibit an heir from selling a future inheritance, because such a contract is considered shameful, as inducing a desire for the death of the testator.[135]

It is said, 3. "*unless a special prohibition of positive law is present*." For certain things cannot be sold while preserving the common good, e.g., certain weapons, poisons, or even precious paintings, etc.

[134] To these contracts of exchange and currency exchange, as also to the very common instrument which is called a cheque or bill of exchange (*Wechsel*), the same principles are to be applied which hold for purchase and sale.

[135] German Civil Code §§ 310, 312.

293. Obligations of the seller.

1. The seller must not demand an unjust price, concerning which there will be discussion below.

2. By natural law the seller is always bound to disclose to the buyer the substantial defects of the thing to be sold. The reason is that otherwise the consent of the buyer will be invalid, and consequently the entire contract invalid. Positive laws in some cases admit the so-called redhibitory action (*Wandelungsklage*) if a defect of the thing was concealed. Those are considered substantial defects (*Hauptmängel*) of the thing which render it notably useless for the primary purpose known to the buyer. But with regard to accidental defects a distinction must be made: if the buyer expressly asks concerning these defects, the seller is bound to answer according to the truth, or at least to decline an answer by saying, e.g., I sell the thing in the state in which it now is. For then the buyer can provide for himself; if he does not do so, he will have to bear the loss. But if the buyer does not expressly inquire concerning these defects, then the seller cannot by frauds induce him into error and thus cause him great damage; therefore he is bound to disclose entirely hidden defects which notably diminish the thing, but he need not indicate defects which any prudent person can easily detect.

St. Thomas teaches excellently concerning this matter:[136] "Concerning a thing which is sold, a threefold defect can be considered. One is according to the species of the thing, and if the seller knows this defect in the thing which he sells, he commits fraud in the sale; hence the sale is rendered illicit.... Another defect is according to quantity, which is known by measure; and therefore if someone knowingly uses a deficient measure in selling, he commits fraud and the sale is illicit. Hence it is said:[137] 'Thou shalt not have divers weights in thy bag, a greater and a less; neither shall there be in thy house a greater bushel and a less,' and afterward it is added: 'For the Lord abhorreth him that doth these things, and He hateth all injustice.' The third defect is on the part of quality, as if someone should sell a sick animal as healthy; if someone knowingly does this, he commits fraud in the sale, whence the sale is illicit. And in all such things one not only sins by making an unjust sale, but is also bound to restitution." As is evident from the example adduced of the sick animal, the Angelic Doctor speaks of a quality redounding upon the substance; but if there is question of a truly accidental quality, there is no grave obligation of restitution.

3. The seller is bound to deliver the thing *physically, or at least morally, the same* as that which the buyer intends to acquire. I say, however, *at least morally the same*; for even if the thing given is physically not altogether that which the buyer thought he was acquiring, nevertheless, if morally it is the same, i.e., almost equally good and useful to the buyer and worthy of the price offered, then there is at least no grave injustice.[138] E.g., when guests ask for Moselle wine in an inn and the innkeeper gives them wine almost equally good which, however, was not grown on the banks of the Moselle, he does not seem gravely to injure justice, provided, however, that he does not exceed the just price.
4. The seller is bound to deliver the thing sold to the buyer in the state in which it was at the time of the sale. Civil laws are wont to establish, or the contracting parties specially determine, whether the seller or the buyer receives the fruits of the thing before delivery; who ought to bear the expenses of custody; for whom the thing perishes, etc. All these statutes are to be observed faithfully.

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[136] *S. theol.* 2, 2, q. 77, a. 2.

[137] Deut. 25:13.

[138] *S. theol.* 2, 2, q. 77, a. 2 ad 1.

294. Scholion. On diminution of weight or measure. St. Alphonsus[139] asks: "Whether one is excused [from injustice] who uses a diminished measure in order to obtain a just price which otherwise he would not obtain because of an unjust rate or an unjust monopoly of buyers? Lugo, Laymann, Palaus, and Sporer with

Soto, Valentia, and Toledo, and the Salmanticenses with Rebello, Salas, and Dicastillo affirm this as very probable. The reason is that then he justly redeems himself from vexation." These things, however, are to be understood with a grain of salt and in our times can very rarely be reduced to practice; for it is said in Sacred Scripture: "A deceitful balance is an abomination before the Lord."[140] Especially, the excuse often brought forth by merchants is not sufficient, namely, that they cannot withstand "competition" if they do not diminish weight and measure. For no injury is inflicted upon them by the buyers. Nor may they say that the weight, even thus diminished, corresponds to the just price. For although this is true absolutely, nevertheless it is false after agreement has once been legitimately made concerning such a price and such a weight.[141] They can, however, defend themselves against other "competitors" by accusing them of illicit machinations, or unfair competition (*unlauterer Wettbewerb, concurrence déloyale*). Such diminution of weight or measure is lawful only: a) if universal custom so bears and this can easily be known by the buyers; b) if buyers by unjust means, e.g., by so-called "syndicates" or boycott, compel sellers to a truly unjust price, because then the sellers can defend themselves.

Rules to be attended to by the confessor. Almost innumerable are the frauds which are wont to be committed in the sale of things. To discern whether from those committed there arises a grave obligation of restitution, the confessor should attend to three things:

a) whether the damaging is truly, formally, and efficaciously unjust, and this in grave matter;

b) whether the thing sold is at least morally the same as that which the buyer thought he was acquiring;

c) what the custom in force is in such a sale.

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[139] *Theol. mor.* l. 3, n. 822.

[140] Prov. 11:1.

[141] Thus also Billuart, *De contract.* diss. 5, a. 3.

2. On the Price and the Obligation of the Buyer

Obligations of the buyer. The buyer must fulfill all those things which in the contract of sale have been justly stipulated concerning the mode and time of receiving the merchandise and paying the price; but especially he is bound to pay the *just price*.

295. Notion and quality of price. Price is the value of a thing expressed in money. But whence the value of a thing is to be taken is not an easy question: whether from common estimation (exchange value, *Tauschwert*) or from its own intrinsic utility (use value, *Gebrauchswert*).[142] This second opinion, which St. Thomas, following St. Augustine, defends, seems to be preferred; he says: "The price of saleable things is not considered according to the degree of nature ... but according as things come into the use of man."[143] For the rest, the two opinions are not so different. For that which is commonly esteemed more dearly also has greater internal utility. I say, however, *internal utility*; for whether the price can be increased because of the external utility of the thing, because the thing is accidentally very necessary to the buyer, will be said below. But whatever may be true of this question, all teach that the price must be *just*, i.e., must at least morally equal the value of the thing. Hence St. Thomas[144] says: "Purchase and sale seem to have been introduced for the common utility of both parties, when, namely, one needs the thing of the other and conversely. But that which has been introduced for common utility ought not to be more a burden upon one than upon the other, and therefore the contract ought to be established between them according to equality of the thing. But the quantity of a thing which comes into the use of man is measured according to the price given, for which

purpose coin was invented. And therefore, if either the price exceeds the quantity of the value of the thing, or conversely the thing exceeds the price, the equality of justice is destroyed. And therefore to sell a thing more dearly or buy it more cheaply than it is worth is in itself unjust and illicit."

Accidentally, the price can sometimes be increased beyond the intrinsic value of the merchandise, if, namely, the seller suffers particular damage from the sale. On the contrary, "if someone is greatly assisted by the thing of another which he has received, while he who sells is not harmed by being without that thing, he ought not to sell it at a higher price, because the utility which accrues to the other is not from the seller, but from the condition of the buyer. But no one ought to sell to another what is not his own, although he can sell to him the damage which he suffers. Nevertheless, he who is greatly assisted by a thing received from another can of his own accord give something additional to the seller; this pertains to his honorable conduct." Thus again St. Thomas,[145] whom St. Alphonsus follows;[146] and therefore, according to these Doctors, the just price is to be taken: 1. either from the intrinsic value of the thing; or 2. from the emerging loss or gain ceasing which arises to the seller from the sale. This opinion seems altogether to be followed. Therefore the opinion of a few theologians who teach that the price upon which the contracting parties freely agreed is just must be rejected. For if this opinion were absolutely true, then wide doors would be opened to frauds of every kind. E.g., someone selling an estate so situated that another person altogether needs it could licitly sell it at an excessive price; or someone could sell to an ignorant Indian colored glass for a great weight of gold.[147] Certainly in these and similar circumstances it is lawful to demand the highest price. Hence in practice those are not to be disturbed who indeed sell more dearly things which furnish a special utility or pleasure to the buyer, provided they neither demand a wholly excessive price nor abuse the buyer's necessity.

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[142] Cf. Vermeersch, *De iust.* q. 8, n. 339ff.

[143] *S. theol.* 2, 2, q. 77, a. 2 ad 3.

[144] Ibid., a. 1.

[145] Ibid.

[146] *Theol. mor.* l. 3, n. 806ff.

[147] Cf. below, concerning the just price.

296. Distinctions of price. A threefold price is wont to be distinguished: a) legal, b) common, c) conventional.

a) On the legal price. The legal price is called that which has been directly and precisely established by public authority or law, so that it is not divided into highest, middle, and lowest, as will be said below concerning the common price.

It is wont to be employed, e.g., in railway tickets, postage stamps, foods served in certain public places, medicines sold by pharmacists, the hiring of public carriages, certain government monopolies, during wartime or a great dearness of provisions, etc.

Principle. The legal price must be observed in conscience,[148] and indeed from commutative justice, unless it is manifestly unjust.

The reason is that this price is legitimately established for the common good by public authority, which is especially able to judge concerning the equitable price of things and which has high dominion over the goods of subjects. Consequently this price is truly just, while every other discordant price becomes unjust. Hence one who notably injures such a price is bound to restitution. E.g., a driver of a public carriage[149] who demands

from inexperienced persons a greater fare than the rate determined by law is bound to restore. When the legal price is established not only in favor of buyers but also in favor of other sellers, namely, lest disorderly competition arise among them, an obligation of restitution can arise not only from increasing but also from diminishing the legal price, because by such diminution unjust damage is caused to other sellers. Thus the common opinion.

Note. Just as epikeia can sometimes be employed concerning other positive laws, so also concerning the legal price, especially: a) if many transgress the legal price with the legislator knowing and remaining silent; b) if the merchandise offered is of a better condition than that whose price is determined by law; c) if the legal price becomes manifestly unjust.

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[148] Thus St. Thomas (*S. theol.* 2, 2, q. 77, a. 2 ad 2), St. Alphonsus (*Theol. mor.* l. 3, n. 803), and the common opinion. The Salmanticenses treat this question excellently (*Curs. Theol. mor.* tr. 14, c. 2, n. 110ff.).

[149] Commonly, carriage driver, coachman (*Droschkenkutscher, cocher*). Although in this case it is rather an excessive price of hire, nevertheless the same principles hold for hiring and sale.

297. b) On the common price. The common price is called that which is determined by the common estimation of men according to the diversity of places and times, commonly the market price, *Marktpreis, prix du marché.*

It does not consist in an indivisible point, but admits a certain latitude and has three degrees, according to which it is highest, middle, or lowest. How great the distance is between the highest and lowest price cannot be determined by one rule, but depends upon many circumstances, especially upon the scarcity of the merchandise and the multitude of buyers. Generally, however, it can be said that the highest price of some thing is that above which no upright merchant would sell it; and the lowest price is that below which no upright buyer would buy it. At least that excess in price which permits rescission of the contract according to civil laws[150] must also in the forum of conscience be considered an excess beyond the highest price. There are, however, civil codes, e.g., the German Code, which never permit rescission of a sale for this reason alone, that an excessive price was agreed upon. Nevertheless, it is not lawful to conclude: Civil law does not consider such a price so excessive that it rescinds the contract of purchase and sale; therefore such a price is just also in the forum of conscience. For the Angelic Doctor[151] teaches: "Human law could not prohibit everything which is contrary to virtue; but it suffices for it to prohibit those things which destroy the society of men, while it regards other things as though lawful, not because it approves them, but because it does not punish them. Thus, therefore, it regards as though lawful, imposing no penalty, that without fraud a seller sells his thing at a higher price or a buyer buys more cheaply, unless the excess is immoderate; because then even human law compels restitution, for example, if someone is deceived beyond half the quantity of the just price. But divine law leaves nothing unpunished which is contrary to virtue. Hence according to divine law it is regarded as illicit if the equality of justice is not observed in purchase and sale." St. Alphonsus[152] observes that in things of small value there is less latitude between the highest and lowest price than in precious things. He establishes this norm: If a thing is worth 5, it can be sold for 4 or 6; if it is worth 10, it can be sold for 8 or 12; if it is worth 100, it can be sold for 95 or 105. But then he adds: "An estate which perhaps was sold for 20,000 can after a year be bought for 12,000." Certainly these things can be held as a directive rule because of the very great authority of the Holy Doctor, but they neither ought nor can always be applied strictly and mathematically in practice.

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[150] In France (art. 1674), if the deception exceeds half the just price; in Spain (art. 1291), beyond one fourth. Cf. Austrian Civil Code § 1060; Italian Civil Code art. 1529; Code of Canon Law, canon 1684, § 2.

[151] *S. theol.* 2, 2, q. 77, a. 1 ad 1.

[152] L.c., n. 804.

298. Principle 1. In the absence of a legal price, the common price is to be followed, so that to sell beyond the highest price and to buy below the lowest is unjust.

The reason is that the common price is determined by common estimation and consequently is considered just. For private judgment is often blind, fallacious, and corrupted by cupidity; but common judgment is ordinarily more prudent and less liable to error. Therefore, when there is no more certain rule, namely, a just positive law, common judgment concerning the price of some thing is to be followed. Thus it is also expressly established in ancient Roman law: "The prices of things are determined not according to the affection or utility of individuals, but commonly," i.e., they are estimated commonly.[153] But that which notably exceeds this common price is unjust. I say, however, *common and not private estimation*, because private estimation cannot change the common price, at least not without limit.[154] Hence if in some region a certain thing is commonly esteemed highly which in another place is esteemed little, a high price can be demanded in the first place. E.g., if the common estimation of some barbarian people values red cloth more than ivory, an educated man can buy ivory by giving red cloth.

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[153] L. 33, D. book 9, tit. 2.

[154] Cf. below, n. 299.

299. Principle 2. There are extrinsic titles on account of which it is lawful to sell above the highest and to buy below the lowest common price.

With regard to a dearer sale, the principal titles are: 1. gain ceasing and emerging loss, to which the other titles can be reduced, namely: 2. a special affection of the seller for the thing to be sold; 3. the mode of selling. With regard to a cheaper purchase, however, the principal titles are: 1. emerging loss or gain ceasing from the present purchase; 2. a spontaneous offer; 3. the mode of buying.

Concerning gain ceasing and emerging loss for the seller, what was said above, n. 295, from St. Thomas applies. A few things concerning the other titles:

A special affection of the seller for the thing to be sold is a sufficient reason for demanding a price greater than the ordinary price, which is wont to be called the *price of affection*. E.g., one who takes great delight in a talking parrot can demand a greater price if another wishes to buy that bird. The common opinion teaches with St. Thomas and St. Alphonsus[155] that it is not lawful to demand a greater price for a thing to be sold because the thing brings a special utility or pleasure to the buyer and not to the seller. The reason is that then the seller would demand a price for some thing which is not his. For that special utility or pleasure of the buyer is not the property of the seller. Hence, e.g., it is not lawful to sell above the highest price a field which is very necessary to the neighboring buyer.[156] But there are certain more recent theologians, Gousset,[157] Schwane,[158] Marres,[159] Waffelaert,[160] Génicot,[161] and Tanquerey,[162] who regard the contrary opinion as probable, saying that conscientious men also act thus in practice. Nevertheless, they are wont to limit their opinion somewhat. Therefore Noldin[163] says: "All affirm that this has force only when the buyer seeks from the thing to be bought nothing except convenience or pleasure; but that he commits injustice who demands a greater price because the other needs this thing: for mere need and necessity, which compels another to buy the thing, is not estimable by a price, nor is the needy person considered to donate the excess of the price." But even with this limitation the proposed opinion seems to be slightly probable. For the reason adduced above from St. Thomas retains its force. Hence in these circumstances it is indeed lawful to sell the thing at the

highest price but not at an excessive price, unless, however, such a price is considered as a gift and not as a true price.

The mode of selling sometimes permits a much greater price to be demanded, e.g., if a thing must be sold retail in a small quantity (*Detailverkauf*), or if it is sold at auction. Especially in the latter case any price, whether the lowest or the highest, is permitted, as will be explained more fully below, n. 302. Furthermore, if payment of the price is deferred, the thing can be sold more dearly; but if payment is anticipated, the thing can be bought more cheaply.

The titles legitimating purchase below the lowest price are:

Gain ceasing or emerging loss which arises to the buyer from the purchase. E.g., the buyer does not need the thing but nevertheless buys it from mercy toward the seller. In this way, however, he loses the interest on the money which he otherwise would have had. Consequently, he can buy more cheaply in order to compensate himself.

The *spontaneous offer* of a thing to be bought is also assigned by St. Alphonsus[164] as a title for buying it more cheaply, according to the adage: "Merchandise spontaneously offered becomes cheaper by one third."[165] For it is often a sign that things exist in great quantity, while, on the contrary, buyers are few. But if things are offered because of the poverty of the seller, the buyer would certainly act against charity if he wished to depress the price, unless, however, emerging loss would arise to him from the purchase.

The *mode of buying* sometimes permits a notable diminution of the price, e.g., when a great quantity of merchandise is bought, when a thing is bought at auction or from dealers in secondhand goods, etc.

You will ask: Is it lawful to sell things below the lowest common price in order to attract buyers (*Reklameverkäufe, ventes de réclame*) if other sellers suffer damage from it? If frauds are not employed, e.g., by adulterating merchandise or diminishing the measure, this is lawful, or at least is not contrary to justice, because everyone is free to sell his thing for a small price; otherwise, however, it is not lawful, since then unjust means are employed to cause damage to others. In our times great merchants disposing of ample capital often depress the price of merchandise immoderately in order to drive away weaker rivals. This mode of acting can injure charity, although means injuring commutative justice are not employed.

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[155] Cf. the places cited above, n. 294.

[156] Cf. Lehmkuhl, *Cas. consc.* I, n. 790ff.; Mausbach, *Moraltheol.* II, 2, § 39.

[157] *Theol. mor.* I, 840.

[158] *Lehre über die Verträge* § 19, n. 6.

[159] *De iust.* l. 4, n. 188.

[160] *Tract. de iust.* I, n. 613.

[161] *Theol. mor.* I, n. 633.

[162] *De iust.* n. 749.

[163] *De praeceptis* n. 598.

[164] *Theol. mor.* l. 3, n. 802.

[165] Cf. Cajetan, *Comm. in* 2, 2, q. 77, a. 1.

300. c) On the conventional price. The conventional price is called that which is determined by the free agreement of the buyer and seller.

Principle. In the absence of a legal and common price, a thing can be sold at any conventional price, provided, however, that neither fraud nor fear is employed.

Hence, e.g., precious paintings, extraordinary gems, ancient manuscripts, etc., do not have a fixed price, but can be sold at any price, however high. But what is to be said if a precious thing, whose true price was unknown to both contracting parties or at least to the seller, was bought for a low price? E.g., someone buys at a low price a painting which is afterward recognized to be a genuine work of Raphael. The response is made with a distinction. If both seller and buyer were ignorant of the true price of the thing, then that price upon which agreement is made will be just. Thus St. Alphonsus.[166] The principal reason seems to us to be that then the buyer begins to possess the thing in good faith and consequently has all the privileges which civil law grants to a possessor in good faith. But civil laws are wont in this case to admit the conventional price as the just price. But if the seller indeed was ignorant while the buyer knew the true price, then again a distinction must be made. If the thing was bought from dealers in secondhand goods or other merchants who, by force of their office, are bound to know the true price of the things offered, then any stipulated price is just. The reason is threefold: a) just statutes of civil codes are wont to permit this; b) the common judgment of the people so bears; c) no injury is done to the seller, since he can and ought to know the true value of the things offered by him. But if the thing was bought from a private person who through his simplicity did not know the true value, then the better and more probable opinion teaches that the purchase thus made is unjust and induces an obligation of restitution. The reason is: a) because then the buyer abuses the simplicity of the seller, who does not consent because of an enormous error;[167] b) because there is no proportion between the merchandise and the price, as is supposed.

But if the true value of the thing is so hidden that according to the common course of affairs it cannot be estimated even by experts in the art, and it was discovered by the buyer only through an extraordinary cause, then the conventional price seems just and the buyer is not bound to restitution. E.g., someone discovers that a treasure is hidden in some field, or that beneath the colors of one image there is found another very precious image. In these and similar cases the fortunate discoverer can also be a fortunate buyer, who probably is not bound to give more than the common price. The reason is that the just price is to be determined according to common and not particular estimation. But according to common estimation these things have only the conventional price actually given by the buyer.[168]

Theologians also commonly teach that *in a sale by auction* any price offered and accepted is just, civil law also so establishing, unless, however, fraud has been employed, as will be said immediately.

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[166] *Theol. mor.* l. 3, n. 802, fourth point to be noted; Noldin, *De praeceptis* n. 499, teaches the contrary.

[167] Cf. Billuart, *De contract.* diss. 3, a. 7; Berardi, *Praxis Confess.* II, n. 646; Gury, *Cas. consc.* I, n. 930.

[168] Noldin, l.c.; Billuart, l.c.

301. Scholion. On counterfeit money. Not only the counterfeiter of money himself, whether metallic or paper money, and his cooperators, but also all who knowingly use counterfeit money in paying a price are bound to restitution. The reason for the first is evident of itself; the reason for the second is that counterfeit money is not a just price. Nor is one excused from restitution who spends counterfeit money of this kind after he himself received it in good faith in payment of a debt. For from the fact that he himself was deceived he does not have the right to deceive an innocent third person. Restitution is to be made to the person to whom

the counterfeit money was given. But if he suffered no damage from the fact that he too spent this money, restitution is to be made to the person who actually suffered the damage; if this person is unknown, restitution is to be made to the poor or to pious causes. Nor is it lawful to give counterfeit money that may have been accepted as alms or as a gift, because then cooperation occurs in the spreading of such counterfeit money among the people.

§ 2. On Certain Kinds of Purchase and Sale

302. 1. On sale by auction. A sale by auction, which is also called an auction or bidding,[169] is a sale in which, before several bidders, the thing to be sold is proclaimed by a herald and awarded to the one offering the greater price. It is twofold: the one *voluntary*, which is made spontaneously by the owner; the other *judicial*, which is commanded by a legitimate judge, e.g., in order to make a division of goods or to pay the debts of creditors.

The just price in this sale by auction is that which without fraud is offered by the last bidder and accepted by the seller, whether it is above the highest or below the lowest price.[170] Hence, e.g., if some painting is sold at auction for a price of 100,000 francs, it is a just price; but if books whose true price is 1,000 francs are sold for 10 francs, this also is a just price. The reason is that such sales are, as it were, aleatory, in which the thing to be sold does not seem to have a determinate price. For many things depend upon chance. There is added also the common consent of the people and of the legislator, who never call the prices obtained unjust unless fraud was employed. Such fraud can be employed both by the seller and by the buyer.

Fraud on the part of the seller is present if he establishes fictitious bidders who, without the intention of buying the thing, intend only to increase its price. Nevertheless, such fraud does not seem to be grave, for the fictitious bidders undergo the danger of paying the price offered, just as true bidders do; grave fraud is present, however, if the fictitious bidder is unable to pay the price offered. Furthermore, the seller can commit frauds as in other sales, e.g., by concealing substantial defects, changing the thing sold for another, etc. Whether the seller can licitly withdraw the thing from the bidding if a sufficient price is not offered depends: a) upon the manner in which the auction was publicly announced; b) upon the statutes or the custom of the place.

Fraud on the part of the buyer, however, is present if by illicit means he prevents others from bidding, so that he buys the thing below the lowest price. I say, however, *by illicit means*, for the buyer can employ lawful means, e.g., exhort or ask another to abstain from bidding; indeed, he can enter into an agreement with one or another buyer that they may assist one another in buying at the lowest price. Thus, at least, without injury to justice strictly so called. Charity, however, seems to be injured if, through the employment of these means, a needy seller is compelled to hand over his things for an insufficient price.[171] Nevertheless, the practice of several dealers in secondhand goods seems unjust to me: having entered into a syndicate or pact among themselves, they truly and morally compel others to withdraw from the bidding and thus buy things at a wholly disproportionate price, especially in sales which are held at stated intervals by *montes pietatis*. For they act in this manner: whenever an outsider wishes to buy a thing, they always bid more and more, so that he must either withdraw from the bidding or pay a truly excessive price. When outsiders have thus been eliminated, they offer wholly insufficient prices for the remaining things to be sold, which the *montes pietatis* are compelled to accept, since the things proposed must altogether be sold. When the sale has ended, all united in the said syndicate divide among themselves the things bought or the profits obtained.

[169] Auction (*Versteigerung, vente aux enchères, auction-sale*).

[170] St. Alphonsus, *Theol. mor.* l. 3, n. 808.

[171] Cf. Lehmkuhl, *Theol. mor.* I, n. 1337.

303. 2. On monopoly. A monopoly[172] is the exclusive power of selling certain merchandise granted to one or a few sellers. It is either legal or established by private authority. A legal monopoly is the power, granted by public authority itself, of selling certain things exclusively. It is most frequently present and is exercised either by the government itself,[173] e.g., with regard to railways, the postal service, and the sale of tobacco, salt, etc.; or by private persons from the authority of the government, e.g., the sale of things made by a proprietary art,[174] the sale of medicine by certain pharmacists alone, etc.

A monopoly is established by private authority in many and diverse ways, e.g., a few men bring it about that they alone sell a certain kind of merchandise at a price pleasing to themselves.

A *legal monopoly* is legitimate, provided, however, that it is contained within just limits. This is evident, because it is a good means of acquiring money necessary for governing the republic; often it is nothing other than an indirect tax. Furthermore, it favors the public good in diverse ways.

Private monopolies are not illicit in themselves if, namely, they are instituted for the purpose of obtaining by legitimate means a good but just price. But if unjust means are employed, or an exorbitant price is demanded, or other abuses creep in, then private monopolies are unjust, as is evident of itself. In present times there exist very many private monopolies or similar combinations[175] which declare war upon one another. Since in civilized regions laws are not wont to permit excessive increases in demanding a price or the employment of wholly unjust means, it is often not established that existing private monopolies are certainly unjust; and consequently the confessor, at least ordinarily, is not bound to speak concerning them unless in a particular case the injustice is manifest,[176] as happens in certain modern syndicates.

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[172] Exclusive sale (*Alleinverkauf*).

[173] State monopoly (*Staatsmonopol*).

[174] Patent right (*Patentrecht*).

[175] Commonly, ring, cartel, trust, syndicate, etc.

[176] Billuart, *De contract.* diss. 2, a. 11, treats monopoly excellently; cf. also *Staatslexikon der Görres-Gesellschaft*, s.v. "Monopol," "Kartell," "Trust." Older theologians commonly teach that private monopolies injure at least charity; but at that time graver abuses seem to have crept into monopolies.

304. 3. On sale through brokers.[177] A broker is one who buys or sells not in his own name but in the name of another; he is therefore a mandatary, whose rights and obligations he consequently has. Today purchase and sale through brokers is most frequent.[178] The rights and obligations of the broker depend either upon law or upon free agreement. Brokers not rarely injure commutative justice because by unjust means, whether from their own mandator or from the other person with whom they contract, they procure an advantage for themselves. Particular cases can be resolved correctly if the general principle is always kept before the eyes: a broker is nothing other than the mandatary either of the seller or of the buyer. Therefore, e.g., if a broker sells more dearly or buys more cheaply than had been determined beforehand by the mandator, he acquires this profit not for himself but for the mandator, unless, however, he procured this profit by altogether extraordinary industry. Likewise, a broker cannot licitly buy for himself the thing to be sold at the established lowest price and afterward sell the same thing more dearly while retaining the excess of the price; for the mandator is rightly considered to disapprove this mode of acting. If, however, the broker cannot find a buyer, he can say this candidly to the mandator and then buy the thing for himself at the established price.

You will ask: Can craftsmen, e.g., shoemakers, masons, etc., retain for themselves reductions in price, five or ten percent, made by sellers for their benefit, while demanding the full price from their mandators? A sufficiently universal custom permits this; nevertheless, the matter is full of dangers, because sellers are wont to make such reductions only in appearance, while in reality they diminish either the quality or the quantity of the merchandise to the detriment of the buyer.

[177] Agent, broker, middleman (*Agent, Makler, Sensal, courtier, commissionnaire*).

[178] Agency transactions (*Agenturgeschäfte*).

§ 3. On Letting and Hiring

305. Definition. Letting in general is an onerous contract by which the use or usufruct of some thing is granted to another for a certain price, or certain services or some work are promised. Therefore letting is distinguished from a loan for use, since the latter is a gratuitous contract. He who grants the use or usufruct is called the *lessor*; but he who pays the price is called the *lessee*.

Division. Objects of a threefold kind can be had in letting: a *thing*, e.g., a house or field;[179] a *work*, e.g., a house to be built;[180] *labor*, e.g., domestic service.[181] In the second and third cases, however, such a contract is rather called hiring. Each is to be treated separately.

1. On the letting of things. A contract of letting is similar to purchase and sale. For the lessor sells, and the lessee buys, the use or usufruct of some thing, e.g., a house, estate, horse, etc. Consequently, almost the same principles hold concerning letting as were indicated above, n. 295, concerning purchase and sale. Furthermore, civil laws are wont to determine very precisely the rights and obligations both of the lessor and of the lessee; these laws, as ordinarily just, are to be obeyed in conscience.

2. On the letting of a work to be done. A *work* is here called whatever someone undertakes to do, e.g., to build a house, make a garment, and generally all those things which are called contract work, *Akkordarbeiten, contrat d'entreprise*. This can be done in a twofold manner, namely, so that the contractor[182] furnishes either his labor alone or both labor and material. In the second case this letting is truly a certain species of sale. In the letting of a work to be done, the price is established for the completed work; nevertheless, if there is question of great works to be done, e.g., the construction of a railway bridge, then a partial price is not rarely paid already after partial completion of the work. Sometimes a work to be completed is publicly announced with all its conditions and circumstances; various contractors are invited to compete under the agreement that the thing to be made will be committed to the one who has promised to complete the work for the lower price. Sometimes, however, there is only a private agreement. But in either case the contractor is bound to make the thing in the manner and at the time stipulated. Especially, he must not employ cheaper material or complete the work with less diligence; otherwise he is bound to restitution if he has caused notable damage to the person who commissioned the work. Since this contract is in some measure aleatory, the contractor is bound to fulfill all the conditions entered into even if he does not obtain a suitable price. If, however, unforeseen cases occur unexpectedly which render the work to be completed much more difficult, e.g., earthquakes, lightning, an epidemic, etc., then it is not only suitable but also just that a new contract be entered into. For the rest, the statutes of civil law are to be observed.[183]

[179] Lease or tenancy contract (*Mietvertrag, Pachtvertrag, loyer, bail*).

[180] Contract for work (*Werkvertrag*).

[181] Employment or service contract (*Arbeitsvertrag, Dienstvertrag*).

[182] Contractor (*entrepreneur, Unternehmer*).

[183] Cf. German Civil Code § 631ff.; French Civil Code art. 1779ff.; Swiss Code of Obligations art. 363ff.

306. 3. On the hiring of labor. This hiring is also called hiring or a contract of labor, and it is a contract by which one person obliges himself to furnish certain labor, while another obliges himself to give a determinate wage for this labor. Therefore the object of this contract is personal labor, or rather working power,[184] which one leases to another for a determinate time. To this pertains the hiring of servants, workers, physicians, etc.

Jurists and economists do not agree concerning the nature and character of this contract. a) Some maintain that it is a true letting, namely, of working power; b) others think it is a sale by which the worker sells his labor as merchandise for a determinate price; c) others teach that a contract of labor is nothing other than a contract of partnership, in which the employer contributes his "capital" and the worker his labor toward completing a common work and consequently also toward dividing the profit received from the work. This last opinion, considered at first sight, seems the best; but in reality it is only a utopia which cannot be reduced to practice. For employers contribute not only money, but also intelligence, at least commonly superior intelligence, and many labors. Furthermore, they are compelled to expose their own fortune to the greatest dangers and often labor for a sufficiently long time without any emolument, indeed with loss. On the contrary, workers incur no danger and must receive a daily wage. It would therefore be inequitable and contrary to the nature of a contract of partnership if in prosperous affairs the workers had a proportionate part of the profit, but in adverse affairs the employer alone had to bear the whole loss. d) Finally, others teach that the contract of labor is reduced to an innominate contract: I do that you may give, and I give that you may do.

Amid so great a diversity of opinions, the doctrine of Leo XIII[185] is to be retained as a principle: "Labor therefore has, as it were, two characteristics implanted in man by nature, namely, that it be *personal*, because the active force inheres in the person, and is altogether proper to him by whom it is exercised and for whose utility it is naturally fitted. Secondly, that it be *necessary*, because the fruit of labor is needed by man for preserving life; but nature herself, to which obedience is most greatly due, commands that life be preserved." From these words it clearly appears that labor cannot be regarded solely as *merchandise* without any relation to the person, but is to be considered as a legitimate, and often the only, means by which the worker can preserve life for himself and his own. If these things are kept before the eyes, the question concerning the just wage can more easily be resolved.

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[184] Use of working power (*Nutzung der Arbeitskraft*).

[185] Encyclical *Rerum novarum*, May 15, 1891.

307. The obligations of employers arise both from justice and from charity.

From justice employers are bound:

1. *To pay an equitable wage at the appointed time.* Hence Leo XIII says:[186] "To defraud anyone of the wage due is a great crime which calls down avenging wrath from heaven by its cry: 'Behold the hire of the laborers ... which has been kept back by you crieth; and the cry of them hath entered into the ears of the Lord of Sabaoth.'"[187] What wage is just, however, will be said below, n. 310.
2. *To respect workers as endowed with human dignity and not to regard them as cheap slaves*, as was done by the pagans, Cicero bearing witness and saying: "Illiberal and sordid are the gains of all hired laborers and of all those whose services, not whose arts, are purchased."[188] Hence from justice the employer is

bound to grant sufficient time so that the worker can live as a man, namely, by devoting himself to religious duties, having care for domestic affairs, etc.

3. Likewise, "not to impose more work than the strength [of the workers] can bear, nor work of a kind which is unsuited to age and sex." For "to demand so much work that the mind becomes dulled by excessive labor and at the same time the body succumbs to exhaustion is permitted neither by justice nor by humanity." Thus Leo XIII.[189] Especially, excessively grave labors are not to be imposed upon women and children. Happily, in several states there exist most salutary laws limiting the labor of women and children, and likewise generally the time and mode of labor.[190] Some of these laws, however, are unsuitable, as notably is that law which establishes indiscriminately that daily labor is never to extend beyond eight hours. For the time of labor is not to be measured indiscriminately, but according to the conditions of the labor, the laborer, necessity, etc.

From charity employers are bound:

1. To treat workers kindly and assist them in necessities. Therefore they ought to give alms principally to their own workers.
2. To favor institutions and decrees by which the condition of workers is justly improved, e.g., by opening schools for their greater instruction, founding baths and other institutions of health, etc. Therefore an employer cannot licitly oppose in parliaments laws which are justly proposed in favor of workers.

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[186] L.c.

[187] James 5:4.

[188] *De offic.* l. 1, 42.

[189] L.c. Cf. Code of Canon Law, canon 1524.

[190] Legislation for the protection of workers (*Arbeiterschutzgesetzgebung*).

308. Leo XIII[191] briefly and pregnantly embraces the obligations of workers in these words:

1. "That which was freely and equitably agreed concerning labor is to be rendered wholly and faithfully." Hence workers sin who labor negligently, who waste time uselessly, or who otherwise violate a contract of labor freely and justly entered into. The gravity of the sin and of the obligation of restoring depends upon the gravity of the damage unjustly caused.
2. "In no way to injure property." Consequently, workers sin who use prodigally the materials delivered to them, who destroy machines, who produce defective merchandise, etc.
3. "Not to violate the person of the employers," i.e., to inflict no injury upon employers, whether by calumniating, harming, saddening, etc.
4. "In the very defense of their own interests to abstain from violence, never to introduce sedition, and not to associate with wicked men." By these words an unjust strike is certainly prohibited, which occurs, e.g., by ceasing from work when a just hiring has not yet ended, or by demanding an excessive wage or other undue conditions. But it is not lawful to deduce from this that every strike[192] made by agreement is intrinsically evil.

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[191] L.c.

[192] Commonly, cessation of labor, strike (*Arbeitseinstellung, Streik, strike, grève, sciopero*).

309. On the moral character of a strike. A strike, as we now speak of it, is the common withdrawal by agreement of many workers in order to obtain certain advantages from employers. A defensive and an ameliorative strike are wont to be distinguished. A *defensive strike* is undertaken by workers who are unjustly oppressed by employers, e.g., when a truly insufficient wage is paid, when insufficient provision is made for the health or morality of the workers, etc. An *ameliorative strike* is made by workers to obtain a greater wage or shorter and easier labor, although the wage hitherto received is not altogether insufficient nor the labor excessive.

All concede that a defensive strike is lawful, provided no other means is at hand for lawfully defending themselves against the injustices of the employer. The reason is evident. For it is lawful to defend oneself with the moderation of blameless defense.

An ameliorative strike is asserted by a few to be intrinsically illicit, since such a strike is: a) true sedition condemned by Leo XIII in the encyclical *Rerum novarum*; b) idle leisure, since a man is bound to labor when he can, according to the words: "In labors shalt thou eat of it [the earth] all the days of thy life";[193] c) after the manner of an illicit private monopoly. But since these reasons are not very convincing, theologians most commonly[194] teach that even an ameliorative strike is not intrinsically evil, such that it can never become lawful; but, on the contrary, that it is lawful provided: 1. it takes place when the hiring has legitimately ended; 2. a proportionately grave cause is present; 3. unjust means are not employed; 4. the end is honorable. Certainly a strike is wont to bring many grave damages, both material and moral; e.g., enormous material damages arise both for workers and for employers; workers ceasing from work often waste time in taverns, give themselves over to drunkenness and immoralities, and quarrels, acts of violence, enmities, and other inconveniences arise. Since these things are so, a strike is very rarely expedient; indeed, it is altogether illicit unless a grave and proportionate cause is present. First of all, an effort is to be made that the just demands of the workers, for if those demands are unjust the strike is intrinsically evil, be obtained by other means, e.g., persuasion, peaceful agreement, the intercession of the government, etc. But if these efforts have been vain, then the strike is to be considered as an economic war. Just as war between different nations is sometimes lawful, so also is this economic war. Certainly it is not lawful to declare war against another nation except to vindicate an injury received, and it is never lawful to wage war in order to obtain, e.g., a new province; but it is lawful to undertake a strike even to obtain some advantage not owed from strict justice. The reason for this difference is that in international war acts evil and unjust in themselves are committed, e.g., killing men and destroying the goods of another. On the contrary, in the economic war of a strike no act evil of itself is committed. For this is a condition without which a strike is not lawful. Indeed, to cease from works to which a man is not bound from justice, and earnestly to exhort, but not compel, associates that they too withdraw from work, are not acts evil in themselves but indifferent. But if from this cessation of work the employer suffers great material damage, this is only indirectly voluntary, which certainly can lawfully be permitted if a proportionately grave cause is present. From all these things it follows that even an ameliorative strike is in itself lawful, provided the conditions listed above are present and especially that unjust means are not employed. Unjust means would be, e.g., to inflict unjust fear or force upon the employer or associates by beating, persecuting, calumniating them, etc.

What has been said concerning a strike applies also, in the opposite direction, to a *lockout of workers made by agreement.*[195] For just as workers can declare economic war upon employers, so employers can wage war against workers. But a truly grave cause is required for making this lockout by agreement, i.e., a grave fault of the workers; because otherwise culpable cruelty is committed, since workers thus dismissed by agreement by

different employers are thereafter admitted nowhere in the whole region to labor[196] and are compelled either to emigrate, to embrace another manner of life, or to beg.

Note. It is very rarely lawful to undertake a strike if the public good is thereby gravely injured, e.g., a strike of workers on a railway, from which the whole public communication is disturbed. Such a strike does not seem lawful unless it is truly defensive, namely, for repelling grave injustices. The reason is that the public good must prevail over the private good of the workers; and it is not lawful to injure the public good unless there is an intolerable injustice which otherwise private men must suffer.

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[193] Gen. 3:17.

[194] Cf. J. Biederlack against Treitz and Tournelle in *Zeitschrift für kath. Theol.* (Innsbruck, 1910), 286ff., 610ff.

[195] Lockout of workers (*Arbeiteraussperrung, lock-out*).

[196] System of blacklists (*System der schwarzen Listen*).

310. On the just wage. Since a wage is, as it were, the price of labor, those things said above, n. 296ff., concerning the legal, common, and conventional price are also to be applied, with proportion observed, to the wage, which likewise can be legal, common, or conventional. Furthermore, there is distinguished the *individual wage or pay*, which suffices to furnish the worker alone with suitable food, clothing, and habitation; and the *family or social wage*, which furthermore suffices to support the worker's immediate family. The family wage is either absolute or relative. It is *absolute* when it suffices to support a family in ordinary circumstances, or when by it a thrifty and upright worker, without neglecting the aids which thrift and the moderate cooperation of wife and children can furnish, is able to provide decently for himself and his own. Such a family wage scarcely varies according to the number of children. For if the offspring is numerous, the expenses are certainly greater, but the income is also greater, since not only the husband but also the wife and children are supposed to labor and contribute to increasing the income of the family. The *relative family wage* is that which is required for supporting a family in extraordinary circumstances, e.g., if the wife is infirm and can in no way contribute to increasing the family's income, if the offspring is very numerous or oppressed by infirmities, if extraordinary expenses are necessary, etc.

311. Principle 1. At least an individual wage is owed to the worker from natural law itself, or from commutative justice.

Thus all Catholics teach, and it is evident from the encyclical *Rerum novarum*, which establishes "that the wage ought not to be unequal to the support of a worker who is indeed thrifty and of good morals." The reason is that the worker has a strict right to suitable sustenance according to the words: "The workman is worthy of his meat";[197] nor is he bound to beg. But a wage is often the only means to such suitable sustenance. Therefore the worker has a right to that wage.[198]

Nevertheless, exceptions are found: 1. if provisions have become dearer and labor scarcer; 2. if the worker is worn out by infirmity or age. In these cases the employer is not bound, at least from justice, to give a perfect individual wage, because this would be an excessive burden. Then, however, the republic is bound to assist the workers.

The Liberals and Socialists oppose this Catholic doctrine. The former teach that the wage offered by the employer and accepted by the worker is to be regarded as just. This doctrine is false and opens a wide door to every tyranny. For workers, compelled by necessity, are not rarely induced to accept an unjust and insufficient wage. Socialists, on the contrary, teach that the entire fruit of labor is owed to workers, only the expenses for

the material employed, for the use of instruments, and for the intellectual labor of employers being deducted. This doctrine is also false, as manifestly unjust toward employers, who besides intellectual labor also furnish capital and assume the risk.

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[197] Matt. 10:10.

[198] Most worthy of note are the things which Cardinal Zigliara wrote by command of Leo XIII and which were transmitted by the Holy See to Cardinal Goossens of Mechelen shortly after the encyclical *Rerum novarum* was published: "Indeed, the work of the worker differs very greatly from merchandise, just as wage differs from price. For the work of the worker is work proceeding from human freedom, and therefore assumes the character of merit and of a right to a wage or reward; and it is consequently far nobler than merchandise and price, which are completed by exchange alone. Nevertheless, for the sake of clarity ... the work of the worker is considered as a certain merchandise, and the reward or wage as a certain price. Nor without reason: for although the work of the worker is something nobler than merchandise, nevertheless it retains the entire character of merchandise insofar as this bears an order to price. Therefore the reasoning of St. Thomas (*S. theol.* 2, 2, q. 114, a. 1) is most correct: 'For that is called a wage which is recompensed to someone in return for work and labor, as a certain price thereof. Hence, just as to render the just price for a thing received from someone is an act of justice, so also to recompense the wage of work or labor is an act of justice.' An act, I say, of commutative justice. For just as purchase and sale, so work and wage are for the common utility of the contracting parties, when, namely, one needs the thing or labor of the other and conversely. But that which is for common utility ought not to be a greater burden upon one than upon the other, and therefore a contract of justice ought to be instituted between employer and worker according to equality of the thing, which is the property of commutative justice (cf. *S. theol.* 2, 2, q. 57, a. 1). But if the criterion is sought by which that equality of the thing between the manual labor of the worker and the wage to be given by the employer must be established, we respond: That criterion is said in the encyclical to be sought from the immediate end of the worker, which imposes upon him the natural duty or necessity of laboring, namely, from food and clothing for suitably sustaining life, and to which manual labor is first and principally ordained (*S. theol.* 2, 2, q. 187, a. 3). Therefore, whenever the work is such that through it the worker satisfies his aforesaid natural duty of attaining the immediate end of his labor, but the wage is unequal to attaining this end, namely, suitable food and clothing, speaking in itself and considering the nature of things, there is an objective inequality between work and wage, and consequently an injury to commutative justice." Such an injury to commutative justice, from which many grave moral inconveniences arise, is certainly present in the system which is called the "sweating system" (*Schwitzsystem durch Zwischenmeister*), and which is employed not rarely against workers, men or women, who at home complete works assigned by some factory (*Heimarbeit*).

312. Principle 2. An absolute family wage is to be granted from justice, or at least from charity, in the normal state of industry to an adult and able worker.

It is said, 1. *in the normal state*; for when commercial industry is in a state of distress, then the workers also must tolerate distress. It is said, 2. *to an adult and able worker*; for if the worker through infirmity or old age is unable to labor perfectly, the employer is not bound, at least from justice, to pay as great a wage as the worker needs for himself and his family. For then the republic ought to furnish assistance. But when the wife or children of the family can earn something in a suitable manner, they are bound to contribute to the support of the family. The reason for the principle is that the most sacred law of nature compels no one to celibacy, but permits marriage to everyone capable of it.[199] Moreover, the father of a family is bound to procure sustenance for his wife and children born to him; and consequently, if he is a worker, he must acquire so great a wage that he can suitably satisfy this duty.

It is disputed among Catholics whether employers are bound from commutative, or at least legal, justice, or from charity alone, to give an absolute family wage. Therefore Cardinal Goossens of Mechelen proposed three doubts concerning this matter to the Holy See. Cardinal Zigliara, by command of the Supreme Pontiff, responded in a letter to Cardinal Goossens in 1891 that an employer who pays a wage sufficient for the support of the worker but unequal to supporting his family does not sin against justice, whose demands are fully satisfied when equality of wage and work is observed. Therefore in this case an employer who does not pay an absolute family wage indeed sins more or less against equity and filial or familial duty, but is not bound

to restitution. There are, however, several authors who nevertheless defend an obligation of justice in this case.[200]

[199] Hence Leo XIII says in the encyclical *Rerum novarum*: "No human law can take away from man the natural and primordial right of marriage."

[200] Cf. Tanquerey, *De iust.* n. 818, who treats the question of the hiring of workers excellently and at length. The responses to the doubts of Cardinal Goossens are given in full by Vermeersch, *Quaest. de iust.* n. 420ff.

Article III. On Aleatory Contracts

313. Notion. Aleatory contracts, so called from *alea*, i.e., an uncertain event, are those by which an uncertain gain is sought or an uncertain loss is averted for a certain price given. It is necessary, however, that this uncertainty of gain or loss not only truly be present on the part of each contracting party, but also that it be nearly equal; otherwise injustice is committed.

The following can be held as a general principle: **All aleatory contracts are lawful, provided:**

1. that the chance be morally equal between each contracting party (unless, however, one contracting party, knowing the inequality, nevertheless wishes to contract);
2. that no frauds be committed;
3. that there be no scandal and no prohibition of positive law.

We shall give the application of this principle in the following aleatory contracts, which seem to be the principal ones, namely: 1. insurance; 2. wagers; 3. games; 4. lotteries; 5. stock-exchange speculations.

§ 1. On Insurance

314. Notion. Insurance[201] is a contract by which someone assumes the risk of another's thing or person for a determinate premium, or, in other words, "it is a contract by which one person, for a certain price, obliges himself to compensate the damages which another can suffer from an involuntary event."[202] The object of this contract, therefore, is the risk assumed, which can occur in diverse things, e.g., the danger of fire, shipwreck, hail, death, etc. Today there exist very many kinds of insurance, which indeed are most useful if they are just. For through them the frequent ruin especially of men of moderate fortune is forestalled; and the things themselves are better guarded because of the supervision of the insurance company.

Requisites for just insurance. A contract of insurance is just:

1. If the insuring company truly pays those things which it ought to pay from the contract, and if the premium to be paid annually morally corresponds to the gravity of the risk in which the insured thing is placed;
2. if the insured sincerely declares the value of the thing and the dangers to which the thing is exposed, and does not bring the thing into danger through gravely culpable negligence;
3. if those things established by positive law or by particular stipulations justly entered into are faithfully observed.

In our days injustice can rarely arise from an excessively large insurance premium. For so many insurance companies exist that competition among them is great, and each one strives to reduce the premium as much as it can. Moreover, each person is ordinarily free to leave one company and enter another.

On the part of the insured, however, frauds and injustices are not rarely committed. For if the thing to be insured is not declared as it truly is, or if it is badly guarded with grave negligence or from direct intention, so that it perishes, or if changes are made in it which increase the danger of loss, etc., in these and similar cases injustice is committed, and a grave obligation of restitution is present if there is question of grave damage caused. (How restitution is to be made in these cases, however, see above, n. 231.)

Life insurance, which is also called a life annuity, is especially to be noted among the diverse kinds of insurance, both because of its frequency and because of the difficulties which it can cause in conscience. Life insurance can be effected in many and diverse ways. Difficulties can arise for the confessor only if the insured has employed frauds in the so-called "declarations," or if by illicit means he has violated the statutes of insurance, or if the physician has described too favorably the state of health of the person to be insured. Sometimes civil laws establish that, after a determinate time has elapsed, e.g., five years, the insurance company can no longer challenge the contract of insurance. These laws indeed seem just and useful, since they avoid very many lawsuits and render insurance companies more attentive. In practice, unless the fraud is most evident and an efficacious cause of grave damage, the confessor ought not readily to declare the contract of insurance null or oblige the insured to restitution. The reasons are: 1. because insurance companies are most cautious, so that they are very rarely led into grave error; 2. because civil laws favor the validity of the contract unless fraud truly substantial and manifest was present; 3. because it is often most difficult to determine from what disease death occurred, and whether the proximate cause of death had already existed long before. Therefore a positive doubt remains whether the fraud employed was truly an efficacious cause of grave damage. In doubt, however, an obligation of restitution is not to be imposed.

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[201] There are some who are unwilling to number the contract of insurance among aleatory contracts, e.g., Koch, *Moraltheol.* § 149, because in aleatory contracts the danger of loss ought to arise solely from the contract itself. On the contrary, even before the contract of insurance there is already danger for him who seeks insurance, e.g., the danger of fire. This distinction seems to be of little moment and of no utility. Hence authors commonly number insurance among aleatory contracts, e.g., Lehmkuhl, Tanquerey, Noldin, Moran, etc.; because the chance of loss is not only on the part of the insurer, but also on the part of the insured, who perhaps pays the premium for many years without any emolument.

[202] Tanquerey, l.c. n. 915.

§ 2. On Wagering

315. Notion. A wager[203] is "a contract by which two or more persons contending concerning the truth of some matter set a prize for him who shall have attained the truth."[204]

From this definition it follows that a wager is a bilateral onerous contract. Sometimes, however, only one person making the wager assumes an obligation upon himself;[205] e.g., I wager that I shall complete this course in the space of one hour; otherwise I shall give ten francs for the poor. In this case the wager is rather a certain conventional penalty which someone, for the most part from vainglory, imposes upon himself.

Lawfulness of wagering. Wagers, considered according to natural law, are lawful, provided they are made: a) from an honorable end, e.g., for the sake of recreation, for stimulating one's powers, for investigating the truth better, etc.; b) concerning a due object, namely, a lawful matter doubtful on both sides. Since, however, grave

and frequent abuses occur in wagers in practice, several modern civil codes partially or totally prohibit and invalidate them.

It is evident of itself that a wager concerning an illicit matter, e.g., concerning committing a theft, drinking an excessive quantity of wine, an exorbitant prize, goods of which the person wagering does not have free disposition, etc., is sinful.[206] Nevertheless, profit received from such a wager can be retained. For the same thing holds which was said above, n. 253, concerning profit received from a shameful contract. Under pain of excommunication (which, however, no longer exists today), Gregory XIV, in the constitution *Cogit nos* of March 21, 1591, prohibited wagers made upon the election of a future Roman Pontiff or of Cardinals.[207] The object of the wager ought to be doubtful on each side, i.e., each person wagering ought to have doubt and not certainty concerning the event in dispute. Hence, more probably, a wager is invalid if one person wagering is certain concerning the matter in controversy, even though he has openly warned his adversary of his certainty.[208] The reason is that in this contract of wagering there ought to be hope of gain. But if one is certain concerning the event, the other has no hope of gain, and consequently cannot reasonably stake anything for it.[209]

Civil codes commonly establish: a) that no obligation arises from wagers; yet also b) that he who has received some profit from a wager is not bound to restore it.[210] These statutes, as just, seem to oblige in conscience. Hence, e.g., in Germany wagers (and the same holds for games) which are excessive and prodigal produce no obligation in conscience. Concerning the lawfulness of wagering, St. Alphonsus writes:[211] "In the concrete (since, in my opinion, no indifferent action is given), I regularly judge that wagers of this kind are not excused from venial sin, because in them there is lacking the motive which renders lawful recreation honorable, as it is present in an honorable game. And St. Antoninus[212] seems to understand it thus, calling such profit shameful, as serving no utility, but vanity and prodigality." This opinion indeed seems true if there is question of those who make wagers frequently and in grave matter; but if there is question of rare wagers of lesser price, they are indeed to be avoided by clerics and religious persons, since they furnish matter for contention, but they are not evil in themselves.

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[203] Wager (*Wette, pari, betting*).

[204] Cf. Billuart, l.c. diss. 6, a. 5, § 5.

[205] Unilateral wager (*halbe Wette*).

[206] St. Alphonsus aptly observes (*Theol. mor.* l. 3, n. 870): "If the wager concerns a sin to be committed by some third person, it is lawful unless the person wagering desires the sin or gives assistance toward committing the sin.... But if the wager concerns a sin to be committed by one of the persons wagering, it will be lawful if you were to wager, e.g., that the other will commit the sin, because then the wager averts him from sin. It is otherwise if you were to wager that you would commit the sin, or that the other would not commit it; because then the wager would induce one to sin."

[207] Cf. Moran, *Theol. mor.* I, 1187.

[208] Cf., however, St. Alphonsus, l.c. n. 878ff.

[209] Cf. Billuart, l.c.

[210] German Civil Code § 762ff.; French Civil Code art. 1964ff.; Austrian Civil Code § 1271; Swiss Code of Obligations art. 513ff.; Italian Civil Code art. 1802. For Spanish law see Moran, l.c. 1184, and Larraga-Saralegui, *Comentarios* n. 826.

[211] *Theol. mor.* l. 3, n. 869.

[212] *S. theol.* P. 2, tit. 1, c. 23, § 9.

§ 3. On Games

316. Notion. A game, taken in the general sense, is some act primarily ordained to the recreation of the mind, or it is a remedy against weariness of the mind, giving it rest, i.e., pleasure.[213] Although someone can play alone, nevertheless a game is generally carried on among several persons, and then it can be defined: a contest of two or more undertaken for the recreation of the mind. But to this contest, lest it flag, there is ordinarily added a pact that some prize should fall to the victor. This pact indeed is called a contract of gaming and can be defined: an aleatory contract by which a prize is granted to him who shall have obtained victory in some contest entered upon for recreation. Therefore the end of every game ought to be honorable recreation of the mind. But if another end, e.g., gain or sensible pleasure, is principally intended, the game either is illicit[214] or is no longer a game.[215]

[213] Cf. *S. theol.* 2, 2, q. 168, a. 2.

[214] E.g., games of chance (*Glücksspiele*).

[215] E.g., a lottery.

317. Morality of recreational gaming. St. Thomas[215a] proves that a game clothed with due conditions and undertaken for honorable recreation of the mind is necessary, is an act of the virtue of eutrapelia, and consequently is meritorious. It is indeed necessary, because it is an excellent remedy against weariness of the mind. For just as weariness of the body is removed by good sleep, so weariness of the mind is cured by a suitable game. It is an act of virtue, because the office of virtue is to observe the right mean in our actions. But both defect and excess are easily present in gaming. Therefore a special virtue is required which avoids each. The virtue rightly ordering games is called *eutrapelia* by Aristotle; this word is translated into the Latin language as pleasantness, good conversation, urbanity, affability. Finally, a game is a meritorious act, because every virtuous act perfected in the state of sanctifying grace produces merit. But in order that a game be lawful, it is principally required: 1. that the pleasure joined to the game not be sought in a shameful object or in illicit operations; 2. that every excess be absent, for pleasure ought to be tasted soberly, as seasoning in foods; 3. that the game befit the person, time, and place. All these things are evident of themselves and do not need proof or illustrative examples.

Division. A game is divided into: 1. a *game of skill*, in which the outcome of the game depends especially upon the aptitude and skill of the player, e.g., a ball game,[216] the game of draughts,[217] etc.; 2. an *aleatory game*, which rests upon fortune alone and scarcely, if at all, upon skill, e.g., the game of dice,[218] etc.; 3. a *mixed game*, which is governed partly by skill and partly by fortune, e.g., several games of cards.

[215a] L.c.

[216] Football.

[217] Skittles (*Kegelspiel, jeu aux quilles, skittles*).

[218] Dice (*Würfelspiel, jeu aux dés, dice*).

318. Principle. Gaming with a pact of gain is lawful, provided the following conditions are observed:

1. *That the players have free disposition of the thing which they stake in the game.* The reason is that in gaming ownership of some thing is transferred. Therefore he who does not have perfect ownership cannot licitly stake gain in a game, nor can the victor retain gain obtained from someone who does not

have free disposition of the thing. Hence, e.g., games played for stakes by religious, minors, and wives are illicit and invalid, unless, however, there is question of goods of which they have free disposition.

2. *That the game be played with full freedom and deliberation.* For all contracts, and especially aleatory ones, ought to be free and deliberate. Hence he who compels someone to play, or who plays with a half-drunken person and thus acquires notable gain, sins and is bound to restitution.

3. *That there be moral equality among the players with respect to the hope of gain and the danger of loss.* For if on one side there is moral certainty of gain and on the other side the same certainty of loss, it is no longer an aleatory contract, but justice and equity are violated. Therefore, e.g., gain obtained from a game is unjust if someone very skilled plays a game of cards with another who is unskilled. But if someone knowingly and willingly plays with another more skilled person, or if he knows that the hope of gain is less, then no injury is done to him. For example, no injury is done to those who play in the city of Monte Carlo, even though the hope of gain for them is much less than for the Bank itself.

4. *That frauds be avoided in the game*; otherwise there is an obligation of restitution, and indeed of not only the gain fraudulently obtained, but also the damage inflicted by depriving the other of the hope of gain. Certain stratagems, however, which according to the custom of players are not considered shameful, are permitted, e.g., looking at the cards of another player solely because of his own negligence.

5. *That gain not be principally intended in the game, or not be sought too avidly.* For a game is instituted for honorable relaxation of the mind. Hence there is a disorder if someone, especially in an aleatory game, seeks gain more than this relaxation.[219] This disorder, however, is of itself only a venial fault, since it is not in so grave a matter; nevertheless, accidentally it can be a grave sin, e.g., because of scandal, because of prodigality, because of great damages in fortune, bodily health, and morals, etc. Therefore not without reason are places in which games of this kind are wont to be conducted for the hope of gain alone called "gaming hells,"[220] and in most regions games of this kind[221] are altogether prohibited.[222] Generally, however, with regard to all games civil codes grant no action either to the victor for seeking the gain or to the vanquished for reclaiming what he has already paid, unless fraud or deceit intervened.[223]

Note. Games in which a large gain is staked are wont to be most dangerous; for they incite the human passions and induce manifold and grave disorders. Hence the confessor should prudently oppose them and should not impose upon anyone a strict obligation of paying debts contracted from gaming if civil law does not recognize such an obligation.

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[219] St. Alphonsus, *Theol. mor.* l. 3, n. 885.

[220] Gaming hells (*Spielhöllen*).

[221] Games of chance (*Hazardspiele, jeux de hasard, game of hazard*).

[222] Cf. German Penal Code §§ 284-286; Austrian Penal Code § 522; Swiss Constitution art. 35.

[223] Cf. above, n. 315, note 4.

319. Scholion. On games prohibited by ecclesiastical law. Purely aleatory games are forbidden to clerics by ecclesiastical law if they are played for gain. "Let them not play at games of chance and dice, nor be present at games of this kind."[224] "Let clerics (and the same holds concerning religious) not occupy themselves with

aleatory games when money has been staked."[225] Therefore let clerics not waste time in games, considering moreover how easily excess is committed with their own damage and the scandal of the faithful.

[224] c. 15, X 3, 1; cf. Council of Trent, sess. 22, c. 1 *de reform.*, and sess. 24, c. 12 *de reform.*

[225] Code of Canon Law, canon 138.

§ 4. On Lotteries

320. A lottery is an aleatory contract by which, upon payment of a certain price, a right is acquired to obtain some prize if the lot is favorable.

A lottery is not illicit of itself, because buying the hope of gain is not prohibited. The principal conditions for a lottery to be lawful are: 1. that no fraud be employed in drawing the tickets or in paying the prize; 2. that ordinarily there be a fair proportion between the price paid and the hope of obtaining the prize. I say *ordinarily*, however, because several lotteries are instituted for promoting a good work, e.g., for building a church; in this case the lottery is nothing other than an occasion of giving alms with a slight hope of gaining something. Since the purchasers of these lots know this, no injury is done.

Since a lottery gives occasion to many abuses, e.g., by exciting a vain hope of becoming rich quickly and without labor and by occasioning excessive expenditures for the purchase of lots, civil laws in several regions consequently impede or at least limit the use of lotteries. These laws indeed are prudent; nevertheless, they are commonly considered as merely penal laws, not inducing an obligation, at least a direct one, in conscience, nor obliging to restitution in case of transgression.

§ 5. On Stock-Exchange Speculations

Preliminary note. In our days stock exchanges have obtained so much power that the welfare of nearly the whole people can depend upon them. For almost all great transactions of commerce are conducted on the Exchange. Moreover, from the malice and cunning of impious men, the so-called "stock-exchange speculations" have brought very many to material ruin. Since these things are so, civil governments have for a long time attempted to enact prudent laws concerning transactions on the Exchange. Experience testifying, however, these laws are not yet sufficient to forestall all abuses. It is very useful for the confessor to know at least the principal heads of stock-exchange speculations, because otherwise, when a case occurs, he cannot judge whether the penitent committed an injustice or not.

321. Notion. The name *Exchange* is taken in two ways: either for a building established by public authority in which certain transactions are conducted, or for the assembly itself of merchants for conducting those transactions. This twofold acceptation is somewhat similar to the twofold acceptation of the name *church*, namely, for the building and for the assembly of the faithful. In the present matter we speak of the Exchange insofar as it is an assembly of certain merchants. The Exchange so understood has a sufficiently great similarity to fairs, in which a multitude of men assembles to buy and sell merchandise. Consequently, the Exchange is rightly called a "qualified market."[226] Two kinds of objects are bought and sold on the Exchange, namely: 1. money or securities (shares, bonds, etc.); and 2. merchandise, e.g., grain, oil, wool, wine, etc. Hence a twofold Exchange is distinguished: the *securities exchange*[227] and the *commodities exchange*.[228] Now the contracts on each Exchange are principally of two kinds, namely, either for the present or for a future term. *Contracts for the present*[229] are nothing other than sales and purchases of merchandise, bonds, shares, etc., and consequently the principles set forth above, n. 291ff., concerning sale and purchase are to be applied to them.

Contracts for a future term[230] are again of two kinds, namely: 1. for a term freely determined between the contracting parties, e.g., someone buys 1,000 measures of wheat to be delivered, not immediately, but after three months (the same thing holds concerning this contract as concerning a contract for the present); and 2. for a term determined by the laws of the Exchange, namely, for the last day of the month or the middle day of the month (commonly, *ultimo* or *medio*); this day is ordinarily called the day of liquidation. These contracts for a future term are aleatory contracts and are wont to be made in many ways, of which the principal ones are the following:

a) A *difference contract.*[231] For example, on March 8 Peter buys from Paul 100 shares of some mine for the price of 120,000 francs. But it is agreed between Peter and Paul that on the last day of the month, i.e., March 31, the shares are not to be delivered, but only the difference in price. Hence, if on this last day those 100 shares are worth 121,000 francs, Paul must render 1,000 francs to Peter; but if the price is only 119,000 francs, Peter must give 1,000 francs to Paul. It not rarely happens that the buyer or seller attempts to evade even the payment of this difference. He then asks that the transaction be deferred or carried over for fifteen days.[232] This extension is commonly lawful; for it is nothing other than asking for a loan with payment of the interest owed. Hence we do not explain it specially here.

b) A *premium contract*[233] can be made in many ways, which it would be lengthy to enumerate.[234] In general, a premium contract consists in this, that on the day before the term of liquidation or payment the buyer can withdraw from the contract entered into, provided he pays the premium previously established. For example, Peter buys from Paul 10,000 sacks of wool, which he must receive on March 31 for the price of 100,000 francs. Peter hoped that the price would be higher than 100,000 francs, but on March 30 the price is lower, nor is there hope that it will be higher on the following day; hence, to avoid greater loss, Peter withdraws from the contract entered into and pays the stipulated premium, which is, as it were, a conventional penalty.

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[226] Qualified market (*qualifizierter Markt*); cf. *Staatslexikon*, s.v. "Börse."

[227] Securities or stock exchange (*Effekten- oder Fonds-Börse, Stock-Exchange*).

[228] Produce or commodities exchange (*Produkten- oder Waren-Börse, Produce-Exchange*).

[229] Called *au comptant, Tagesgeschäfte, Kassageschäfte, Comptantgeschäfte, Locogeschäfte, Effektivgeschäfte*, and by other very similar names.

[230] *Börsentermingeschäft, à terme.*

[231] Difference transaction (*Differenzgeschäft, opération à crédit*).

[232] *Se faire reporter à la quinzaine, Report- und Deportgeschäft*, or *Kost geben und Kost nehmen, Prolongation*, etc.

[233] Premium transactions (*Prämiengeschäfte, marché à prime*).

[234] *Stellgeschäft* or *Stellage, Nochgeschäft, Wandelgeschäft, Escompte*, etc.

322. Principle. All stock-exchange transactions, even those for a future term, are lawful of themselves; accidentally, however, difference contracts are very often illicit and unjust.

The first part is proved. All stock-exchange transactions are reduced to a contract of purchase and sale or to aleatory contracts. But these contracts are lawful of themselves. Therefore stock-exchange transactions also are lawful of themselves.

The second part is proved. Difference contracts accidentally very often bring the material ruin of the contracting party, inordinately incite the accursed hunger for gold, and excite all the human passions. Therefore accidentally they are illicit. Moreover, those who contract in this manner often have recourse to the

most cunning frauds,[235] e.g., they spread false rumors, corrupt newspapers to give false reports, vehemently recommend enterprises which are already near ruin, create unjust monopolies,[236] etc. Therefore these difference contracts accidentally are very often unjust. Hence modern laws also endeavor to impede them by establishing that they be regarded as games and consequently produce no civil action.[237] Nevertheless, even today modern laws have not been able to eliminate all the abuses of difference contracts. The confessor should prudently avert his penitents from these difference contracts, because they are rarely lawful and always full of dangers of many kinds. But these contracts and other speculations on the Exchange are altogether prohibited to clerics.[238] For they are entirely unbecoming to the clerical state.

[235] Commonly, stock-exchange swindle (*Börsenschwindel*).

[236] Commonly, *corner*, "*Schwänze*."

[237] Cf. German Civil Code § 764; Swiss Code of Obligations art. 513.

[238] Holy Office, April 15, 1885.

Section II. On the Potential Parts of the Virtue of Justice

Order of treatment. After what has been said concerning the virtue of justice itself, we must treat, following the footsteps of the Angelic Doctor, the potential parts of justice, or the other virtues annexed to justice. Nine or ten such virtues are enumerated, namely, religion, piety, observance, obedience, gratitude, vindication, truth, affability, liberality, and epikeia.[1] Among all these virtues, the virtue of religion holds the first place, since it approaches more nearly to God.[2] The virtue of religion is annexed to justice as a potential part, because it indeed agrees with justice in the notion of its object, namely, in rendering to another what is due; but it falls short of the perfect mode by which justice attains its object, since it does not render what is due according to strict equality. For religion indeed renders due worship to God, but not according to strict equality, because no creature is able to venerate God as much as is fitting. The due worship to be rendered to God is commanded in the first three precepts of the Decalogue. Hence the treatise on the virtue of religion contains nearly all those things which other manuals treat under these three precepts of the Decalogue. The virtues of piety, observance, and obedience embrace nearly those things which are commanded in the fourth precept of the Decalogue. Hence this second section is suitably subdivided into three questions:

1. On the virtue of religion (or on the first three precepts of the Decalogue).
2. On the virtues of piety, observance, and obedience (or on the fourth precept of the Decalogue).
3. On the remaining potential parts of the virtue of justice.

[1] *S. theol.* 2, 2, q. 80, a. unic.

[2] Ibid., q. 81, a. 6.

Question I. On the Virtue of Religion (or on the First Three Precepts of the Decalogue)

Literature. St. Thomas, *S. theol.* 2, 2, q. 81-100; Suarez, *De virtute religionis*; Billuart, *Tract. de religione et vitiis oppositis*; Bouquillon, *De virtute religionis* (Bruges, 1880); John Baptist Wirthmüller, *Die moralische Tugend der Religion* (Freiburg, 1881); Tanquerey, *Theol. mor. de virtute religionis.*

We shall treat: 1. the nature of religion; 2. the diverse acts of religion; 3. the vices opposed to religion.

Chapter I. On the Nature of Religion

323. Name. It is obscure whence the name *religion* was taken. There are four principal etymological explanations: 1. Religion is derived from *relegere*, to read again. Thus Cicero.[3] For we ought frequently to read again or revolve those things which pertain to divine worship. 2. The name *religion* is derived from *reeligere*, to choose again. Thus St. Augustine.[4] For man ought to choose again the God whom he lost by sinning. 3. The name *religion* is taken from *religare*, to bind. Thus Lactantius.[5] For through religion man is most greatly bound and fastened to God. 4. The name *religion* is derived from *relinquere*, to leave apart. Thus Massurius Sabinus.[6] For those things which pertain to religion ought to be left apart or separated from profane things. Concerning these etymologies St. Thomas observes:[7] "Whether religion is so called from frequent reading, or from the repeated choice of that which has been negligently lost, or from rebinding, religion properly imports an order to God. For he is the one to whom principally we ought to be bound as to an unfailing principle; to whom our choice also ought continually to be directed as to the ultimate end; whom we also lose negligently by sinning, and whom we ought to recover by believing and professing the faith."

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[3] *De nat. deorum* l. 2, c. 28.

[4] *De civ. Dei* 10, 3.

[5] *Instit.* 4, 28. The definition of Lactantius is more pleasing to Cajetan, *Comm. in* 2, 2, q. 81, a. 1.

[6] In Aulus Gellius, *Noctes Atticae* 4, 9.

[7] *S. theol.* 2, 2, q. 81, a. 1.

324. Diverse acceptations. There are very many diverse acceptations of religion, especially among non-Catholics. Thus, e.g., Schleiermacher, Jacobi, and many modern non-Catholics place religion in some sensation or affection of subjection toward some infinite Universe.[8] The so-called "Societies of Ethical Culture" teach that religion is identified with natural morality, so that all religion consists in a good moral life, abstracting from every religious worship.[9] Pantheists, Deists, and all who deny the existence of a personal God necessarily also deny true religion, so that Feuerbach did not blush to call religion a certain disease of man. Omitting all these false acceptations, concerning which apologists treat more broadly,[10] Catholic authors employ the word *religion* principally in four ways:

1. *In the objective sense*, for a determinate manner of believing in or worshiping the Deity. Thus, e.g., we speak of the Mohammedan religion, the Jewish religion, pagan religions, etc., and the history of religions.
2. *For the whole moral life.* In this sense St. James says:[11] "Religion clean and undefiled before God and the Father is this: to visit the fatherless and widows in their tribulation, and to keep oneself unspotted from this world." In this sense we also call an upright and pious man religious.
3. *For a special state of men*, namely, those who by the public profession of the vows of poverty, chastity, and obedience have been perpetually deputed to divine worship. Thus we speak of the religious institute of the Dominicans, the Franciscans, etc., or also of the religious state and religious profession.
4. *For a special moral virtue*, by which, namely, we offer to God the worship and service due to him.[12] We shall treat here only of this last acceptation, and thus religion can be defined:

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[8] Subjective feeling of dependence; feeling of the vigor of the divine life-impulse and source of will manifesting itself in man (*Subjektives Abhängigkeitsgefühl; Gefühl von der Kräftigkeit des sich auswirkenden göttlichen Lebenstriebes und Willensquells im Menschen*). Cf. A. Weiß, *Die religiöse Gefahr* (1904), part II, n. 39.

[9] Cf. Weiß, l.c., part IV, n. 22.

[10] Especially to be consulted is A. Weiß in the work cited, where nearly all false acceptations of religion are enumerated and refuted, especially part IV, n. 58ff.

[11] James 1:27.

[12] In the Greek language it is called *eusebeia* (εὐσέβεια), and in the German language, the virtue of the veneration or service of God (*die Tugend der Gottesverehrung oder des Gottesdienstes*), or more briefly, religiosity (*die Religiosität*).

325. Real definition. Religion is a moral virtue inclining us to offer due worship to God as our creator and governor, or as our supreme principle.

This definition is explained. It is said, 1. *a moral virtue.* For religion is neither a theological nor an intellectual virtue. And indeed: a) It is not a theological virtue, which has God himself directly as its formal object *quod* and *quo*. Thus, e.g., I believe the Trinity because of divine revelation; I love God because of the supreme divine goodness. But the direct object of religion is not God himself, but something created, namely, the worship to be offered to God. For the *material object* of the virtue of religion consists in those actions, whether internal or external, by which God is worshiped, i.e., by which we profess the divine excellence and our subjection; e.g., inclinations, genuflections, prayers, sacrifices, etc. The *formal object quod* is "at least an imperfect equality, which man establishes between himself and God through worship, or through actions by which he worships and reveres him as the first principle and supreme lord."[13] For man, acknowledging that he is a creature made by the supreme and most excellent God, is bound to worship this God insofar as this is possible for him: that worship as due and proportioned to human powers is the formal object in the virtue of religion. Finally, the *formal object sub quo*, or the motive on account of which religion worships God, is the natural moral rectitude which is found in divine worship and which consists in this, that the creature reveres the divine excellence and manifests his subjection toward God.[14] The special relation and difference between the virtues of religion and charity will be discussed below, n. 328. b) That the virtue of religion differs from the intellectual virtues of wisdom, understanding, knowledge, etc., is nearly evident of itself. For these virtues are only virtues in the broader sense and reside in the intellect, while the virtue of religion is a most excellent moral virtue and resides in the will. Although religion is not a theological virtue, it is very closely allied to the theological virtues; for it attains God mediately and offers him due worship because of the supreme divine excellence. Moreover, religion is a certain profession of our faith, hope, and charity; indeed, it sometimes commands even the acts of the theological virtues themselves in order to honor God. Hence it follows: a) that religion excels among the other moral virtues, because it approaches God more nearly than the other moral virtues;[15] b) that sins which are directly opposed to the virtue of religion, such as blasphemy, perjury, etc., are worse than sins against the other moral virtues.

It is said, 2. *inclining us to offer due worship to God*; because due divine worship is the material object of the virtue of religion, as was said above.

It is said, 3. *to God as our creator and governor, or as our supreme principle.* Hence the Angelic Doctor says: "It belongs to religion to offer reverence to the one God according to one aspect, insofar, namely, as he is the first principle of the creation and government of things.... To these two belong all the acts which are attributed to religion; because through them all man professes the divine excellence and his own subjection to God, either

by offering something to him [e.g., in sacrifices], or also by assuming something divine" [e.g., the invocation of the divine name in an oath].[16]

[13] Billuart, *De relig.* diss. 1, a. 2.

[14] Cf. *S. theol.* 2, 2, q. 81, a. 5.

[15] Cf. ibid., a. 6.

[16] Cf. ibid., a. 3, corp. and ad 2.

326. Subject of the virtue of religion. A twofold subject is distinguished: remote and proximate. The remote subject of some virtue is those persons or beings in which the virtue is found; but the proximate subject is that power of the soul in which the virtue resides.

a) The *remote subject* of the virtue of religion cannot be: 1. animals and other irrational beings. The reason is that they do not know the divine excellence. But if in Sacred Scripture they are sometimes invited to worship God, e.g., in the Canticle of the Three Children, "All ye fowls of heaven, bless the Lord," these expressions are merely metaphorical, signifying the overflowing fervor of the man praying and praising God. 2. The devil and the damned; for they indeed know the excellence of God, but they hate it and are unwilling to submit themselves to God. 3. All sinners who remain in the formal sin of irreligion. For irreligion is a vice directly opposed to religion. But it is impossible for a virtue and its opposite vice to be simultaneously in the same subject.

All other men, however, and the angels and the souls in purgatory can be the subject of religion. Even Christ as true man had and exercised the virtue of religion throughout his whole life, but especially in the sacrifice of the cross.

b) The *proximate subject* of the virtue of religion is neither the intellect, nor the concupiscible part, nor the irascible part, but the will. The reason is: a) because the object of religion is not the true, nor the moderation of the passions, but a spiritual good; b) because the two principal acts of the virtue of religion, namely, to revere the excellence of God and to subject oneself to the dominion of God, are acts elicited by the will, which nevertheless presuppose a twofold knowledge, namely, of the most excellent divine majesty and of our lowliness. Religion, although it resides in the will, nevertheless often commands acts of other powers and virtues, e.g., the act of the intellect in prayer, the acts of the bodily powers in genuflection and other external acts of divine veneration, the act of fasting, which belongs to the virtue of temperance, for worshiping God, etc.[17]

[17] Cf. *S. theol.* 2, 2, q. 81, a. 4. Concerning the response to objection 2 of this article Cajetan subtly notes: "Therefore many external acts, such as sacrifices and ceremonies, and internal acts of other powers, such as prayer, are proper, immediate, and elicited acts of religion, although they are only commanded acts of the will, in which religion exists subjectively."

327. The necessity of religion arises from both natural law and positive divine law. And first, indeed, from *natural law*; for by the very fact that man knows the personal God, the most excellent Lord of heaven and earth, and his own dependence upon this God, he is impelled to worship him. Therefore St. Thomas rightly teaches: "It belongs to the dictate of natural reason that man should do certain things for divine reverence."[18] Hence religion is found everywhere on earth among all peoples, even among those destitute of so-called civilization. The *positive divine law* of both the Old and the New Testament prescribes the worship of God in many places. Through the ceremonial precepts in the Old Testament, the worship of God was most

precisely ordered; but in the New Testament the sacrifice of the Mass was instituted as the principal manner of worshiping God. Likewise, the sacraments instituted by Christ are referred to the worship of God.

Extent of religion. Religion demands the worship of God both internal and external and sometimes public.

1. *Internal worship* is owed to God, because the homage of the soul is the chief thing, and without it all other things are of no avail. Therefore Christ says: "God is a spirit; and they that adore him must adore him in spirit and in truth."[19]

2. *External worship* is owed to God, because the whole man, i.e., consisting of body and soul, depends upon God the creator and governor; and consequently the whole man also, according to body and mind, ought to revere God. Moreover, there is so close a connection between body and soul that the internal affections of the soul spontaneously overflow into bodily actions, and conversely, internal affections are excited and fostered by external signs and actions.[20] For daily experience proves that, when religious ceremonies are worthily performed, Christian men are powerfully stirred to internal religious affections. Therefore external rites are employed in all religions, and Innocent XI rightly condemned the delusion of Michael Molinos and the Quietists, who taught: "Everything sensible which we experience in the spiritual life is abominable, filthy, and unclean."[21]

3. *Public worship of God*, i.e., that which is performed in the name of the Church by persons legitimately deputed for this and through acts determined by the Church,[22] is also sometimes necessary, because man is a social animal and because the Church was founded as a visible society. But a visible society cannot persist unless it sometimes exercises its acts in public or in common. Therefore public divine worship arises from human nature itself and from the institution of the Church, and it greatly fosters the fervor of each Christian.

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[18] *S. theol.*, l.c., a. 2 ad 3.

[19] John 4:24.

[20] Cf. *S. theol.*, l.c., a. 7.

[21] Condemned proposition 30 (Denz. n. 1250). The necessity of external worship is denied not only by the Quietists, but also by nearly all those who place the whole of religion in a pure feeling of subjection. They are accustomed to call external worship vain formalities (*eitlen Formelkram*).

[22] Cf. Code of Canon Law, canon 1256.

Chapter II. On the Acts of the Virtue of Religion

The principal acts of religion are devotion, prayer, adoration, sacrifice, the use of the sacraments, a vow, an oath, adjuration, and the sanctification of certain days. Sacrifice and the sacraments will be discussed in the special treatise on the sacraments. The remaining acts must now be treated.

Article I. On Devotion

328. Notion. Three things are ordinarily signified by the name *devotion*:

1. Certain exercises of piety; in this sense we speak of devotion toward the Eucharist, toward the Five Wounds, etc.

2. Attention and a certain spiritual consolation in prayer.[1] It is ordinarily called accidental or affective devotion. In this sense we say: I made meditation with great devotion, or without devotion.

3. The first act of the virtue of religion, in which sense it can be defined: **Devotion is a certain will [i.e., an act of the will] to give oneself promptly to those things which pertain to the service of God.** Thus St. Thomas.[2]

The word *devotion* itself, considered in itself, signifies a habit rather than an act, and indeed devotion is not rarely taken as a habit;[3] but then it does not really differ from the virtue of religion itself. Following the Angelic Doctor, however, we take devotion insofar as it is an internal act of religion and insofar as it is elicited by a firm, constant, and generous will. St. Thomas rightly proves in this manner that devotion is to be considered as an act:[4] "By acts, and not by habits, we merit, as was established above.[5] But devotion has a special notion of meriting. Therefore devotion is a special act." Not everyone who sometimes proposes to give himself to the service and worship of God is called devout, but he who does this from a stable and constant virtue. Christ had devotion most perfectly, who could say of himself: "In the head of the book it is written of me that I should do thy will: O my God, I have desired it, and thy law in the midst of my heart";[6] and: "My meat is to do the will of him that sent me."[7] It is to be noted that the will to give oneself promptly to those things which pertain to the service of God can arise not only from the virtue of religion, but also from the virtue of charity; but in different ways. For if such a will intends a union of friendship with God, it is an act of charity; but if it intends the worship and service of God, and indeed as something due because of God's excellence and our subjection, it is an act of religion. The Angelic Doctor writes to the point:[8] "It belongs immediately to charity that man give himself to God by adhering to him through a certain union of spirit; but that man give himself to God for certain works of divine worship belongs immediately to religion, but mediately to charity, which is the principle of religion." Just as charity commands all the virtues, and consequently also the virtue of religion, so likewise the virtue of religion, through the act of devotion, commands the other acts which pertain to the worship of God. Hence devotion has a most general influence upon all the other acts.[9] For why do we worship God by prayer, sacrifice, and ceremonies? Because we wish to give ourselves and all our things to the divine service. Hence it appears how necessary devotion is in the spiritual life, so that, when it is lacking, human acts of divine worship become remiss and imperfect; indeed, the vice of acedia arises. Just as the virtue of religion is intimately connected with the virtue of charity, so the act of the virtue of religion, which is devotion, is closely joined with the act of charity which is ordinarily called a good intention in all our works.[10]

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[1] In the German language, *Andacht.*

[2] *S. theol.* 2, 2, q. 82, a. 1. In the German language this devotion could perhaps be called self-consecration and zealous surrender to God, devotedness (*Selbstweihe und eifrige Hingabe an Gott, Ergebenheit*).

[3] Piety (*Frömmigkeit*).

[4] *S. theol.*, l.c., in arg. *Sed contra.*

[5] *S. theol.* 1, 2, q. 21, a. 3 and 4.

[6] Ps. 39:8ff.

[7] John 4:34.

[8] *S. theol.* 2, 2, q. 82, a. 2 ad 1.

[9] Ibid., a. 1 ad 2.

[10] Good intention (*Gute Meinung, bonne intention*).

329. The causes of devotion are partly extrinsic and partly intrinsic. The principal extrinsic cause is God through his grace. This grace, both sanctifying and actual, is altogether necessary for a supernatural and meritorious act of devotion. For with sanctifying grace all the theological and moral virtues are infused, as was said above, I, n. 472. Now the infused virtue of religion does not elicit a supernatural act of devotion unless actual grace excites and assists it. The acquired virtue of religion, however, can elicit some act of devotion even without grace. The secondary extrinsic cause of devotion is often the example and moral influence of other devout men, as is evident from daily experience.

The intrinsic cause of devotion is meditation and contemplation both of God's beneficence and excellence and of the humanity of Christ, and of human dependence upon God the Creator, Governor, and Mover. For from contemplation of God and Christ charity is excited, which is the proximate cause of devotion, according to the words: "It is good for me to adhere to my God, to put my hope in the Lord God."[11] But from consideration of human dependence and defects arises the desire for divine assistance, according to the words: "I have lifted up my eyes to the mountains, from whence help shall come to me: my help is from the Lord, who made heaven and earth."[12] From these things it appears clearly how necessary good and frequent meditation is for the religious life.[13]

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[11] Ps. 72:28.

[12] Ps. 120:1.

[13] *S. theol.* 2, 2, q. 82, a. 3.

330. The effects of devotion are several:

1. *Spiritual joy.*

For devotion, as was just said, is caused principally by meditation on the divine excellence and beneficence. But this meditation produces spiritual delight, according to the words: "I remembered God, and was delighted."[14] Accidentally, however, this consideration causes a certain sadness in man the wayfarer,[15] according to the words: "My soul hath thirsted after the strong living God: when shall I come and appear before the face of God? My tears have been my bread day and night."[16]

2. *Accidental or affective devotion.*

For the spiritual joy arising from devotion does not remain in the mind alone, but overflows into all the human faculties, causing sweet consolations, even sensible ones. God is accustomed to grant this affective devotion to beginners in the spiritual life, lest they be deterred by the difficulties which arise. As time advances, however, this devotion gradually ceases; indeed, it not rarely gives place to spiritual aridity, God thus disposing it for our testing. Accidental devotion, although it is much less than substantial devotion, nevertheless is not to be despised as useless or evil in itself. Therefore Innocent XI condemned the proposition of Michael Molinos:[17] "He who desires and embraces sensible devotion does not desire or seek God, but himself; and he acts badly who, walking by the interior way, desires it and strives to have it, both in sacred places and on solemn days." On the other hand, affective devotion is not to be esteemed excessively, nor ought a man to grieve from the lack of it, since substantial devotion alone suffices.

3. *Facility and promptness in performing the other acts of religion*, such as praying, adoring, sacrificing, etc., and even the acts of the other virtues.

The reason is that a devout mind is prompt to please God through all virtuous acts.

4. *An excellent influence also upon bodily gestures and one's manner of acting.*

For because of the intimate union of body and soul, a mind truly and constantly devoted to God shines forth even in the body, so that the countenance, bodily gestures, voice, and ecclesiastical ceremonies to be performed appear under the influence of devotion.[18]

From all these things we are convinced of the great value of devotion and are admonished to pray with the Church "that we may be instructed by an affection of pious devotion," and that "God may increase devotion in us unto salvation."

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[14] Ps. 76:4. Hence the most devout St. Paul said of himself: "I exceedingly abound with joy in every tribulation" (2 Cor. 7:4).

[15] Cf. *S. theol.*, l.c., a. 4.

[16] Ps. 41:3ff.

[17] Proposition 27 (Denz. n. 1247).

[18] Cf. Wirthmüller, *Die moralische Tugend der Religion* § 9.

Article II. On Prayer

We must treat individually: 1. the notion and division of prayer; 2. its object; 3. its necessity; 4. its efficacy, where its properties also will be discussed; 5. certain particular prayers, and notably the canonical hours.

§ 1. On the Notion and Division of Prayer

331. Name. The name *prayer* is employed in one way by profane writers and in another in theology. St. Jerome writes concerning this matter: "According to grammarians, *oratio* is every discourse of those speaking, whose etymology they explain thus: *Oratio* is the reason of the mouth. But in the sacred Scriptures we rarely read *oratio* according to this sense, but rather that which pertains to prayers and supplications."[19] St. Thomas aptly explains from this etymological derivation of *oratio*, as though *oratio* were the reason of the mouth,[20] how prayer taken in the theological sense is an act of reason, and thence he deduces its real definition.[21]

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[19] *Ep. ad Cypr.* 139 (140); in Migne, *Patr. lat.* 22, 1168.

[20] Reason of the mouth (*Vernunft des Mundes*).

[21] *S. theol.* 2, 2, q. 83, a. 1 and a. 17 ad 3.

332. Definition. In the theological sense, prayer is ordinarily taken in three ways:

1. *In the general sense*, for any act of religion, and indeed for the whole religious life. Hence that saying of St. Augustine: The best prayer is a just life. Thus also the Ordinary Gloss[22] explains the admonition of Christ and the Apostle, "Pray without ceasing," saying: "Always live justly; for the just man never ceases to pray unless he ceases to be just; therefore he always prays who always acts well." Prayer accepted in this general sense has been called *vital prayer*, concerning which St. Catherine of Siena treats well.[23]

2. *In the broad sense*, for every pious movement of the mind toward God. In this sense the holy Fathers often speak concerning prayer, e.g., St. Gregory of Nyssa:[24] "Prayer is converse and conversation with God"; St. John Chrysostom:[25] "Prayer is speech to God"; St. Augustine:[26] "What is prayer except the ascent of the soul from earthly things to heavenly things, the seeking of things above, and the desire of invisible things?" and: "Prayer is the conversion of the mind to God through a pious and humble affection."[27] The words of St. John Damascene[28] are most well known: "Prayer is the ascent of the mind to God." In this broad sense of prayer he also prays who elicits acts of faith, hope, and charity; who meditates on the divine mysteries; who praises God; who gives thanks to God for benefits conferred, etc. But not every elevation of the mind to God is prayer in this sense; for he who thinks about divine things solely for the sake of learning or teaching does not pray. Therefore a pious movement of the mind toward God is always required for prayer, namely, one which is made for the sake of venerating him.

3. *In the strict sense*, for deprecatory prayer. In this sense there is the almost classical and most well-known definition likewise given by St. John Damascene:[29] "Prayer is the petition of fitting things from God." St. Thomas[30] also adopts this definition, and St. Bruno the Carthusian aptly explains it, saying: "Prayer is the reason of the mouth which we, bowed down, offer, laying open our desires."[31] But in order that our petition directed to God be true prayer, it is required that it concern things which are fitting and lawful. For prayer is an act of religion or of the worship of God. But he who would ask indecent and illicit things from the most holy God would not worship God, but mock him.

Prayer is an act of religion. It is not difficult to prove that prayer accepted in the second and third senses is truly an act of the virtue of religion. For by praying we acknowledge the divine power and goodness and profess our need and dependence upon God. All these things constitute true worship of God. The Angelic Doctor writes to the point:[32] "It belongs properly to religion to offer reverence and honor to God; and therefore all those things through which reverence is offered to God belong to religion. But through prayer man offers reverence to God, insofar, namely, as he subjects himself to him and, by praying, professes that he needs him as the author of his goods. Hence it is manifest that prayer is properly an act of religion." Therefore we aptly pray: "Let my prayer be directed as incense in thy sight."[33] For good prayer is sweet-smelling incense before the divine majesty.

From these things it follows that the principal end of every prayer ought to be divine worship. Therefore when someone prays, e.g., for health to be recovered, he ought first and principally to intend divine worship and his own subjection under God; secondarily, however, he can desire his health. Hence at least implicitly he ought to say to himself: I ask health from the best and greatest God, provided this is the good pleasure of his adorable providence. For the rest, in practice any prayer made with true confidence includes by that very fact this due veneration of God. For no one would pray with confidence unless he were inwardly convinced of the divine omnipotence and goodness and unless he felt his own need.

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[22] On 1 Thess. 5:17; cf. Ecclus. 18:23 and Luke 18:1.

[23] *Dialogue*, c. 66.

[24] Orat. 1 *de orat. dominic.* (Migne, *Patr. graec.* 44, 1125).

[25] *In Gen.* hom. 30, n. 5 (Migne, l.c. 53, 280).

[26] Sermon 73. This text is frequently cited by both ancient and modern authors, but it is listed by Migne among the spurious sermons of St. Augustine.

[27] *Lib. de spiritu et anima* (Migne, *Patr. lat.* 39, 1887).

[28] *De fide* l. 3, c. 24 (Migne, *Patr. graec.* 94, 1090).

[29] L.c.

[30] *S. theol.* 2, 2, q. 83, a. 1.

[31] In Migne, *Patr. lat.* 142, 169.

[32] *S. theol.*, l.c., a. 3.

[33] Ps. 140:2.

333. What do we intend by praying? It must be kept before the eyes that in deprecatory prayers we by no means intend to manifest our necessities to God, since the omniscient God knows them even before our manifestation. Nor do we wish by our prayers to change the decrees of divine providence, since this is impossible because of God's immutability. **The nearly primary end of our deprecatory prayer, besides divine worship, is to remove the obstacles existing in ourselves which impede the fulfillment of our desire.**[34] For through prayer clothed with due conditions we are rendered fit to receive divine benefits.

For in praying we exercise nearly all the virtues: humility, by professing that we are weak and totally dependent upon God; faith, by believing in God's omnipotence and goodness; hope, by hoping for his assistance; charity, by tending toward a close union with God. Hence Hugh of St. Victor[35] rightly says: "Prayer is the devotion of the mind, i.e., a conversion to God through a humble and pious affection supported by faith, hope, and charity." And the Roman Catechism[36] teaches: "God therefore wishes us to employ this exercise of prayer, so that, burning with zeal for asking what we desire, we may advance by such assiduity and desire to the point that we are worthy that those benefits be conferred upon us which our soul, previously empty and confined, was unable to receive."

Since good and salutary prayer is so excellent a means both of our eternal salvation and of obtaining other goods, we need the grace of God in order to pray well. Hence the words: "The Spirit helpeth our infirmity; for we know not what we should pray for as we ought; but the Spirit himself asketh," i.e., causes us to ask, "for us with unspeakable groanings."[37]

To explain the essence of prayer still better, it is useful to note certain things concerning the remote and proximate subject of prayer.

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[34] St. Augustine expresses this beautifully: "The rational creature offers prayers to God ... that it itself may be built up, not that God may be instructed" (*De gratia N. Testam.* c. 29, in Migne, *Patr. lat.* 33, 568). Cf. *S. theol.* 2, 2, q. 83, a. 2, and *Summa c. gent.* III, 96.

[35] *De modo orandi* c. 1 (Migne, *Patr. lat.* 176, 979).

[36] Part 4, c. 2, q. 9.

[37] Rom. 8:26.

334. The remote subject of prayer is the same as the remote subject of religion, since prayer is an act of the virtue of religion. It can be said generally: All those are the remote subject of prayer, or can truly pray, who can and wish with pious affection to subject themselves to the divine majesty, acknowledging their own need and dependence. Hence the following cannot pray rightly:

1. Those in whom all true humility is lacking. Therefore it is related concerning the giants of the Old Testament: "The ancient giants did not obtain pardon for their sins, who were destroyed trusting to their own strength."[38]

2. The demons and the damned. But if Satan asked from God permission to tempt Job, or if the demons cast out from the Gerasenes asked to enter the swine, or if the rich man who rejected Lazarus, buried in hell, asked that his tongue be cooled with water, or if the same man asked that Lazarus be sent to his father's house to warn his brothers, all these petitions are not true prayers which worship God, but only desires manifested.

On the contrary, the following can pray:

1. *All sinners and even men who are not predestined.* The contrary opinion of John Wycliffe and Pasquier Quesnel was condemned.[39]

2. *Christ as man,*[40] *all the angels and saints.* For all these most perfectly acknowledge their own dependence and God's dominion. Christ prayed most fervently in the garden of Olives; the saints and angels pray both for their own accidental glory and for our salvation. Nor let anyone say that the citizens of heaven cannot pray because even before prayer they see in the essence of God whether the thing requested will occur or not. For this foreknowledge is not so certain,[41] and although it is present, it does not impede prayer. For Christ, who most certainly knew all future events, prayed to the Father in the garden of Olives that the chalice of the Passion might pass. Therefore, just as Christ in the garden asked for deliverance from the Passion in order to show the repugnance and affection of his human nature, which manifestation was joined with the most perfect subjection and reverence toward God the Father, so the citizens of heaven can pray to God from a simple affection of charity toward those living on this earth, nevertheless subjecting this affection to the efficacious divine will.[42]

3. *The souls in purgatory also can more probably pray both for themselves and for those living on this earth.* Theologians by no means agree concerning this matter, nor to this day has the Church defined anything. The older theologians seem more commonly to deny to the souls in purgatory the power of praying, at least in a deprecatory manner. Thus, e.g., St. Thomas[43] writes: "Those who are in purgatory ... are not in the state of praying, but rather of being prayed for." From the sixteenth century onward, however, several authors defend the affirmative opinion. John Medina[44] (d. 1546) seems to have been the first who taught thus. He is followed by Valentia,[45] Sylvius,[46] Bellarmine,[47] Bonacina,[48] Elbel,[49] nearly all modern authors, e.g., Lehmkuhl,[50] Noldin,[51] Christian Pesch,[52] Wirthmüller,[53] etc. Truly convincing arguments, however, can be brought forward for neither opinion. St. Thomas seems to speak only of deprecatory prayer. And indeed it is difficult to understand what these souls can ask for themselves, or how they know the necessities of men on this earth. On the other hand, since these souls are not idle and do not lack perfect subjection to God and acknowledgment of the divine excellence, prayer of praise and thanksgiving and general deprecation for the Church militant is not to be denied to them.[54]

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[38] Ecclus. 16:8.

[39] The Council of Constance condemned proposition 26 of Wycliffe: "The prayer of one foreknown," i.e., not predestined, "avails nothing" (Denz. n. 606). Clement XI proscribed the propositions of Pasquier Quesnel: proposition 50, "In vain do we cry to God: My Father, if the spirit of charity is not that which cries"; proposition 59, "The prayer of the impious is a new sin; and what God grants them is a new judgment upon them" (Denz. nn. 1400, 1409).

[40] Cf. *S. theol.* 3, q. 21, a. 1.

[41] Cf. ibid. 1, 2, q. 113, a. 8.

[42] Cf. ibid. 2, 2, q. 83, a. 11.

[43] Ibid., ad 3 and a. 4 ad 3; cf. also John of St. Thomas, disp. 26.

[44] *De orat.* q. 5. Gabriel Biel (d. 1495) is sometimes alleged as the first who taught thus.

[45] T. III, disp. 6, q. 2, p. 7.

[46] *Comm. in* 2, 2, q. 83, a. 11.

[47] *De purgat.* l. 2, c. 15.

[48] *De hor. can.* disp. 192, p. 1, n. 8.

[49] *Theol. mor.* II, n. 398.

[50] *Theol. mor.* I, n. 482.

[51] *De praeceptis* n. 141.

[52] *Prael. dogm.* IX, n. 324.

[53] *Die moralische Tugend der Religion* § 11.

[54] Cf. below, n. 344.

335. The proximate subject of prayer is not the will, but practical reason. Thus St. Thomas,[55] and it is manifestly evident from the definition of prayer, which is the ascent of the mind to God, or the petition of fitting things from God. For to pray is to speak to God, to intimate and manifest one's desire. But these acts belong to practical reason. Since, however, the desire of the will also operates in prayer, the will incites to the act of prayer. Therefore, although prayer is an act of the virtue of religion residing in the will, nevertheless it is formally elicited by reason. Nor is this a contradiction. For in order that an act be called elicited by some virtue, it is not necessary that it be in the same power in which the virtue itself is; but it suffices that through this virtue it be directed to its proper end, with no other virtue mediating. Thus, e.g., we say that the external confession of faith is an act elicited by faith in the intellect, although this confession is made by another power.[56]

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[55] L.c., a. 1. John Medina (*De orat.* q. 2) and certain Scotists teach that prayer is an act of the will.

[56] Cf. Billuart, *De orat.* a. 2, and Cajetan, *Comm. in* 2, 2, q. 81, a. 4.

336. Division of prayer. The divisions of prayer are not assigned in the same manner by diverse authors. The principal divisions are the following:

1. Mental or internal prayer and vocal or external prayer.

Mental prayer is perfected by acts of the intellect and will alone. In this prayer we recall with fervent zeal, e.g., the divine attributes, such as goodness and clemency, the infinite benefits conferred upon us by God, the Christian virtues, our poverty, etc.; and in this manner affections of love, desires for heavenly things, and resolutions to lead a perfectly Christian life are caused in us. The highest degree of this prayer is called *contemplation*,[57] by which the mind beholds and admires God himself and his perfections with a pure eye, without discourse and disturbance, and is joined to him by a certain sweet bond of most fervent love. Therefore in contemplation three things meet: the consideration of truth without discourse, admiration, and spiritual delight. Hence Pseudo-Augustine[58] says most acutely: "Contemplation is the joyful admiration of clearly perceived truth." Contemplation is by no means sterile and idle, as the Quietists dreamed, but on the contrary becomes the fruitful parent of all Christian virtues, which indeed are often exercised in a truly heroic degree. The lower degree of mental prayer is simple *meditation*, which consists in the pious and discursive consideration of religious truths for the purpose of drawing from them good resolutions for the moral life.

Therefore the essential difference between contemplation and meditation consists in this, that contemplation is intuitive, but meditation is discursive.[59] Meditation is very necessary for every Christian man who wishes to make progress in the spiritual life.

Vocal prayer is that which is perfected by the mind and words and other external acts. St. Paul speaks concerning it: "By him therefore let us offer the sacrifice of praise always to God, that is to say, the fruit of lips confessing to his name."[60] Vocal prayer ought to express in words that which has been conceived inwardly. This expression indeed is not necessary in order that our desires become known to God, but so that our interior devotion may thereby be more greatly excited, so that the whole man, i.e., consisting of soul and body, may pray, and finally so that public prayer may be more greatly fostered. From the beginning, not only of Christianity but of the whole human race, vocal prayers have been offered to God. Christ himself also frequently, but especially in his Passion, uttered vocal prayers. From what has been said it follows that vocal prayer does not consist in words alone, but necessarily requires at least some operation of the mind. What attention of mind is necessary for every prayer, however, will be said below, n. 354.

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[57] The word *contemplation* is taken in diverse senses by mystical and ascetical authors. Cf. Poulain, *Des grâces d'oraison* (1909), c. 5.

[58] *De spiritu et anima* c. 32 (Migne, *Patr. lat.* 40, 802).

[59] St. Thomas, *S. theol.* 2, 2, q. 180, a. 3 ad 1.

[60] Heb. 13:15.

337. 2. Public and private prayer.

Public prayer is uttered by a public minister of the Church and is performed in the name of the Church for the salvation of the people. *Private prayer* is performed mentally or vocally in the name and by the proper authority of the one praying. Therefore three things are required for public prayer: 1. that such a prayer be instituted by the Church; 2. that such a prayer be made in the name of the Church; 3. that such a prayer be made by persons legitimately deputed for this.[61] If even one of these is lacking, the prayer is private. Hence a priest privately reciting the Divine Office, to which he is bound by a precept of the Church, performs public prayer; but the same priest saying the Rosary from his own devotion performs private prayer. Public prayer, which is also sometimes called common, always ought to be vocal, as St. Thomas[62] teaches: "Prayer is twofold: common and individual. Common prayer is that which is offered to God by the ministers of the Church in the person of the whole faithful people; and therefore it is necessary that such prayer become known to the whole people for whom it is uttered, which could not be done unless it were vocal. And therefore it is reasonably instituted that the ministers of the Church pronounce prayers of this kind even in a loud voice, so that they can come to the knowledge of all. But individual prayer is that which is offered by an individual person praying, whether for himself or for others; and it is not of the necessity of prayer of this kind that it be oral." Since all the prayers of the Divine Office and of the liturgy are public prayers, clerics consequently ought to pronounce these prayers orally; otherwise they do not satisfy the ecclesiastical precept, as will be said specifically below, n. 376, concerning the canonical hours.

3. Prayer is divided into supplications, prayers, petitions, and thanksgivings.

This division is taken from the epistle of St. Paul, who says: "I desire therefore, first of all, that supplications, prayers, intercessions, and thanksgivings be made for all men."[63] These four parts are explained in this manner by the Angelic Doctor:[64] "Three things are required for prayer, the first of which is that the one praying approach God, whom he prays to: this is signified by the name *prayer*, because prayer is the ascent of the intellect to God. Secondly, petition is required, which is signified by the name *petition*, whether the petition is

proposed determinately, which some properly call a petition, or indeterminately, as when someone asks to be helped by God, which they call supplication.... Thirdly, a reason for obtaining what is asked is required; and this is either on the part of God or on the part of the petitioner. The reason for obtaining on the part of God is his holiness, on account of which we ask to be heard ... and to this pertains supplication, which is a sacred appeal, as when we say: Through thy nativity, deliver us, O Lord. But the reason for obtaining on the part of the petitioner is thanksgiving, because by giving thanks for benefits received we merit to receive greater ones.... In several collects of the Church also these four can be observed, as in the collect of the Trinity: what is said, *Almighty eternal God*, pertains to the ascent of prayer to God; what is said, *who hast given to thy servants*, etc., pertains to thanksgiving; what is said, *grant, we beseech thee*, etc., pertains to petition; what is placed at the end, *Through our Lord*, etc., pertains to supplication." Other explanations of the words of St. Paul are also offered by other authors.

4. By reason of the end toward which the man praying proximately tends, prayer is sometimes divided into adoration, thanksgiving, and petition.

If the one praying intends the acknowledgment of the supreme divine excellence and of his own subjection, adoration or praise of God takes place; if by praying he intends to give thanks for benefits received, it is thanksgiving; but if by praying he wishes to obtain new graces, it is petition or deprecatory prayer, to which are also referred propitiatory prayer, by which someone asks remission of sins and punishments, and intercession, by which someone asks goods for other men.

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[61] Cf. Code of Canon Law, canon 1256.

[62] *S. theol.* 2, 2, q. 83, a. 12.

[63] 1 Tim. 2:1.

[64] L.c., a. 17.

§ 2. On the Object of Prayer

In this paragraph we respond to the following three questions: 1. What things can be asked in prayer? 2. For whom is prayer to be made? 3. To whom are our prayers to be directed?

1. What Things Can Be Asked in Prayer?

338. The general rule in this question is a proposition taken, not indeed according to the very words but according to the sense, from St. Augustine: It is lawful to pray for that which it is lawful to desire.[65]

Applications of the rule. a) It is lawful to ask in prayer not only for goods in general, but also in particular. The contrary doctrine proposed by Socrates,[66] Wycliffe, the Illuminati, and the Quietists is false and contradicts Sacred Scripture, in which we are commanded to ask also for particular goods. The most manifest example is the Lord's Prayer itself, in which seven particular and determinate petitions are contained.

b) It is lawful to ask determinately and absolutely for goods necessary to eternal salvation, such as the required grace and all other means necessary to salvation. The reason is that no one can abuse these goods and that God truly wishes us to ask for them, admonishing us: "Seek ye first the kingdom of God."[67] Indeed, it is not only lawful but also better to ask for goods of this kind in an absolute manner, because in this manner we pray more attentively and because we are accustomed to pray for and desire goods the more fervently the more particularly they are regarded.[68] Hence the doctrine of the Quietists is false which teaches that even

spiritual goods necessary to salvation are to be asked for only conditionally, namely, under the condition that God has predestined us to eternal salvation, and that man ought to renounce even eternal life if God has thus decreed. The falsity of this doctrine is evident from the fact that God sincerely wishes all men to be saved,[69] and that no one is reprobated to hell before foreseen demerits. Graces gratuitously given and charisms, e.g., the gift of tongues, miracles, etc., may not be asked for absolutely in prayer, but only conditionally, because these graces are not means directly useful to the eternal salvation of the one possessing them, but rather benefit other men.

c) It is lawful in prayer to ask also for temporal goods, not indeed so that we establish our end in them, but as certain aids by which we may be assisted in attaining eternal beatitude.[70] This is also confirmed by the practice of the Church, which asks in prayers, e.g., for rain, fair weather, health, etc. But when we ask temporal goods from God, we ought always to add at least the implicit condition that we do not expect our prayers to be heard if the temporal goods are obstacles to our eternal salvation. Since temporal goods in fact are often obstacles to salvation, they are to be sought through prayer cautiously and not too avidly.

d) It is also lawful in prayer to ask for physical evils both for oneself and for another, provided, however, that they are asked for as means of obtaining spiritual goods of great value. Thus St. Paul desired to be dissolved and to be with Christ; thus the saints not rarely asked for poverty, infirmity, persecutions, etc. Nevertheless, prayer of this kind is to be made with great caution, especially if there is question of asking for the physical evil of one's neighbor, because deceptions will very easily be present and because the intention of the one praying is not rarely not so pure.[71]

e) It is not lawful in prayer to ask for a morally evil thing, e.g., assistance in perpetrating theft or fornication. For such a prayer would be a grave sin, at least speaking objectively, because he who wished to have the most holy God as a cooperator in a sin, even one light in itself, would commit grave irreverence toward him.[72]

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[65] This proposition is found according to its sense in Ep. 130 (otherwise 121), c. 12, *ad Probam* (Migne, *Patr. lat.* 33, 503).

[66] In St. Thomas, *S. theol.* 2, 2, q. 83, a. 5.

[67] Matt. 6:33.

[68] Cf. St. Thomas, IV, dist. 15, q. 4, a. 4, quaestiunc. 3.

[69] Cf. 1 Tim. 2:4.

[70] *S. theol.*, l.c., a. 6.

[71] Cf. Billuart, *De orat.* a. 5.

[72] Cf. Noldin, *De praeceptis* n. 142.

339. Scholion. On the Lord's Prayer. St. Thomas[73] demonstrates excellently that in the Lord's Prayer all things whatsoever which we can lawfully ask from God by praying are contained in perfect order. Since the Lord's Prayer is the best and most frequent among all prayers, it is very expedient that pastors of souls diligently instruct the faithful concerning the beauty and suitability of this prayer. Therefore the Roman Catechism,[74] intended for parish priests, has an ample commentary on the Lord's Prayer.

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[73] *S. theol.* 2, 2, q. 83, a. 9. The source prints q. 82, an evident typographical error.

[74] Part IV, c. 9.

2. For Whom Is Prayer to Be Made?

340. General rule. It is lawful to pray not only for ourselves, but also for all and each creatures capable of eternal glory.[75]

The intrinsic and fundamental reason why and how one person can pray efficaciously for another is the dogma of the communion of saints. For all men (the damned alone excepted) are bound together by an intimate union of charity, and therefore one can benefit another. The efficacy of prayer consists chiefly in this, that the obstacles to grace existing in us are removed from the way and consequently we are better disposed to receive graces, as was said above in n. 333. Certainly, from the fact that we pray for another, e.g., for a sinner, he does not thereby remove the obstacles to grace nor become fit to receive graces; but God often bestows actual graces without a special disposition being present in the recipient. Thus, e.g., it is piously believed that, through the prayers of Stephen the protomartyr, God bestowed the grace of conversion upon Saul, who was by no means specially disposed, on the road to Damascus. Moreover, since the whole human race, redeemed by the blood of Christ, is one moral society in which individual men are members, the dignity and operation of one member redound in some measure to another member. Therefore, if one man through prayer becomes better disposed to receive graces, this greater disposition redounds in some measure to other men united with him, so that they also (although sinners) become more capable of receiving graces.

Applications. It is lawful to pray for all men living upon this earth, with no one excepted, whether they are faithful or unbelievers, friends or enemies, excommunicated or not. Likewise it is lawful to pray for the souls in purgatory; indeed, even for the blessed in heaven, who, although they possess essential beatitude and that immutable, can nevertheless still increase in accidental beatitude. But it is not lawful to pray for the damned in hell, because they are no longer capable of eternal glory.

1. Wycliffe taught that prayers were indeed to be poured forth for men *in general*, but not for men individually. But this doctrine was proscribed by the condemnation of proposition 19: "Special prayers applied to one person by prelates or religious profit that person no more than general prayers, other things being equal."[76] That prayers can be made for other men *in particular* is manifest from Sacred Scripture, from the practice of the Church, and from theological reason. First, indeed, from Sacred Scripture, namely from the example of Christ, who prayed for Peter that his faith might not fail;[77] and for those who crucified him.[78] In almost every epistle St. Paul solicits the prayers of the faithful for himself.[79] St. James admonishes: "Pray one for another, that you may be saved."[80] The practice of the Church shows the same thing; for on Good Friday she prays for all, not only the faithful, but also unbelievers, heretics, and Jews. The theological reason for this doctrine is thus explained by St. Thomas:[81] "We ought to ask in prayer for that which we ought to desire. But we ought to desire goods not only for ourselves, but also for others; for this pertains to the nature of the love which we ought to expend upon our neighbors. And therefore charity requires this, that we pray for others. Hence Chrysostom says: Necessity compels one to pray for oneself; but fraternal charity exhorts one to pray for another. Sweeter before God is the prayer, not which necessity sends forth, but which the charity of brotherhood commends.... As Cyprian says: Therefore we do not say, My Father, but Our Father; nor, Give me, but, Give us, because the teacher of unity did not wish prayer to be made privately, so that anyone would pray for himself alone; for he wished one to pray for all, since he himself bore all in one."
2. We not only can but sometimes ought to pray *for enemies*. Wherefore the doctrine of the Angelic Doctor, admitted by all, is to be noted: "It is necessary that, in our common prayers which we make for others, we not exclude our enemies. But that we pray for them specially is a matter of perfection, not of

necessity, except in some special case."[82] That special case is a) a grave necessity in which the enemy is placed, or b) if scandal would arise without special prayer.

[75] This rule can also be expressed in this manner: We can and ought to pray for all those for whom our prayer is useful and whom we ought to love from charity.

[76] Denz. n. 599.

[77] Cf. Luke 22:32.

[78] Luke 23:34.

[79] Cf. Rom. 15:30; 1 Thess. 5:25.

[80] Jas. 5:16.

[81] *S. theol.* 2, 2, q. 83, a. 7, corp. and ad 1.

[82] *S. theol.* 2, 2, q. 83, a. 8. Cf. above I, n. 575f.

341. 3. We can certainly pour forth *private* prayers for the excommunicated, because this is nowhere prohibited and because even the excommunicated are still capable of eternal glory. That at times public prayer for the excommunicated is also lawful is evident from the example of the Church herself, who on Good Friday prays publicly for heretics and schismatics, whom she assuredly regards as excommunicated. But whether in other cases also it is lawful to pray publicly, and especially whether it is lawful to offer the sacrifice of the Mass for the excommunicated, depends upon the legislation of the Church or upon legitimate custom.[83] But if St. John seems to exclude great sinners from our prayers, saying: "He that knoweth his brother to sin a sin which is not unto death, let him ask, and life shall be given to him who sinneth not unto death. There is a sin unto death: for that I say not that any man ask";[84] the sense of these words is that prayer for sinners is heard with difficulty and not always; or that this prayer is useless for the sinner's eternal life so long as he wishes to remain in sin. In the same manner are the words of Jeremiah to be understood: "Therefore do not thou pray for this people, neither take to thee praise and supplication for them, and do not withstand me: for I will not hear thee."[85] But if St. Jerome[86] asserts, "It is foolish to pray for sinners unto death," he is to be understood on the supposition that someone knew with certainty that another was entirely reprobated by God. Then certainly prayer would be useless. But this certainty cannot be had without a special divine revelation, which is known scarcely ever to have been granted.

[83] Cf. below, in the tract on the sacrifice of the Mass, III, 247ff.; Code of Canon Law, c. 2262.

[84] 1 John 5:16.

[85] Jer. 7:16.

[86] *Comm. in Jer.* (Migne, *Patr. lat.* 24, 802).

342. 4. That we can and ought to pray *for the souls in purgatory* follows from the Council of Trent, which teaches that the sacrifice of the Mass can be offered for those who have died in Christ but are not yet fully purged,[87] and that the souls detained in purgatory are assisted by the suffrages of the faithful, but especially by the acceptable sacrifice of the altar.[88] The same can easily be proved from all the liturgies both of the Latin and of the Eastern Church, in which there are prayers for the dead.[89] Nevertheless, the obligation of praying for the dead does not seem grave, because it is not certain that any deceased person in fact still needs our prayers. It is lawful and expedient to pray not only for the souls of purgatory in general, but also for a determinate deceased person; for although it is not certain that such a determinate deceased person will

receive relief from our prayers, nevertheless it is piously believed that divine mercy does not leave without fruit a prayer made from charity.[90]

5. That we can pray for an increase in the *accidental glory of the saints* is the common opinion of authors. For that accidental glory can be increased; whence the Church prays in the Mass: "Receive, O Holy Trinity, that it may profit them [the saints] unto honor, but us unto salvation." Essential glory, however, i.e., the vision of God, cannot be increased in the saints; and therefore it is not lawful to pray for that. In this sense also are the words of St. Augustine[91] to be understood: "He does injury to a martyr who prays for a martyr, to whose prayers we ought to be commended." Prayers for the saints, however, are not in frequent use, except insofar as prayers are sometimes made for obtaining the beatification or canonization of some servant of God.

6. It is not lawful to pray *for the damned*, since they are outside the bond of charity. Moreover, such prayer would be entirely useless, since the punishments of hell are eternal and cannot be diminished. Wherefore the story of the deliverance of the emperor Trajan from hell, as narrated by John the Deacon, namely that St. Gregory the Great by his prayers delivered the emperor Trajan and Falconilla from hell, is to be regarded as a fable.[92] Likewise, the assertion of the poet Prudentius that on Easter day all the punishments of the damned cease or are interrupted is a fantastic fiction.[93]

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[87] Sess. 22, c. 2 and can. 3 (Denz. nn. 940, 950).

[88] Sess. 25, decree on purgatory (Denz. n. 983).

[89] In the liturgies there occur certain prayers whose sense is not so easily understood, e.g., in the Mass for the dead: "Deliver, O Lord, the souls of all the faithful departed from the punishments of hell and from the deep pit; let not Tartarus swallow them up; deliver them from eternal death," etc. Certain authors, such as Suarez (*De poenit.* disp. 48, sect. 5, n. 12), Bellarmine (*De purgat.* l. 2, c. 5), and Chr. Pesch (*Prael. dogm., de noviss.* n. 617), think that the Church prays by a certain fiction, as though those souls were still at the point of departing from this life. They think it probable, however, that such a prayer, even if in fact made after death, could, in the foreknowledge of God, have profited the soul even before death, so that it might receive greater assistance from God for avoiding the danger of eternal death. This opinion is not very pleasing, because, first, it is a mere hypothesis without any solid foundation drawn from tradition or from theological reason; and, secondly, because it is an excessively involved explanation. For although God can, on account of the foreseen merits of a future prayer and Mass to be said, grant special graces to one who is dying, it is nevertheless very doubtful whether God would in fact do this. Other authors, among whom is Benedict XIV (*De sacrif. Missae* l. 2, c. 9), rightly teach that all such formulas are to be understood of purgatory and not of hell. The reason is that, according to several most distinguished authors, e.g., St. Thomas, the punishments of sense in purgatory and hell do not differ essentially from one another. Wherefore the words "hell, eternal death, Tartarus" are not incongruously employed also for purgatory.

[90] Brief mention must be made of the opinion of Dominic Soto concerning the duration of purgatory. He writes: "The clemency of God does not permit his friends to be withheld from his sight for a long time. And therefore it belonged to his most wise providence to institute for purifying them those punishments which could cleanse the souls there in a short time. For since those torments are supernatural and cannot corrupt the subject, he could make up for any length of time by accumulated punishments. Wherefore I would believe that no one has ever remained in purgatory for twenty years; indeed, as my opinion inclines, not even ten.... It is not credible that God would detain by length of time those whom he could release thence more quickly by an accumulation of punishments." Certainly all these things are mere opinion, but they are by no means proscribed, as some have wished, by proposition 43 condemned by Alexander VII: "An annual legacy left for a soul does not last beyond ten years" (Denz. n. 1143). For the duration of a legacy lasts for as long as the testator determined and does not cease even if the soul has already been delivered from purgatory.

[91] Sermon 159 (Migne, *Patr. lat.* 38, 868).

[92] *Life of St. Gregory the Great* l. 2, n. 44 (Migne, *Patr. lat.* 75, 105). St. Thomas attempts to interpret this little story benignly (*Suppl.* q. 71, a. 5). Cf. Nat. Alexander, *De liberatione commenticia Traiani imperatoris ab infernis.*

[93] *Carmen de novo lumine paschalis sabbati* v. 125ff. (Migne, *Patr. lat.* 59, 828).

3. To Whom Are Our Prayers to Be Directed?

343. Proposition. God alone is to be prayed to as he who can of himself furnish the things which we ask; but it is lawful and useful to invoke the saints or angels, that they may intercede for us with God.

This is Catholic doctrine and is thus proved and explained by St. Thomas:[94] "Prayer is offered to someone in two ways: in one way, as to be fulfilled by him; in another way, as to be obtained through him. In the first way we offer prayer to God alone, because all our prayers (even for obtaining temporal goods) ought to be ordained to the attainment of grace and glory, which God alone gives, according to the words of the Psalm: *The Lord will give grace and glory.*[95] But in the second way we offer prayer to the holy angels and men; not so that through them God may know our prayers, but so that through their prayers and merits our prayers may obtain their effect. And therefore it is said that the smoke of the incense, that is, the prayers of the saints, ascended from the hand of the angel before the Lord.[96] And this is also evident from the very manner which the Church employs in praying; for we ask the Holy Trinity to have mercy upon us, but we ask any of the other saints to pray for us."

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[94] *S. theol.* 2, 2, q. 83, a. 4.

[95] Ps. 83:12.

[96] Cf. Apoc. 8:4.

344. On the invocation of the saints.

Several heretics, e.g., Eustathius of Sebaste, Vigilantius, Peter of Bruys, the Apostolics, the Cathars, the Wycliffites, the Lutherans, the Calvinists, etc., deny the utility and lawfulness of the invocation of the saints, asserting that Christ is the sole mediator between us and God; that the saints do not know our prayers; and that God is so good that he is ready to hear us even without the intercession of the saints. To these objections a brief response is made: 1. Christ is indeed our sole mediator insofar as, joining in himself at once the divine and human nature, he joins us again to God by his redemption. But the saints are our mediators insofar as they assist our prayers by interceding for us. Or, more briefly: there is one mediator *of redemption*, but there are many mediators *of intercession.* 2. It is false that the saints do not know our prayers, because, by seeing the divine essence, they know all those earthly things which specially concern them. Such things are prayers directed to them.[97] 3. Certainly God is most clement and most merciful; but there is no derogation from his clemency and mercy if, for most fitting reasons, our prayers become more efficacious from the fact that they are assisted by the intercession of the saints; just as a good father of a family more readily grants a favor asked by one son if at the same time the other sons intercede for their brother.

From all these things it is evident how rightly the Council of Trent[98] commanded bishops diligently to instruct the faithful "that the saints reigning together with Christ offer their prayers to God for men; that it is good and useful suppliantly to invoke them, and, for obtaining benefits from God through his Son Jesus Christ our Lord, who alone is our redeemer and savior, to have recourse to their prayers, aid, and assistance; but that those who deny that the saints enjoying eternal happiness in heaven are to be invoked, or who assert either that they do not pray for men, or that the invocation of them, that they may pray also for each one of us, is idolatry, or that it conflicts with the word of God and is opposed to the honor of the one mediator of God and men, Jesus Christ, or that it is foolish to supplicate by voice or mind those reigning in heaven, think

impiously." The intrinsic reasons why we can invoke the saints especially to our own profit are: 1. *Divine goodness*, which, although it can most easily act in all things directly through itself, nevertheless employs secondary causes to produce many effects and thus to increase the happiness of creatures. Thus also divine goodness employs the intercession of the saints to grant the grace of being heard to our prayers, so that in this way the accidental happiness of the saints may be increased and our confidence may grow. 2. The *communion of saints* existing among the Church militant, suffering, and triumphant. For it is most fitting that the members of the same Church not only love one another but also assist one another efficaciously. From all these things it is abundantly evident that the invocation of the saints is lawful, very useful, and indeed sometimes necessary. He who desires more on this matter should consult the apologists.[99]

Saints and just men existing not only in heaven but still upon earth can be invoked. Hence St. Paul, writing to the Romans (who are called saints), says: "I beseech you therefore, brethren, through our Lord Jesus Christ and through the charity of the Holy Spirit, that you help me in your prayers for me to God."[100] Likewise nothing prevents baptized infants who departed from this life before the use of reason from being invoked privately. For such persons are certainly in heaven. Then it is also lawful to invoke *the souls existing in purgatory*, since they are friends of God. But whether such invocation is in fact efficacious, and especially whether the souls in purgatory know the prayers directed to them, is not certain.[101] There are some who say that guardian angels manifest prayers of this kind to the souls in purgatory, or that God grants them a revelation in a special manner; but these things are very uncertain and cannot be sufficiently proved. Wherefore nothing indeed prevents a man from directing his prayers privately to the souls in purgatory, as many of the faithful in fact do; but nevertheless the invocation of the souls in purgatory does not seem to be something to be preached publicly from the pulpit so long as the Church has determined nothing concerning this matter.

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[97] Cf. *S. theol.*, l.c., ad 2. Theologians do not agree concerning the manner in which the saints know prayers directed to them. Cf. Billuart, *De orat.* a. 4, obj. 2.

[98] Sess. 25, on the invocation of the saints (Denz. n. 984).

[99] Cf. Billuart, l.c., a. 4, where many objections of the heretics are also found resolved; Mausbach, *Kathol. Moraltheol.* II, § 30.

[100] Rom. 15:30.

[101] Cf. above n. 334 (3).

345. You ask: Is the invocation of the saints not only useful and lawful, but also necessary, so that he who refused to invoke the saints, and especially the Blessed Virgin, would sin?

No explicit precept of invoking the saints is indeed found, and therefore he who, apart from contempt or scandal, never invoked the saints or the Blessed Virgin would not sin gravely; yet he would certainly deprive himself of many graces and would act against the order willed by God. Hence, in practice, he who obstinately refused to invoke the saints, and especially the Blessed Virgin,[102] who even in liturgical worship is acknowledged as mediatrix of our grace, would not be excused at least from venial sin.

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[102] Francis Sylvius in the seventeenth century seems first to have asserted the necessity of invoking the saints (*Comm. in* 2, 2, q. 83, a. 4, concl. 2). Placidus Boeckhn, O.S.B., also attempted to demonstrate that a precept of invoking the saints exists. At that time sharp disputes arose concerning this matter. Concina treats this controversy broadly and profoundly, *In Decal.* l. 2, diss. 1, c. 8, n. 6.

§ 3. On the Necessity of Prayer

346. Proposition. Prayer is not only useful and fitting for all adults, but is also necessary by a necessity of precept, and indeed commonly also by a necessity of means.

That prayer is useful and fitting is evident a) from the fact that it is so excellent an act of religion, and b) from the fact that it procures such signal benefits.

The necessity of prayer has indeed been exaggerated too much by some, namely by the Euchites,[103] who taught that nothing else is required, but prayer alone suffices for eternal salvation; but it has been diminished too much by many, especially by those who deny divine providence (the Deists), or who assert that all things are ruled by a rigid fate (the Fatalists).

1. That prayer is necessary for all adults by a *necessity of precept* is evident from many texts of Sacred Scripture. Thus, e.g., Christ admonishes: "Watch ye, and pray."[104] "We ought always to pray, and not to faint."[105] "Ask, and it shall be given you; seek, and you shall find; knock, and it shall be opened to you. For every one that asketh receiveth; and he that seeketh findeth; and to him that knocketh it shall be opened."[106] The Apostles likewise inculcate prayer: "Pray without ceasing."[107] "Be instant in prayer; watching in it."[108] "Be prudent therefore, and watch in prayers."[109] The Holy Fathers and theologians hand down the same thing with unanimous opinion. Hence the Church also manifests this necessity in the Mass, where the Lord's Prayer is introduced: "Admonished by saving precepts and formed by divine instruction, we dare to say: Our Father," etc.

2. That prayer is also necessary for all adults by a *necessity of means* (at least commonly and by ordinary law) is the far more common and more probable opinion. Nevertheless, the sense of this proposition is not that God bestows no graces unless he is first entreated by us; for it is manifest that God confers upon us many actual graces without any preceding prayer. Thus, e.g., the grace of conversion was bestowed upon Saul, certainly not praying but persecuting the Church. Therefore the absolute necessity of prayer is asserted only in this sense: that God, in view of the order of present providence and considering the infirmity and indigence of human nature, does not confer final perseverance in grace unless an adult man has at some time poured forth pious prayers. The proposition thus understood is easily proved both a) by authority and b) by reason.

a) **By authorities.** The author of the book *On Ecclesiastical Dogmas*[110] writes: "We believe that no one comes to salvation unless God invites him; that no one merits assistance unless he prays." St. Augustine[111] teaches the same thing, asserting that God does not command impossible things, and consequently that you, a man, ought "to do what you can, and to ask for what you cannot." The Council of Trent[112] made these words its own: "God does not command impossible things, but by commanding he admonishes you both to do what you can and to ask for what you cannot." The Commented Rule of St. Benedict[113] beautifully expresses this necessity of praying: "As breath is always necessary to us for the life of the flesh, so continual prayer is altogether necessary for the health of the mind"; and: "I would more easily believe that a man could subsist without a soul than that a perfect religious could subsist without prayer." The same St. Thomas[114] teaches: "Every [adult] man is bound to prayer from the very fact that he is bound to procure spiritual goods for himself, which are given only by God; whence they cannot be procured in any other way than that they be asked from him." The Roman Catechism[115] also upholds the same doctrine: "Since God owes nothing to anyone, it assuredly remains that we ask of him by prayers the things which we need; which prayers he has given us as a *necessary instrument* for obtaining that which we desire, especially since it is certain that there are some things which it is not possible to obtain without his assistance." John of St. Thomas,[116] Sylvius,[117] Sporer,[118] St. Alphonsus,[119] and almost all theologians teach the same opinion.

b) **By theological reasons.** 1. Acts of faith and charity are necessary for an adult by a necessity of means, as was proved above in I, nn. 496 and 561. But prayer on the part of man is necessarily joined with these acts,

especially when he is placed in necessity. For he who believes in God omnipotent and merciful; who truly loves this God above all things; and who, finally, intimately senses his own necessities and miseries, necessarily raises his mind to God with pious affection, asking assistance. But such a pious affection is prayer. 2. It is necessary to worship the divine majesty. But it is impossible to worship God without a pious affection of the mind toward God; and this is prayer, at least in the broad sense. 3. No nation has ever existed without religion. But the principal act of religion is prayer. Hence no nation has existed which did not pour forth prayers to the Deity. This, moreover, is a sign that the act of prayer arises from the very condition of human nature and consequently that it is absolutely necessary. Yet it does not follow from this that God cannot save an adult man who has not prayed. For this would be false. Nothing prevents God from conferring sanctifying grace upon an adult pagan and then causing him to die at once, without time for praying being present.[120] This alone is asserted with St. Alphonsus:[121] according to the ordinary course of things, no adult is in fact saved who has not prayed.

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[103] On the Euchites and Messalians cf. Wetzer and Welte, *Kirchenlex.* II, 1309, s.v. "Messalianer."

[104] Matt. 26:41.

[105] Luke 18:1.

[106] Matt. 7:7f.

[107] 1 Thess. 5:17.

[108] Col. 4:2.

[109] 1 Pet. 4:7.

[110] More probably this author is Gennadius of Marseilles, about the year 495 (Migne, *Patr. lat.* 58, 995). Several other texts of the Holy Fathers are adduced by Concina, l.c., c. 5, where the reasons of the few authors who do not admit that prayer is necessary by a necessity of means are also refuted.

[111] *De natura et gratia* c. 43 (Migne, *Patr. lat.* 44, 271).

[112] Sess. 6, c. 11 (Denz. n. 804).

[113] In Migne, *Patr. lat.* 66, 329.

[114] IV *Sent.*, dist. 15, q. 4, a. 1, sol. 3.

[115] Part IV, c. 1, q. 3f.

[116] *Comm. in* 2, 2, q. 83, disp. 36, a. 3.

[117] *Comm. in* 2, 2, q. 83, a. 2.

[118] *De praec. Decal.* tr. 2, c. 7.

[119] *Theol. mor.* l. 3 at the beginning; *Gran mezzo della preghiera* Part II, c. 4 at the end, where the Holy Doctor says according to the German translation: "I assert and repeat it, and I shall continue to repeat it until my last breath, that our salvation depends entirely upon prayer. Therefore all writers in their books, all preachers in their sermons, and all confessors in the administration of the sacrament of penance ought to impress nothing upon the faithful so emphatically as praying without ceasing. Unceasingly they ought to admonish them and cry out to them: 'Pray, pray, and do not cease to pray! For if you pray, your salvation is secure; but if you cease to pray, your perdition is equally certain.' ... From all that we have said, the conclusion is to be drawn that he who prays will certainly be saved, and that he who does not pray will certainly be damned." Cf. also Tillmann, *Das Gebet nach der Lehre der Heiligen*, 136ff.

[120] Cf. Billuart, *De gratia* diss. 6, a. 3.

[121] L.c.

347. The time of obligation. Once the necessity of prayer has been established, the question immediately arises: *When does this precept of praying oblige?*

The response is: The precept of praying obliges (just as also the precept of eliciting faith, hope, and charity) *per se* and *per accidens*.

This precept obliges *per se* several times in life; but it cannot be determined precisely how often we ought to pray by divine law.

Theologians commonly teach that this precept obliges *per se*: 1. *At the beginning of the moral life*, namely when a man, having attained the full use of reason, ought to turn himself to God.[122] For this turning to God is already prayer. 2. *In danger of death*. For then also a man ought to turn himself with pious affection to God, asking his assistance for having a happy death. 3. *Several times in life*. There are some who say that the precept of praying obliges *per se* every week; others, with St. Alphonsus,[123] every month or certainly every two months; others think that this precept (at least under grave sin) does not oblige except every year. All these opinions cannot be strictly proved; hence let it suffice to say that the precept of praying obliges *per se* several times in life. Meanwhile, however, the faithful are most earnestly to be admonished to pour forth at least some pious prayers every day. For the rest, good Catholics ought not to be anxious about the fulfillment of this divine precept, since it is already sufficiently observed by hearing Mass on Sundays and feast days.

Note. Since the divine precept of praying obliges *per se* several times in life, penitents who for a long time have neither received the sacraments nor heard Mass are to be asked in confession whether throughout that time they also neglected prayer. The reason is that negligence of this kind is a special sin (at least objectively speaking).

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[122] Cf. above I, nn. 502 and 563.

[123] *Gran mezzo della preghiera* Part I, c. 3, § 3.

348. The precept of praying obliges *per accidens*: 1. whenever another precept presses which cannot be fulfilled without prayer, e.g., hearing Sunday Mass; 2. when a grave temptation to sin arises, especially a temptation against the virtue of chastity. For it is certain from experience that some temptations cannot be conquered without prayer; 3. in grave calamities, especially public ones. For charity demands that we then have recourse to the most efficacious assistance of prayer.

No *common* law is found anywhere prescribing morning and evening prayers or prayers before and after a meal; and therefore the omission of such prayers is not of itself a sin, either mortal or venial, and consequently is not even sufficient matter for absolution.[124] In practice, however, to omit these prayers without sufficient reason is almost always a venial sin, because it manifests sloth and deprives one of graces necessary for daily life. Hence the faithful are to be exhorted not to omit these prayers (which were already customary among Christians from the first centuries of the Church). Not praying before and after a meal in public inns is indeed not a sin of itself; nevertheless it is usually much better if the faithful also make brief prayers in such places as a sign of religion.

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[124] Thus the Salmanticenses, *Curs. theol. mor.* tr. 21, c. 9, n. 17. Concina treats this matter well, *In Decal.* l. 2, diss. 1, c. 5.

§ 4. On the Efficacy of Prayer and Its Conditions

The efficacy of prayer is very great; for it produces three primary effects and several other secondary effects. The three primary effects of prayer are merit, satisfaction, and impetration; while the secondary effects are

many: for prayer disposes one for grace, enlightens the intellect, nourishes faith, confirms hope and confidence, inflames charity, increases humility, produces ineffable consolations, fosters the exercise of all the virtues, etc. A few things are to be said concerning each.

349. a) The primary effects.

1. Prayer is *meritorious* when it is poured forth as it ought to be by a just man who is a wayfarer.[125] For prayer is a good work. Moreover, every good work of a just man who is a wayfarer, proceeding from the root of charity, is meritorious, and indeed *de condigno*. Such prayer merits an increase of grace and glory. Christ seems to speak of this merit when he says: "But thou when thou shalt pray, enter into thy chamber, and having shut the door, pray to thy Father in secret: and thy Father who seeth in secret will repay thee."[126] But although only a man endowed with sanctifying grace can merit *de condigno*, nevertheless the prayer of a sinner made with actual grace also merits *de congruo* (in the broad sense) a threefold good, because a) it disposes him for sanctifying grace; b) it obtains temporal goods; c) it accustoms him to good works.[127]
2. Prayer is *satisfactory*; for it has all the conditions required for satisfaction, since it is a good and arduous work proceeding from grace. That prayer is a good work and proceeds from grace (at least if a man is constituted in the state of sanctifying grace) is evident of itself. Daily experience proves that good prayer is an arduous work, since it is not easy to perform a good prayer. Hence the Council of Trent[128] places prayer among satisfactory works, and confessors are accustomed to impose certain prayers for sins as a salutary penance or satisfaction.
3. Prayer is *impetratory*, and indeed in two ways, namely insofar as it is a good work, and formally insofar as it is prayer. We do not speak of the first impetratory effect, which prayer has in common with all good works. The discussion here will presently concern only the other effect.

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[125] *S. theol.* 2, 2, q. 83, a. 15.

[126] Matt. 6:6.

[127] Cf. St. Thomas, *Suppl.* q. 14, a. 4.

[128] Sess. 14, can. 13.

350. b) The secondary effects.

1. Prayer enlightens the intellect, according to the words: "Come ye to him, and be enlightened."[129] Wherefore St. Thomas always had recourse to prayer whenever he was unable to understand some difficult truth.
2. Prayer nourishes faith. For faith and prayer foster one another. Firm faith in the omnipotence, goodness, and mercy of God induces a man to pray; and fervent prayer increases faith, both because it increases grace and because it is itself an exercise of faith.
3. Prayer confirms hope and confidence on account of the salutary effects often gathered from prayer.
4. Prayer inflames charity. For "as lovers are more inflamed to love by conversation and meeting, so pious men, the more often by making prayers to God they converse, as it were, with him, are impelled with greater joy at each prayer to love and worship him more ardently."[130]

5. Prayer increases humility. For one who prays, conscious of his own indigence, approaches God as a beggar.
6. Prayer produces ineffable consolations. For if conversation with a faithful friend is pleasant, what at last is to be said concerning sweet conversation with God in prayer? Hence Christ admonishes: "Ask, and you shall receive; that your joy may be full."[131]
7. Prayer fosters the exercise of all the virtues, according to the saying: "He who knows how to pray rightly truly knows how to live rightly." The intrinsic reason is that by prayer man approaches God. By frequent and true approach to God, man becomes like God; he flees dangerous earthly things; he restrains disordered passions; and at length he is adorned with the crown of all the virtues.

[129] Ps. 33:6.

[130] Roman Catechism, Part IV, c. 2, q. 7 (8).

[131] John 16:24.

351. Proposition. Prayer furnished with the requisite conditions has, from the promise of God, an infallible efficacy for impetrating the things which are asked.

This proposition seems to be of Catholic faith on account of the manifest testimonies of Sacred Scripture: "The prayer of him that humbleth himself shall pierce the clouds; and till it come nigh he will not be comforted; and he will not depart till the Most High behold."[132] Christ repeatedly promised the hearing of prayer: "Ask, and it shall be given you; seek, and you shall find; knock, and it shall be opened to you. For every one that asketh receiveth; and he that seeketh findeth; and to him that knocketh it shall be opened."[133] "Amen, amen I say to you: if you ask the Father any thing in my name, he will give it you."[134] The Holy Fathers also proclaim the efficacy of prayer very frequently. Thus St. Hilary[135] says: "It is the doctrine of our hope that God, when prayed to, both has mercy and saves." Tertullian[136] writes: "Prayer alone is that which conquers God; ... it washes away sins; repels temptations; extinguishes persecutions; consoles the fainthearted; delights the magnanimous; ... feeds the poor; governs the rich; raises the fallen; supports those falling; sustains those standing." A certain ancient author embraces the efficacy of prayer in this brief and very well-known proposition: "He who knows how to pray rightly truly knows how to live rightly."[137] Several Holy Fathers wrote entire treatises on prayer and its efficacy, which you will find enumerated in Migne, *Patr. lat.* 220 (Indexes), 959-960.

[132] Ecclus. 35:21.

[133] Matt. 7:7f.

[134] John 16:23. Similar passages are found in Matt. 21:22; Mark 11:24; Luke 11:9; John 14:13; Jas. 1:6.

[135] *Tract. in Ps.* 118 (Migne, *Patr. lat.* 9, 544).

[136] *De orat.* c. 29 (ibid. 1, 1303).

[137] Sermon 55 among the spurious sermons of St. Augustine (Migne, ibid. 39, 1849).

352. The conditions required for prayer to be infallibly efficacious are considered: 1. on the part of the object which is asked; 2. on the part of him for whom it is asked; 3. on the part of the one praying.

1. On the part of the object which is asked, it is required for the infallible efficacy of prayer that it conduce to eternal salvation.

For if a man were to ask for something harmful to his eternal salvation, then the hearing of such prayer would not be a reward but a punishment. Since temporal and material goods do not always conduce to eternal salvation, but rather lead away from it, a man asking for goods of this kind is not always heard; indeed, a man cannot ask for goods of this kind in prayer except under the condition that they not be obstacles to eternal salvation, as was said above in n. 338 (c).

2. On the part of him for whom it is asked, it is necessary that he be disposed to receive the grace asked.

Hence, e.g., someone praying for the eternal salvation of another man is not always heard, namely when that man pertinaciously resists grace. Wherefore the Angelic Doctor posits as a condition of the infallible efficacy of prayer that someone pray for himself and not for another. "That one pray for oneself is posited as a condition of prayer, not indeed as necessary for the effect of meriting, but as necessary for indefectibility in impetrating. For it sometimes happens that prayer made for another does not impetrate, even if it is made piously and perseveringly and concerns things pertaining to salvation, on account of the impediment which is on the part of him for whom one prays, according to the words: 'If Moses and Samuel shall stand before me, my soul is not toward this people.'[138] Nevertheless, the prayer will be meritorious for him who prays from charity, according to the words: 'My prayer shall be turned into my bosom';[139] that is, although it does not profit them, I nevertheless am not deprived of my reward."[140] Therefore, although according to the opinion of St. Thomas (whom Suarez[141] and some others contradict) prayer for the eternal salvation of another man is not infallibly efficacious, it is nevertheless often heard; whence St. James admonishes: "Pray one for another, that you may be saved; for the continual prayer of a just man availeth much."[142] Such prayer is always a most excellent work of charity and very meritorious for the one praying himself.

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[138] Jer. 15:1.

[139] Ps. 34:13.

[140] *S. theol.* 2, 2, q. 83, a. 7, ad 2.

[141] *De relig.* tr. 4, l. 1, c. 27.

[142] Jas. 5:16.

353. 3. On the part of the subject praying, the conditions required for infallible hearing are: a) the state of grace, b) humility, c) confidence, d) perseverance, e) attention.

a) **The state of grace** is indeed required primarily. For although God sometimes hears the prayers of sinners, as is evident from the examples of the publican, the thief, etc., nevertheless sin often greatly prevents prayers from being heard, since it makes a man an enemy of and hateful to God. On the contrary, a just man is a friend of God, by whom he is loved and from whom he receives many benefits. Hence it is said: "The eyes of the Lord are upon the just: and his ears unto their prayers."[143] "If you abide in me, and my words abide in you, you shall ask what you will, and it shall be done unto you."[144] "If our heart do not reprehend us, we have confidence toward God: and whatsoever we shall ask, we shall receive of him, because we keep his commandments, and do those things which are pleasing in his sight."[145]

b) That **humility** is required for efficacious prayer is evident from the very nature of prayer, since it is an act of religion by which we acknowledge our infirmity and the excellence of God, subjecting ourselves to the majesty of God. The same is evident from Sacred Scripture: God hears the humble publican, but spurns the proud Pharisee. "God resisteth the proud, and giveth grace to the humble."[146] Abraham, praying, professed his humility, saying: "I will speak to my Lord, whereas I am dust and ashes."[147]

c) **Firm confidence**, which entirely trusts in the promises of Christ and in divine mercy, is likewise necessary for the efficacy of prayer. Hence St. James admonishes: "But let him ask in faith [confidence], nothing wavering. For he that wavereth is like a wave of the sea, which is moved and carried about by the wind. Therefore let not that man think that he shall receive any thing of the Lord."[148] St. Paul exhorts: "Let us go therefore with confidence to the throne of grace."[149] Wherefore Christ often performed miracles upon seeing the great faith or confidence of those asking, e.g., of the ruler, the Canaanite woman, the woman suffering from an issue of blood, etc.

d) **Perseverance** is very necessary in prayer. For although God is ready to hear the one praying at once, man himself is not at once sufficiently prepared to receive graces (but by praying perseveringly he becomes better disposed). For thus, by waiting, he perceives his own unworthiness and indigence more vividly; he esteems more highly the grace finally obtained; and after being heard he is more incited to love and thanksgiving. Christ teaches the necessity of perseverance by various parables and miracles. Thus the importunate friend asking for three loaves finally obtains that which he desires;[150] the Canaanite woman, not deterred by repeated repulses, finally obtains the miraculous healing of her daughter, etc.[151] Similar to perseverance is assiduity or duration in prayer. This assiduity of prayer also is commended, although it is not altogether necessary. Of Christ himself it is said: "He passed the whole night in the prayer of God,"[152] i.e., he prayed through the whole night; and: "Being in an agony, he prayed the longer."[153] Concerning the duration of prayer, the Angelic Doctor says:[154] "It is fitting that prayer last so long as is useful for stirring up the fervor of interior desire. But when it exceeds this measure, so that it cannot continue without weariness, prayer is not to be prolonged further."

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[143] Ps. 33:16.

[144] John 15:7.

[145] 1 John 3:21f.

[146] Jas. 4:6.

[147] Gen. 18:27.

[148] Jas. 1:6f.

[149] Heb. 4:16.

[150] Cf. Luke 11:5ff.

[151] Cf. Matt. 15:22ff.

[152] Luke 6:12.

[153] Luke 22:43.

[154] *S. theol.* 2, 2, q. 83, a. 14.

354. e) **Attention** is the last condition required, and indeed not only for the efficacy of prayer but for its very essence. Attention is twofold: one external, the other internal. Since attention is opposed to distraction, external attention is that which excludes external distraction, namely all those external acts which occupy a man in such a way that the mind is no longer able to attend to the sense of the prayer. Thus, e.g., external attention is lacking if someone during vocal prayer reads a book or paints or performs some other work requiring keen advertence; but external attention is not impeded if someone during vocal prayer takes a walk or performs some other light work not requiring much consideration. External attention can be called attention in the true sense, since by it a man attends lest prayer be disturbed by external occupations. For just as a guard who attends lest wild beasts break into a flowering garden is rightly said to have attention

concerning the garden, so likewise one who prays and drives away external occupations has attention concerning prayer. Internal attention excludes internal distraction or the wandering of the mind to things entirely foreign to prayer.

Internal attention is distinguished a) by reason of its **object**; for it can be directed to three objects,[155] namely: 1) to the words of the prayer taken materially, so that those words are pronounced completely and in their order; this attention is called material or superficial; 2) to the sense of the words, and then it is called literal or also intellectual; 3) to the end of prayer, namely to worshipping God himself, or to the mystery for the worship of which the prayer was instituted, etc. This third attention (which is usually called spiritual or mystical) is more perfect than the others; the second is more perfect than the first.

Internal attention is distinguished b) by reason of **state** into actual, virtual, and habitual. *Actual* attention is present if someone actually attends to the sense of the words, to the end of prayer, etc. *Virtual* attention exists when actual attention was previously present and was never revoked, but now is no longer present because of involuntary distractions. *Habitual* attention is abusively called attention, because in fact it is not true attention but only a certain inclination to attend. A man devoted to prayers has this habitual attention even in his sleep. St. Alphonsus[156] and others confess that they do not understand what virtual attention is. And yet the matter can be explained in a sound sense: if someone, after an actual intention and attention possessed at the beginning of prayer, is then involuntarily distracted, the attention previously possessed is not revoked; therefore it perseveres virtually in the moral sense. Certainly, in the physical sense, every distraction, even an involuntary one, destroys attention, just as cold destroys heat; but since involuntary distractions are not human acts and consequently are not even moral, no influence and no change is caused by them in the previously existing and morally persevering moral act. But at the beginning of prayer there was attention. Therefore this attention perseveres in the moral sense, notwithstanding involuntary distractions. But if *voluntary* distractions should supervene, then certainly the attention to prayer previously possessed is destroyed even in the moral sense, because voluntary attention and voluntary distraction are directly opposed and contrary.

The older authors of the Middle Ages are not accustomed to speak of the distinction between external and internal attention in prayer taken generally. And in fact this distinction is rather superfluous for prayer itself in the genus of morals. For, at least *in the genus of morals*, there is no difference whether one praying voluntarily distracts his mind by reading, writing, etc., or by deliberately thinking of something else. For in either case the one praying expressly wills to distract his mind from the object of prayer, although he perseveres in uttering the words of the prayer. The means employed for obtaining this end are of themselves indifferent. But since the canonical Hours are prescribed by the Church, which in the external forum cannot judge purely internal acts, the distinction between external and internal attention is of some moment in the recitation of the Divine Office. For the Church can judge and punish a violation of external attention, but not a defect of internal attention.

Concerning attention, two things are certain among all; but one thing is disputed.

It is certain, 1. that at least some attention, whether external or internal, is required for the essence of prayer. And indeed that which is done without any attention is not even a human act. But how can such an act performed without any attention still be called prayer, which proceeds from reason as from its subject, as was proved above in n. 335?

It is certain, 2. that some *internal* attention also is required for mental prayer, since mental prayer is essentially an act of the mind. Hence he who voluntarily thinks about other matters during meditation no longer

meditates.

It is disputed what kind of attention is required for *vocal prayer*.

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[155] Ibid., a. 13; St. Alphonsus, *Theol. mor.* l. 4, n. 177.

[156] *Gran mezzo della preghiera* Part I, c. 3, § 3.

355. Controversy concerning the necessity of internal attention.

Since this question concerning the attention required for prayer is so practical for the recitation of the Divine Office, theologians dispute sharply whether external attention suffices or whether at least some internal attention also is required in order that a cleric reciting the Divine Office satisfy his obligation. Cajetan,[157] Dominic Soto,[158] Wigandt,[159] and especially Concina,[160] who, according to the testimony of St. Alphonsus, maintains this opinion at length and with great learning, teach that external attention alone does not suffice; likewise Reiffenstuel,[161] Valentia,[162] Suarez,[163] Peter Ledesma,[164] Bartholomew de Medina,[165] Billuart,[166] who calls it certain, and St. Alphonsus,[167] who calls it more common and more probable. On the contrary, Durandus[168] seems first to have taught that external attention alone suffices for the essence of prayer and for the recitation of the Divine Office; he was followed by Lugo,[169] Silvester Prierias,[170] Tamburini,[171] Gobat,[172] Elbel,[173] Noldin,[174] and many modern authors. The older authors dispute this matter at great length. Especially St. Alphonsus, Lugo, Billuart, and Concina are to be consulted. Some think, not without reason, that in practice there is not so great a difference between these two opinions when rightly understood. For all require for vocal prayer (and notably for the Divine Office) material attention for pronouncing the words properly. But this material attention is already a certain internal attention. Therefore all require a certain internal attention for vocal prayer. The following things seem to be true concerning the necessity of attention both in private prayer and in the recitation of the Divine Office:

1. Without *external* attention, neither prayer nor a sufficient recitation of the Divine Office can subsist. Thus all teach, as was already said. Wherefore he who, during prayer or the Divine Office, performs other works requiring grave consideration no longer satisfies the obligation of reciting the Divine Office. But what works are of this kind depends not only upon the nature of the work but also upon the disposition of the one praying. For one person more easily than another loses the attention necessary for prayer.

Authors commonly teach, however, that those who during the *choral* Office perform works necessary for the choir, such as playing the organ, lighting candles, finding antiphons, etc., satisfy the Divine Office if, in the best manner they can, they attend and recite alternate verses of the psalms. The reason is that they labor more than the others for the choral Office, and it would be excessively harsh if, nevertheless, after completing the choral Office, they were bound to repeat the Divine Office privately. Hence for them the common maxim, "The choir supplies," holds if they cannot attend so well to the words of the Office, or even if they are compelled to omit some verses of the psalms.

2. All *voluntary distractions* during prayer are more or less sinful. For they violate the reverence due to God. Thus likewise all teach, if perhaps you except Caramuel,[175] who thinks that voluntary distractions in prayer are not even a venial sin, provided external attention is preserved.
3. In order that someone be said not to have satisfied his obligation of reciting the Divine Office because of a defect of internal attention, it is required not only that he have had voluntary distractions, but also

that he *noticed* that he was voluntarily distracted and *did nothing* to eliminate the distractions. Almost all (even the authors of the first opinion) teach thus. "Therefore, so long as," Cajetan concludes, "it is not clearly established for them that they changed their purpose, or that, while noticing and knowing it, they wandered about other matters, they can believe that they satisfied their obligation."[176]

4. No certain argument can be adduced for either the affirmative or the negative opinion from definitions or decrees of the Church. Even Concina himself, who vigorously defends the affirmative opinion, concedes that the decretal *Dolentes* of Innocent III,[177] which is often cited for the affirmative opinion, proves nothing, since it intended nothing other than to restrain the external excesses of certain clerics.

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[157] *Comm. in* 2, 2, q. 83, a. 13. But Cajetan's mind is not so clearly established.

[158] *De iure et iust.* l. 10, q. 5, concl. 6.

[159] *Tribunal confessar.* tr. 10, exam. 5, nn. 82 and 83.

[160] *In Decal.* l. 2, diss. 2, c. 9.

[161] *Theol. mor.* tr. 6, dist. 1, n. 43.

[162] *Comm. in* 2, 2, disp. 6, q. 2, punct. 10.

[163] *De relig.* l. 4, c. 26, n. 3.

[164] *Summa* Part II, tr. 9, c. 4, concl. 20.

[165] *Summa* l. 1, c. 4, § 14.

[166] *De relig.* diss. 2, a. 8, § 8.

[167] *Theol. mor.* l. 4, n. 177.

[168] *In* IV, dist. 15, q. 12.

[169] *De euchar.* disp. 22, n. 25ff.

[170] *Summa Summ.*, s.v. "Hora."

[171] *Decal.* l. 4, c. 2, § 1, n. 19. This author, l.c., c. 6, n. 5, says: "Therefore, he who, while hearing Mass from a precept or performing the Divine Office, would voluntarily revolve a philosophical question in his mind, or think about his affairs, provided he had external attention, ... according to the said probable opinion would sufficiently fulfill the precept."

[172] *Tract. theol. iur.* tr. 5, n. 821. The author, however, does not seem always to be consistent with himself.

[173] *Theol. mor.* Part V, conf. 123, n. 404.

[174] *De praeceptis* n. 139.

[175] In *Theol. fund.* n. 442 the author writes: "I am a man more frail than you yourself, endowed with an acute and fiery disposition. In one moment I turn toward the heavens, in another I pass to things below. No fly is moved in the oratory which is not an impediment to me; ... I do not avoid distractions, involuntary ones a thousand times, sometimes even voluntary ones; and nevertheless I am troubled by no scruple, ... because I prudently suppose that I am not bound to internal action; that to possess it is good, and to lack it is not even a light fault." But that voluntary distractions are not even a light fault is certainly a heap of laxity.

[176] In St. Alphonsus, *Theol. mor.* l. 4, n. 177.

[177] c. 9, X 3, 41. Concina's explanation of this decretal is worthy of being read.

356. 5. Since the opinion denying the necessity of internal attention is certainly extrinsically probable on account of the great number of authors who maintain it, no one can be accused of not having satisfied the ecclesiastical obligation of reciting the Divine Office, or of being bound to restore benefice revenues,[178] provided that a) he observed external attention and b) he had the intention of satisfying. For it is not certain

that the Church wished to impose in the recitation of the Hours anything other than external attention. For the recitation of the Divine Office with the exclusion of external distraction and with the inclusion of the intention of satisfying the ecclesiastical precept seems to be not only an act of religion but also prayer in some measure. For those who are bound to the Divine Office do not pray in their own name, but in the name of the Church. Therefore, if they truly pronounce the words of the Office with the due intention and at least external attention, the Church seems to supply the internal attention otherwise necessary for true prayer. Therefore such a recitation of the Divine Office with external attention alone and with voluntary internal distraction has a twofold morality: the one good, because the one reciting wills to obey the precept of the Church; the other evil, because he wills to be voluntarily distracted during prayer.

[178] Cf. St. Alphonsus, l.c., l. 3, n. 669.

357. 6. It seems to me that the essence of *private prayer* cannot subsist with external attention alone and with voluntary internal distraction.[179] For prayer is an act of practical reason, as was said above from St. Thomas. Moreover, it seems to be an absurd contradiction that the same practical reason should at once elicit an act concerning God (prayer) and an entirely different act, for example concerning the devil (e.g., a voluntary thought about obscene things). Moreover, every prayer is an ascent of the mind to God, actual or at least virtual. Therefore, if through voluntary distraction the mind is knowingly called away from God, how can prayer then still persist? Can the human mind be at once elevated to God and at once knowingly not elevated?

[179] The Angelic Doctor teaches (IV, dist. 15, q. 4, a. 2, quaestiunc. 4): "Attention in prayer must always remain virtually.... But it remains virtually when someone approaches prayer with the intention of impetrating something or of rendering due worship to God, even if in the continuation of the prayer the mind is carried away to other things; unless the wandering becomes so great that the force of the first intention entirely perishes, and therefore it is necessary that a man frequently recall his heart to himself." The Angelic Doctor has similar words in *S. theol.* 2, 2, q. 83, a. 13, ad 3: "If someone deliberately wanders in mind during prayer, this is a sin and impedes the fruit of prayer." Therefore, if the recalling of the heart is necessary, voluntary distraction also destroys virtual attention and consequently prayer itself. Concerning the mind of St. Antoninus see St. Alphonsus, l.c., l. 4, n. 177, and Concina, *In Decal.* l. 2, diss. 2, c. 9.

358. Objections. The reasons which are usually brought forward for the opposite opinion are not convincing. They say: 1. Prayer is a petition to God for fitting things. But it is not repugnant that our petitions can be represented before God even with an actual wandering of the mind. Just as, if someone were to recite before a king a speech composed for obtaining some favor, he would certainly pray by reciting it before the king, even if his mind were then distracted to other things; so also one reciting a prayer, notwithstanding internal and voluntary distraction, can still pray to God. This argument is repeated by all modern authors after Lugo, but in truth it seems to be very weak. For a king hearing the speech of such a voluntarily distracted man perceives nothing except the external words, which certainly bear the appearance of a petition, and consequently perhaps they are heard by the king; on the contrary, God, hearing the words of someone praying while voluntarily distracted, is not deceived by external words, but beholds his vain heart, and therefore not only will he not hear such a voluntarily distracted prayer, but rather will punish it. Therefore the comparison between a king and God limps and proves nothing. Nevertheless, something can be conceded to this argument. If one praying reads before the king not his own petition but that of another while voluntarily distracted, the king, knowing this voluntary distraction, is indeed offended by the irreverence of the one praying, but nevertheless perhaps will hear the petition on account of the other in whose name it was presented. Thus likewise a cleric reciting the Divine Office with voluntary distraction indeed sins and will be punished on account of the irreverence committed; but since he prays not in his own name but in the name of the Church,

God can accept and even hear this prayer thus distracted. Hence such a cleric satisfies his obligation of reciting the Divine Office, provided, however, that he has the intention of satisfying, as was said above.

They say: 2. Internal attention cannot belong to the essence of vocal prayer, because otherwise a priest voluntarily distracted in the administration of Extreme Unction, whose essential form is deprecatory or a true prayer, would administer this sacrament invalidly; which authors nevertheless very commonly do not admit. The response to this argument is that the sacrament of Extreme Unction is not invalidated through the voluntary distractions of the priest administering it; but this proceeds from the fact that the priest prays not in his own name but in the name of the Church, and that the form of the sacraments externally pronounced seriously with the intention of doing what the Church does always produces its effect *ex opere operato*. Or, more briefly: the form of the sacrament of Extreme Unction pronounced by a voluntarily distracted priest is a true *physical* prayer and consequently produces the effect of the sacrament, but it is not a moral prayer (of the minister himself) or an act of the virtue of religion. He who desires more concerning this controversy should consult Concina, l.c.

359. The doctrine of St. Thomas concerning the necessity of attention.

Concerning the influence of attention *upon the efficacy of prayer*, the Angelic Doctor notes the following:[180] "Concerning [vocal prayer] it must be known that something is called necessary in two ways: in one way, as that through which the end is better attained; and thus attention is absolutely necessary for prayer. In another way something is called necessary without which a thing cannot attain its effect. Now there is a threefold effect of prayer: the first is common to all acts informed by charity, which is to merit; and for this effect it is not required of necessity that attention be present to prayer throughout, but the force of the first intention with which someone approaches prayer renders the whole prayer meritorious, just as happens in other meritorious acts. The second effect of prayer is proper to it, which is to impetrate; and for this effect also the first intention, which God principally regards, suffices. But if the first intention is lacking, prayer is neither meritorious nor impetratory; for God does not hear that prayer to which he who prays does not attend. The third effect of prayer is that which it effects presently, namely a certain spiritual refreshment of the mind; and for this, attention in prayer is required of necessity." For it is established by experience that refreshment or affective devotion in prayer is not granted except to those who pray with actual attention.

[180] *S. theol.* 2, 2, q. 83, a. 13.

§ 5. On the Canonical Hours and Certain Other Prayers

360. Preliminary note. In now treating the canonical Hours, we omit those things which pertain to the history, liturgy, and ascetic practice of this prayer. Among moderns, Batiffol[181] and Suitbert Bäumer[182] have written on the history of the Breviary. De Herdt,[183] Schüch,[184] and many others treat the liturgy of the Breviary. Bacuez,[185] however, treated its ascetic practice.

The canonical Hours have been called by many and diverse names,[186] e.g., canon, synaxis, collect, action, divine psalmody, course, divine office, ecclesiastical office, hourly prayers, canonical prayers, work of God, duty of service, Mass, evening Mass, breviary. This last name (so frequently used in our days) signified in ancient times a compendium or epitome either of the prayers to be said by clerics or of the Rubrics to be observed in the Office. For since the Divine Office, which was performed in choir, had been written in volumes of the greatest bulk, gradually smaller manual books containing an abbreviated Office were composed, which were called *breviarium*, *breviarius*, *portiforium*, *portifex*, etc.

It is useful now first to recount in a single view the propositions concerning the canonical Hours condemned by Alexander VII and Innocent XI, so that they may be commended more easily to memory and may not afterward have to be repeated in diverse places.

1. The following five propositions were condemned by Alexander VII (in 1665 and 1666):[187] "One who recites the Paschal Office on Palm Sunday satisfies the precept" (prop. 34). "By one Office someone can satisfy the twofold precept for the present and the following day" (prop. 35). "Restitution imposed by Pius V upon beneficiaries who do not recite is not owed in conscience before a declaratory sentence of a judge, because it is a penalty" (prop. 20). "Restitution of revenues on account of the omission of the Hours can be supplied by any alms which the beneficiary previously gave from the revenues of his benefice" (prop. 33). "One who has a collative chaplaincy or any other ecclesiastical benefice, if he devotes himself to literary studies, satisfies his obligation if he has the Office recited by another" (prop. 21).
2. Proposition 54 was proscribed by Innocent XI (in the year 1679): "He who cannot recite Matins and Lauds, but can recite the remaining Hours, is bound to nothing, because the greater part draws the lesser to itself."[188]

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[181] *Histoire du Bréviaire* (3rd ed., 1911).

[182] *Geschichte des Breviers* (Freiburg im Breisgau, 1895).

[183] *Liturgia.*

[184] *Pastoraltheologie.*

[185] *Le Bréviaire* (German trans., 1891: *Das Brevier vom Standpunkt der Frömmigkeit betrachtet*).

[186] Cf. Bäumer, l.c., § 1.

[187] Denz. nn. 1134f., 1120, 1133, 1121.

[188] Denz. n. 1204.

361. The parts of the Divine Office. According to the present discipline of the Roman rite, the following parts pertain to the Divine Office which is to be performed by ecclesiastical precept:

1. The seven canonical Hours, namely Matins with Lauds, Prime, Terce, Sext, None, Vespers, Compline. Some authors think that this division was introduced on account of the verse of Ps. 118, "Seven times a day I have given praise to thee," or on account of seven moments in the Passion of our Lord Jesus Christ.[189] The *Pretiosa* is not indeed a distinct Hour, but nevertheless pertains to the Divine Office. Since in ancient times there existed the custom of saying Matins and Lauds at midnight or at another time of night, these two Hours are called the nocturnal Office; but the other Hours are called the daytime Hours. In a broader sense the whole Office to be recited daily is called the daytime Office, because it is to be performed on every day.
2. The Office of the Dead on the day of the commemoration of all the faithful departed, on which day the Office of the current day is omitted.[190]
3. On the feast of St. Mark and during the three days of the Rogations, the Litany of the Saints is to be recited, even outside choir;[191] it cannot be anticipated on the preceding day.

Today there is no longer any obligation of reciting a) the Office of the Blessed Virgin Mary, b) the Office of the Dead (outside the day mentioned above), c) the Penitential Psalms, d) the Gradual Psalms.[192] The prayers *Aperi* at the beginning and *Sacrosanctae* at the end do not pertain to the integrity of the Office; but they are added very piously and usefully.

Note. With regard to those who legitimately use a special rite, the particular statutes concerning the parts pertaining to the Divine Office are to be consulted.

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[189] These are the seven things on account of which we sing psalms at the Hours: Matins binds Christ, who cleanses crimes; Prime fills him with spittle; Terce gives the cause of death; Sext fastens him to the cross; None divides his side in two; Vespers takes him down; Compline lays him in the tomb.

[190] Pius X, Const. *Divino afflatu*, 1 Nov. 1911, tit. XIII (*Act. Ap. Sed.* III, 649).

[191] Pius X, Const. *Divino afflatu*, 1 Nov. 1911, tit. VIII, n. 3. If the feast of St. Mark is transferred, the Litanies are not transferred.

[192] Ibid., n. 2.

362. Obligation. By common law the following are gravely obliged to recite the Divine Office daily:

1. all clerics constituted in major orders;[193]
2. all beneficiaries, even those not constituted in major orders;
3. all religious of either sex assigned to choir, but only after solemn profession.

All authors teach that the obligation of reciting the Divine Office is grave of its kind. Therefore he who omits the entire Office or a notable part of it without an excusing cause sins gravely. One little Hour, or an equivalent part, is considered a notable part. Hence, e.g., if someone without sufficient reason omits Terce or Compline, or from several Hours omits so many parts which, taken together, are equivalent to Terce or Compline, he sins mortally. The reason for such severity seems to be this, that especially in this matter the saying holds: "He who is negligent in a small thing shall gradually fall." For a cleric who from levity sometimes omits even a little Hour of the Divine Office will easily neglect greater things also and will gradually fall into other grave sins. Theologians dispute whether it is also a mortal sin to omit Vespers on Holy Saturday, which are then very brief. Nothing certain can be said in this dispute. Therefore, after the omission has been made, the existence of mortal sin is not to be asserted, all the more because the far more common opinion holds that this omission is only a light sin.[194]

He who culpably omits the entire Office of one day commits only one grave sin, because he violates only one precept and that by one act of the will. But if several acts of the will not joined to one another are present, there are also several sins, as is evident from what was said above in I, n. 377 concerning the numerical distinction of sins.[195]

Something more must now be said concerning the individual categories of persons who are obliged to the Office.

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[193] Clerics of the Eastern Churches must in this matter observe the statutes of their own Church; cf. Papp-Szilagyi, *Enchir. iur. eccl. orient. cath.* sect. 2, § 56.

[194] Cf. St. Alphonsus, *Theol. mor.* l. 4, n. 147.

[195] St. Antoninus (*S. theol.* Part III, tit. 13, c. 4, § 5) says: "If someone omits all the Hours of one day, ... he does not thereby commit seven mortal sins, but one, and one so much graver the more he omits of it, because the whole Office of one day falls under one

precept."

363. The obligation of clerics in major orders.

This obligation, already existing for centuries from customary law, is expressed in these words in the Code of Canon Law, c. 135: "Clerics constituted in major orders, except those concerning whom in cann. 213 and 214, are bound by the obligation of reciting the canonical Hours in full every day according to their own approved liturgical books." All clerics constituted in sacred orders, although excommunicated, suspended, or degraded, are bound to the Divine Office. For if clerics who have been punished on account of crimes were freed from the burden of the Office, they would then derive some advantage from iniquity, which certainly would be incongruous. But when a cleric in major orders has legitimately been reduced to the lay state, the obligation of reciting the Divine Office ceases.[196]

For clerics, the grave obligation of reciting the Office begins at the hour at which the order of subdiaconate is received. Therefore he who is ordained in the morning before the ninth hour is bound neither to Matins and Lauds nor to Prime, but ought to begin with Terce; he who is ordained after the ninth hour of the morning ought to begin with Sext. Nevertheless, in either case it is better if the cleric begins with Prime. But he who before ordination recited the Hours to which he was not yet bound must more probably recite them again after ordination, because no one can satisfy a precept at a time when it does not yet exist; just as I cannot today recite the Office to which I am obliged only on the following day. The contrary, however, is maintained by some authors, e.g., Lugo,[197] Noldin,[198] etc., and this opinion is deservedly called probable by St. Alphonsus.[199]

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[196] Code of Canon Law, c. 213.

[197] *De euchar.* disp. 16, sect. 2, n. 39.

[198] *De praeceptis* n. 756.

[199] *Theol. mor.* l. 4, n. 140.

364. The obligation of beneficiary clerics.

1. A grave obligation of reciting the Divine Office falls upon *all* beneficiaries, even those not constituted in major orders, from the day possession of the benefice is taken. For St. Pius V[200] declared concerning every beneficiary: "Likewise, let him who ... has not said the Office, unless a legitimate impediment has excused him, understand that he has committed a grave sin." In our regions there are very few beneficiaries not yet initiated into sacred orders. Other beneficiaries are especially pastors, canons, bishops, certain chaplains, etc.

2. A beneficiary who, "detained by no legitimate impediment, has not satisfied the obligation of reciting the canonical Hours does not make his own the revenues in proportion to the omission, and let him hand them over to the fabric of the church or to the diocesan seminary, or expend them upon the poor."[201] This return of revenues obliges by the fact itself, i.e., before the sentence of a judge, as is evident from proposition 20 condemned by Alexander VII and cited above. Beneficial revenues are not indeed the price for the Divine Office recited, for this would be simony, but nevertheless they are granted under the condition that the beneficiary recite the Office. For just as no one receives the subdiaconate unless he promises to observe chastity, so no one receives a benefice unless he promises the daily recitation of the Office. But a beneficiary who, with a legitimate excusing cause, e.g., infirmity, excessive labor, etc., does not say the Office can lawfully receive the beneficial revenues. If the omitted

part of the Office does not constitute grave matter, i.e., a part equivalent to a little Hour, there is no grave obligation of restitution. Thus the more common and more probable opinion.[202]

[200] Const. *Ex proximo*, 1571.

[201] Code of Canon Law, c. 1475, § 2. In the ancient law, revenues of the first semester did not have to be restored, but in the new law this indult no longer seems to exist.

[202] St. Alphonsus, *Theol. mor.* l. 3, n. 668.

365. 3. The quantity of restitution on account of neglect of the Office is to be measured according to the statutes enacted by St. Pius V. "We establish that he who has omitted all the canonical Hours on one or more days shall lose all the revenues of his benefice or benefices which would correspond to that day or those days if they were divided daily; but he who has omitted Matins alone shall lose half; he who has omitted all the other Hours shall lose the other half; he who has omitted individual ones of these shall lose a sixth part of the revenues of the same day." But the difficulty is whether equal restitution is to be made by a simple beneficiary (e.g., by a canon) and by a beneficiary with cure (e.g., by a pastor). Several theologians and canonists maintain the affirmative part, e.g., Peter Navarrus,[203] Castropalaus,[204] Suarez,[205] Azor,[206] Schmalzgrueber;[207] and this opinion receives great weight from the very Constitution of St. Pius V, who speaks indiscriminately concerning all benefices and makes no distinction between simple benefices and benefices with cure. But the other, far more common, indeed today almost universal, opinion rightly teaches that a beneficiary with cure is bound only to partial restitution of the revenues of the benefice if he indeed neglected the Office but fulfilled the other works of his benefice. How great this partial restitution is cannot easily be determined. D'Annibale[208] rightly says concerning this matter: "How great [the part to be restored is], whether half, as the stricter authors hold, or a fifth, as the more benign hold, is not agreed; therefore it is better to leave this between these to the judgment of a good man, who will have to measure the matter variously according to the offices." And in truth, if these offices incumbent in addition to the canonical Hours are grave, it is just that the beneficiary have some recompense, although he neglected the canonical Hours. He can retain for himself at least half and even two-thirds of the beneficial revenues for such recompense. Hence, e.g., if a certain pastor has culpably neglected the whole Office on one day and has annually 3,000 francs in strictly beneficial revenues, i.e., about 8 francs each day, he certainly sufficiently satisfies his obligation of restoring if he expends about 4 francs, or even 2 francs, upon the poor or for the benefit of the church.[209] But if he omitted not the entire Office but only part of it, the restitution is to be proportionally diminished.

There are several authors, e.g., Suarez,[210] Bonacina,[211] St. Alphonsus,[212] Noldin,[213] Göpfert,[214] who teach that a poor beneficiary obliged to restitution can apply to himself the alms to be given; indeed, Ballerini[215] thinks that a beneficiary with cure for whom the beneficial revenues are necessary for fitting support is bound to nothing from the omission of the Divine Office alone, provided that he otherwise fulfilled the obligations of the benefice. Whether these opinions correspond to the mind of the Church, which so gravely obliges beneficiaries to the recitation of the Office, I do not dare to say. It is greatly to be desired that the Church herself authoritatively establish what obligation exists in these and similar cases. It must be recalled that alms made *before* the omission cannot be reckoned toward the restitution to be made, as is evident from proposition 33 condemned by Alexander VII. But alms made *after* the culpable omission can be reckoned toward the restitution to be made.

[203] *De restit.* l. 2, c. 2, n. 283.

[204] *Opus mor.* tr. 7, disp. 2, punct. 7, n. 8.

[205] *De relig.* l. 4, c. 30, n. 6.

[206] *Instit. mor.* Part I, l. 10, c. 14, q. 5.

[207] *Ius can.* l. 1, n. 98.

[208] *Summula Theol. mor.* III, n. 64.

[209] Noldin (*De praeceptis* n. 758) asserts: "A bishop or pastor who fulfills his pastoral offices will scarcely have to restore a tenth part of his revenues on account of the neglected recitation of the Breviary." This opinion indeed seems excessively benign, since the Church treats beneficiaries who neglect the recitation of the Office so severely.

[210] L.c., n. 21.

[211] *De Offic. div.* disp. 1, q. 5, punct. 4, n. 8.

[212] *Theol. mor.* l. 3, n. 672.

[213] *De praeceptis* n. 758 d.

[214] *Moraltheol.* I, 331.

[215] *Opus Theol. mor.* IV, n. 106.

366. On the obligation of canons to recite the Office in choir. A few things are to be said here, since this matter pertains rather to canon law and is often determined more precisely by particular statutes or by legitimate customs. All chapters of canons (whether in cathedral or collegiate churches) are bound under grave sin to say the whole Divine Office chorally, unless a special permission of the Holy See is present.[216] A bishop can in no way dispense from this grave obligation by his own authority. Canons who through their own fault and without legitimate permission are absent from the choral Office sin gravely or lightly according to the quantity of the matter, although they recite the Divine Office privately. They are also bound to restore the beneficial revenues received.[217] According to the more probable opinion, a continuous culpable absence of five days is grave matter.[218] Concerning what causes excuse from choral attendance, see the canonists.[219] Canons are bound not only to be materially present in choir, but also devoutly to sing psalms and chant; otherwise they lose not only beneficial revenues but also the so-called "daily distributions."[220]

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[216] Council of Trent, sess. 24, *de reform.* c. 12; Code of Canon Law, c. 413f.

[217] Cf. S.C.C., 10 July 1920, where almost the whole doctrine concerning the obligation of canons is clearly set forth.

[218] Cf. Billuart, *De orat.* diss. 2, a. 8, § 4.

[219] Cf. our *Man. iur. can.* q. 143.

[220] Council of Trent, l.c., and Benedict XIV, Const. *Cum semper oblatas*, 19 Aug. 1744.

367. The obligation of solemnly professed religious.

A grave obligation of reciting the Office falls upon religious of either sex, and it arises not from simple vows but *from solemn profession alone*. The choral obligation, however, must be distinguished from the obligation of reciting the Divine Office privately. In some religious orders, the simply professed are indeed obliged to the choral Office in the same manner as the solemnly professed,[221] but, unless they are constituted in sacred orders, they are never obliged to private recitation.[222] The choral obligation of religious is already presupposed in the Council of Vienne,[223] where it is said: "In cathedral, regular, and collegiate churches let psalms be sung devoutly at the due hours, ... if they wish to avoid the indignation of God and of the Apostolic See." But the obligation of privately reciting the Divine Office for solemnly professed religious of either sex arose from

immemorial custom having the force of law; now, however, it is established in express words in the Code of Canon Law, c. 610, § 3.

Lay brothers or lay sisters after solemn profession are not obliged to recite the Divine Office,[224] since these men and women are deputed not to choir but to other offices. Whether they are bound under sin to other prayers prescribed for them by their Rule depends upon certain and legitimate particular statutes. But if a doubt is present concerning the quality of this obligation, the more benign side is to be followed. For the most part, lay brothers and lay sisters are not obliged under sin to perform the prayers imposed by the Rule. The obligation of many religious sisters or even nuns to recite the Marian Office daily is not grave; indeed, of itself its omission does not even induce light fault.[225] Nevertheless, the Constitutions of the individual Congregations are to be attended to.

The canonists treat the manner of reciting the Office in choir, the place of the choir, and the persons necessary for the choral Office. Cf. our *Man. iur. can.* q. 235ff.

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[221] Cf. Sacred Congregation of Religious, 6 Aug. 1868.

[222] Sacred Congregation of Religious, 28 July 1902.

[223] Lib. 3, tit. 14, c. 1 in *Clem.*

[224] Cf. Code of Canon Law, c. 610, § 3.

[225] Cf. *Normae* n. 156.

368. The form of the Divine Office is here called the objective arrangement of prayers determined for each day. For the Church has determined not only in general the obligation of reciting the Office, but also its rite through the so-called Rubrics. The following is to be held as a general principle: *The rites and Rubrics truly prescribed by the Church oblige in conscience; nevertheless, parvity of matter is possible in their transgression, and indeed, when a sufficient cause is present, their transgression becomes lawful.*

A grave violation of the form of the Divine Office is present in the following cases, unless a legitimate excusing cause exists:

1. if someone changes the rite by using a breviary other than the one prescribed;

2. if someone recites the Office in a language other than Latin;

3. if someone recites an Office notably different in quality and quantity.

With regard to 1. St. Pius V[226] prescribed that all who are obliged to the Divine Office are gravely bound to recite it according to the form and rite of the Roman Breviary, except those churches and religious orders which two hundred years previously (i.e., before the year 1368) were already using another legitimately approved breviary. But even to these privileged ones it was then conceded that, with the consent of the bishop and the entire chapter, or of the prelate and the community, they could use the Roman Breviary in choir. By force of this Pian privilege, even in our times several churches, e.g., Milan, Trier, etc., and several religious orders, e.g., the Benedictines, Carthusians, Dominicans, etc., employ their own breviary. The choral recitation of the Office must without any doubt be celebrated under grave obligation according either to the Roman rite or to another legitimately prescribed rite; nor is any change now lawful without special permission of the Holy See.

But if there is question of a change of rite *in private recitation*: a) it is indeed certain that a religious cleric using his own breviary, if he is elevated to the episcopal dignity, ought to leave his own rite and in all things follow the Roman rite or the rite of his diocese. The same holds for his chaplain who recites the Office with him. Thus the Sacred Congregation has established several times.[227]

b) Authors taught rather commonly that all who assist at the choral recitation of the Office can always conform themselves to that choral Office, even if of themselves they are bound to follow another rite. Hence, e.g., a secular priest assisting and singing psalms at the choral Office of Benedictines or Dominicans satisfies his obligation and is not bound to recite the Office according to the Roman rite. The reason is that holy Mother Church greatly favors the choral recitation of the Office, because in choir the Office is customarily celebrated with greater solemnity and devotion than in private. But apart from a special privilege (such as the Jesuits during the Exercises and the Benedictines possess)[228] or apart from a sufficient cause, such as is possessed, e.g., by a priest seeking the religious state who sings psalms in the choir of those religious, this doctrine is no longer sufficiently safe today. For to the question, "Does a cleric constituted in sacred orders satisfy his obligation if, spontaneously or upon invitation, he joins clergy who chant or recite an Office different from the Office of that cleric?" the Sacred Congregation of Rites responded on 27 Jan. 1899: "Generally, no."[229]

c) Authors do not agree whether, at least *in a case of necessity*, a religious having his own breviary can satisfy by reciting the Office of the Roman Breviary and, conversely, whether a cleric obliged to the Roman rite satisfies his obligation by employing the breviary of some privileged order; nor has a general law been enacted concerning this matter. St. Alphonsus[230] writes: "If you lacked the Roman Breviary and had another, for example a Benedictine one or something similar, you are bound to recite from it. The reason is that there is a twofold precept of the Office: one universal precept concerning the performance of the Hours; the other concerning the observance of the form of each day; whence, if you cannot observe one, you are bound to the other. But the Salmanticenses contradict this, saying that one is not bound, because, as they say, the precept of the Office is indivisible; that is, the precept of reciting it and of reciting it under one form. And they infer this from the words of the Bull of Pius V, where it is said: 'that satisfaction cannot be made except in this form alone.' Notwithstanding this, the first opinion, as more pious and reasonable, seems to me to be followed." Outside a case of necessity, one reciting the Office cannot lawfully use the breviary of another rite.[231]

With regard to 2. If someone recites the Divine Office in a language other than Latin, e.g., the psalms in the Hebrew language or the Litanies or Vespers in the vernacular language with the people, he does not satisfy his obligation. Thus at least if the one reciting belongs to the Latin rite.

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[226] Const. *Quod a nobis*, 1568.

[227] Cf. St. Alphonsus, *Theol. mor.* l. 4, n. 161, q. 3, n. 2.

[228] Sacred Congregation of Rites, 11 July 1908 (*Anal. eccl.* XVI [1908], 391).

[229] *Decr. auth.* n. 4011, ad 3.

[230] L.c., n. 158.

[231] Noldin (*De praeceptis* n. 760) says: "Priests and religious who must use their own, non-Roman breviary in choir can recite the private Office according to the Roman Breviary." So far as I know, neither any decree of the Roman Curia nor the doctrine of canonists permits this so universally; and therefore such a religious would sin if, without a grave cause, he recited the Office according to the Roman rite while abandoning his own rite.

369. With regard to 3. The quality of the Office to be recited daily is customarily determined in the Calendar or Directory. The general rule is: *Everyone is bound to use his own calendar.* Concerning the application of this rule, the following things are to be noted:

1. *Beneficiaries*, such as pastors, canons, residential bishops, etc., are always bound to the Office of their own church. Thus the Sacred Congregation of Rites several times, on 12 Nov. 1831 and 23 Nov. 1906.[232] The same holds for clerics assigned to some church.[233] But only those who exercise the care of souls in it by a stable office (and not merely a transitory one), e.g., pastors and assistant pastors, are considered assigned to some church. Teachers and students of a seminary are considered assigned to the church of the seminary;[234] therefore they are bound to recite the Offices proper to the church of the seminary. The Offices proper to some church are: the Office of the titular of the church, of the dedication of the church, of an outstanding relic, etc.

2. *Clerics who are not beneficiaries and are not specially assigned to some church* are bound to follow the calendar of their diocese. But if they remain outside the diocese for a short time, they can, but are not bound to, follow the calendar of that diocese where they are here and now. But if they have acquired a quasi-domicile in a place outside the diocese, they are bound to follow the calendar of that place.[235] Thus the more probable opinion. The reason is that clerics having a quasi-domicile somewhere are subject to the bishop of that place.

Hence, e.g., a cleric in major orders who, for the sake of study, resides at some university for the greater part of the year better recites the Office according to the calendar of the diocese in which the university is situated; and indeed immediately from the day on which he arrives at the university, because he also immediately acquires a quasi-domicile on that day, since he has the intention of remaining in that place for the greater part of the year. If such a cleric is a priest, still another reason presses. For in saying Mass he is bound to conform himself to the calendar of the church in which he celebrates (a few cases excepted). But the mind of the Church is that the Mass correspond to the Divine Office recited.

3. *Regulars* are bound to use their own calendar, i.e., that of the convent or monastery in which they dwell. But regulars who are traveling must still follow the calendar of their own convent, unless a) they arrive at another convent of the same order, whose calendar they ought to observe; b) they remain for a longer time, e.g., for a month, outside every convent of their order, e.g., for the sake of preaching or health. For then "they ought to conform themselves to the calendar of the province extended without any diversity to all for each year."[236]

Note. Since the calendar is customarily prepared by men learned in the Rubrics and Liturgy, the Office can and ought always to be recited as determined in the calendar, unless an error of the calendar is manifest.[237]

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[232] *Decr. auth.* n. 2682, ad 46, and n. 4194, ad 8. If a bishop governs two dioceses or if a pastor governs two parishes, he recites the Office of that place where he habitually resides. Cf. Sacred Congregation of Rites, 28 May 1898, *Decr. auth.* n. 3993, ad 1.

[233] Sacred Congregation of Rites, 7 Dec. 1844 (*Decr. auth.* n. 2873).

[234] Sacred Congregation of Rites, 7 Sept. 1850 and 23 Nov. 1906 (l.c., nn. 2980 and 4194, ad 8); cf. also Noldin, l.c., n. 762.

[235] Sacred Congregation of Rites, 14 May 1672 and 12 Nov. 1831 (l.c., nn. 1445 and 2682, ad 46).

[236] Sacred Congregation of Rites, 31 Aug. 1839. The Sacred Congregation of Rites on 27 June 1896 established that religious absent from their convent for several days ought in the private recitation of the Office to follow the calendar of the monastery from which they departed.

[237] Sacred Congregation of Rites, 13 June 1899 (*Decr. auth.* n. 4031).

370. With regard to exchanges of one Office for another, it must first be distinguished whether such exchanges are voluntary or involuntary.

1. If someone *voluntarily*, without a grave reason, exchanges the Office to be recited for another notably different in quality and quantity, he sins gravely. Thus the common opinion, which is confirmed from proposition 34 condemned by Alexander VII, in which it was asserted that on Palm Sunday it was lawful to recite the Paschal Office. He sins lightly or not at all who for a reasonable cause changes the Office for another of almost the same quality and quantity, e.g., because the Office to be recited is not contained in the breviary possessed. But the intention of reciting the Hours with a companion is not a sufficient cause for changing the Office,[238] as was already said above.
2. If someone has *involuntarily* erred in the Office, the following three rules are to be attended to:

a) Office stands for Office.

b) An error is corrected where it is discovered.

c) An error is not corrected by an error.

By reason of the first rule, no one is bound to recite the Office appointed for that day if, after performing the wrong Office, he discovers his error. But if the Office recited erroneously was much shorter than the Office actually prescribed, then some compensation is to be made. Thus, e.g., if someone had recited the Office of a saint in place of the Sunday Office, which according to the old Roman Breviary consisted of twelve psalms in the first Nocturn, he had to supply nine psalms. Thus the common opinion.[239]

By reason of the second rule, he who, after part of the Office has already been performed, notices that he said the wrong Office should perform the remainder from the true Office. There are, however, authors such as Lessius, the Salmanticenses,[240] Noldin,[241] etc., who teach that in this case it is lawful to complete the Office begun, lest unlike parts be joined into one Office. The first opinion is better and more common; whence St. Alphonsus[242] says: "I think with Croix and Tamburini that it is better to recite from the proper Office, lest you continue the error." But when someone through error, e.g., has recited Sext twice, he cannot therefore omit None or another similar part of the Office. For Office indeed stands for Office, but Hour does not stand for Hour. For when one Hour is omitted, the form of the Office has already been notably changed, and the whole Office of such a day has not in fact been recited. This is a sin.[243]

By reason of the third rule, he who through error recited an Office not yet occurring must recite that Office again on the day on which it is actually prescribed. There are, however, authors, e.g., St. Alphonsus,[244] Noldin,[245] Lehmkuhl,[246] etc., who teach that in this case the omitted Office is to be recited. The reason is that, just as the Office of a saint is rightly transferred on account of an impediment of the day to another unimpeded day, so the Office seems reasonably able to be transferred on account of a moral impediment, such as error or ignorance is considered to be, lest the saint be deprived of his honor in that year. Nevertheless, the first opinion is truer and more common; for the deprivation of honor which the saint suffers from the fact that one cleric does not recite his Office is so small that it ought to yield to the order established in the calendar.[247]

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[238] Sacred Congregation of Rites, 27 Jan. 1899. Hence the opposite opinion of St. Alphonsus (*Theol. mor.* l. 4, n. 161, q. 3, n. 4) and of other authors seems to have to be abandoned because of the contrary decision of the Sacred Congregation of Rites.

[239] Cf. St. Alphonsus, l.c., q. 3.

[240] In St. Alphonsus, l.c., q. 5.

[241] *De praeceptis* n. 764.

[242] L.c.

[243] Cf. also Noldin, l.c.

[244] L.c., q. 5.

[245] L.c.

[246] *Theol. mor.* II, n. 790.

[247] Cf. Cavalieri, *Commentaria* II, c. 41, nn. 21-28; cf. also *Decr. auth.* n. 1474.

§ 5. The Manner of Reciting the Office

In order to satisfy fully the ecclesiastical precept, the Divine Office must be recited: 1. in the due order, place, posture, and time; 2. integrally; 3. continuously; 4. vocally; 5. with attention and intention.

371. 1. The due order must be observed not only among the different Offices, as the calendar determines it, but also within the same Office, as the Rubrics prescribe. Nevertheless, the inversion of the first order is more prohibited than that of the second. According to the Rubrics, the order of the Hours is the following: first Matins with Lauds is to be recited, and then Prime, Terce, Sext, None, Vespers, and Compline. Inversion of this order never becomes a mortal sin, since it does not injure the substance of the Office; indeed, it is not even a venial sin if there exists a cause, even one only slightly impelling. Thus, e.g., it is lawful to say the Little Hours first and then Matins and Lauds if someone does not have a breviary at hand but only a diurnal; if someone cannot read the lessons well but can more easily say the psalms and antiphons, it is lawful for him now to omit the lessons and afterwards to say them separately; if someone arrives in choir when an Hour has already begun, he laudably continues by singing psalms with the others in choir, but afterwards he will complete privately those things which have not yet been said. Some say that it is entirely lawful not to recite the commemorations in the order designated by the Rubrics, since these Rubrics are not preceptive but directive.[248]

To invert the order of the Hours *in choral recitation* is at least a venial sin, since the Rubrics for this recitation are customarily much more gravely obligatory than for private recitation.[249]

[248] Cf. Noldin, l.c., n. 171.

[249] Some authors, such as the Salmanticenses, Suarez, Dominic Soto, Concina, etc., think that a notable inversion made without legitimate cause is a grave sin; but the opposite opinion is more probable. Cf. St. Alphonsus, l.c., n. 171.

372. Place and posture are indeed very accurately prescribed for the choral recitation of the Divine Office, but in private recitation great liberty is conceded. Hence the Office can be recited privately in any place and posture, provided, however, that the necessary attention is possible. The Sacred Apostolic Penitentiary granted a plenary indulgence to all who recite the entire Office before the Most Blessed Sacrament.[250] By common law, all the Rubrics which prescribe certain genuflections, inclinations, signs of the cross, etc., refer to choral recitation, and *do not oblige in private recitation.* In certain religious orders some genuflections and inclinations are prescribed even for private recitation. The prayer *Sacrosanctae*, to be recited after the Office, must be said on bended knees if someone wishes to gain the favors attached to it. The sick alone are not bound to this genuflection.[251]

[250] Decree of 23 Oct. 1930 (*Act. Ap. Sed.* XXII, 493), decree of 5 Dec. 1930 (*Act. Ap. Sed.* XXIII, 23), and decree of 7 Nov. 1932 (*Act. Ap. Sed.* XXIV, 411).

[251] Sacred Congregation of Indulgences, 12 June 1855 and 7 Jan. 1856.

373. The time formerly assigned for reciting the Hours was this: Matins around midnight; Lauds at dawn; Prime after sunrise; Terce at the ninth hour; Sext at noon; None at the third hour after noon; Vespers at sunset; Compline at the twilight of night. Nevertheless, the same customs in this matter did not prevail in all churches. According to the present discipline, legitimate particular statutes are to be observed in choral recitation, yet in such a way that Matins and Lauds are always said before the conventual Mass corresponding to the Office. But as regards private recitation, there exists only one grave obligation, namely, to complete the whole Office within the natural day, or a space of twenty-four hours.[252] This time of twenty-four hours determined by law is, as they say, for terminating the obligation, but not for urging it. Therefore, he who by midnight has not yet completed the Divine Office of the present day is no longer bound to complete it in the hour immediately following, although he can do so. The reason is that the Office is considered as the burden of the day. On 23 July 1893 the Sacred Congregation of the Council permitted each person, as regards the recitation of the Hours and the Eucharistic fast, freely to observe either natural solar time or so-called legal time.[253] Since, therefore, this legal time in some regions is half an hour later than solar time, there it is lawful, e.g., already at half past one in the afternoon to anticipate Matins and Lauds. Under venial sin, unless, however, a legitimate excusing cause is present, it is prescribed that Matins, Lauds, Prime, and Terce be recited before noon, but Vespers and Compline after noon. It is free to recite Sext and None either before or after noon. During Lent, except on the first three days and on Sundays, Vespers are to be said before noon, either at the eleventh hour or at any other morning hour. Nevertheless, a sufficient cause for saying the entire Office privately at any hour of the day is easily present, e.g., study to be done, a sermon to be prepared, confessions to be heard, greater devotion, etc.

The Rubric of the Missal[254] prescribes that Matins and Lauds be recited by the priest before the celebration of Mass. Although some[255] have thought that this Rubric obliges gravely, nevertheless the more common and more probable opinion admits only a light obligation.[256] The reason is that there is not so close a connection between the Mass and the Office, since today the Mass not rarely does not correspond to the Office said (e.g., when Mass is said in another church or a Requiem Mass is said). Moreover, the recitation of Matins does not seem to be a necessary preparation for celebrating, since a priest can sufficiently dispose himself for celebrating Mass by praying in another manner. Nevertheless, there is a true moral obligation to recite Matins and Lauds before celebrating Mass, both because all the Rubrics of the Missal are more probably preceptive, and because failure to perform this recitation is numbered among the defects of the Mass. But for the recitation of Matins lawfully to be postponed until after Mass has been celebrated, a reasonable cause is required, e.g., lack of time, inconveniences otherwise arising, etc. It would, however, be a grave disorder if the conventual Mass corresponding to the Divine Office were celebrated without an urgent cause before Matins and Lauds had been recited in choir. Thus the truer and more common opinion.[257]

On the anticipation of Matins and Lauds. Matins and Lauds may be anticipated, i.e., recited on the preceding day, from that hour at which the sun holds the midpoint of its course between noon and sunset, according to the table inserted at the beginning of the breviary. By a special privilege this anticipation is sometimes conceded from one o'clock in the afternoon; indeed, to priests of the Order of St. John of God on 12 June 1899 and to all who possess the Bull of the Crusade, the privilege of anticipating immediately after noon was conceded. According to the discipline now in force, even apart from a special privilege, anticipation may always be made in private recitation from two o'clock in the afternoon, as the Sacred Congregation of Rites

manifestly declared on 12 May 1905.[258] The other Hours (and also the *Pretiosa*) cannot be anticipated on the preceding day.

[252] Cf., however, below concerning the anticipation of Matins and Lauds.

[253] The Sacred Congregation of Rites established the same on 12 May 1905, ad 3 (*Decr. auth.* n. 4158).

[254] *Rit. serv. in Miss.* I, n. 1; *De defect.* X, n. 1.

[255] St. Antoninus (*S. theol.* P. 3, tit. 13, c. 4, § 4 and c. 6, § 6), Ledesma, Antoine, etc.; cf. St. Alphonsus, *Theol. mor.* l. 6, n. 347.

[256] Cf. St. Alphonsus, l.c., and Concina, *In Decal.* l. 2, diss. 2, c. 9, § 8, n. 11.

[257] Benedict XIV, St. Alphonsus, Soto, and many others cited by St. Alphonsus, l.c., n. 348, hold it. If several conventual Masses are to be said on some day, it suffices that Matins and Lauds have been recited before the principal Mass.

[258] The following responses of the Sacred Congregation of Rites were issued concerning this matter: 1. "Whether in private recitation Matins for the following day can be begun at two o'clock in the afternoon, or whether the table of the diocesan directory is to be followed at all times? — Affirmative to the first part; negative to the second." 2. "Whether also in public or choral recitation the Office can be begun at two o'clock in the afternoon? — Negative." 3. "Whether the hour for reciting Matins can be reckoned indiscriminately from the local meridian circle or from the official meridian circle, called Greenwich, which indeed anticipates the hour of the local circle (at Piacenza) by approximately a third of an hour? — At will" (*Decr. auth.* n. 4158). In some periodicals and authors, "Approved authors are to be consulted" is read as the response to the first question, but the text as it is found in the authentic Decrees is to be followed.

374. 2. That the Office is to be recited integrally each day is certain. Hence he is guilty of mortal sin who culpably omits a notable part of it, whether that notable part is continuous or composed of many separate small parts. One Little Hour, or another equivalent part, is considered a notable part, as was already said above in n. 362. If someone pronounces the individual words of the Office with notable truncation or, as it were, swallows very many syllables of words, he indeed sins against the integrity of the Office; but Billuart,[259] with other authors, rightly observes that in these cases a mortal sin is rarely present unless the truncation is truly enormous. The reason is that in moral matters we ought so to speak that no entrance is given to infinite scruples; but this would happen if, because of certain slight mutilations which so easily creep in, grave matter of sin were finally constituted at the end of the Office.

The integrity of the Office is in no way injured if someone sings psalms alternately in choir; indeed, if someone occupied with necessary duties of the choir, e.g., playing the organ, does not recite alternately some verses or even an entire psalm. For then, as they say, the choir supplies.[260] He who plays the organ while the Office is sung in choir does not satisfy his obligation unless he intelligibly pronounces the alternate verses with one part of the choir and responds with the choir to those things which are customarily said by one person.[261] Even in private recitation it is lawful to recite the Office alternately with a companion, as it is celebrated in choir. The companion called in can be a layman, indeed even a woman.[262] It is required, however, that the one who is obliged to the Office and thus sings psalms alternately *hear* his companion singing psalms,[263] whence a deaf person cannot say the Office in this manner. Nothing, however, prevents the companion called in from being deaf and hearing nothing of the recitation of the Office, provided nevertheless that he himself intelligibly pronounces the alternate verses and is heard by the one who is obliged to the Office. Alternate private recitation is customarily of no small assistance to devotion, and therefore is to be counseled if it can conveniently be done.

[259] *De orat.* diss. 2, a. 8, § 7.

[260] The Sacred Congregation of the Council determined on 12 Apr. 1919, 16 Apr. and 19 July 1921, that a bishop about to celebrate a pontifical Mass satisfies the obligation of the canonical Hour (Terce and None) by reciting the prayers prescribed by the *Caeremoniale Episcoporum* (*Act. Ap. Sed.* XIII, 480).

[261] Thus the common opinion; cf. Concina, *In Decal.* l. 2, diss. 2, c. 5, q. 13.

[262] Cf. Billuart, *De orat.* diss. 2, a. 8, § 7.

[263] Authors rather commonly agree that a deaf cleric cannot recite the Office alternately with a private companion. Some, however, are more benign if the deaf person assists in choir.

375. 3. Continuously, i.e., without interruption, the individual Hours are to be said. Nevertheless, with all theologians agreeing, any interruption, even one made without a reasonable cause, never constitutes a mortal sin. For the sole grave obligation is the recitation of the entire Office within the space of one day. Yet a notable interruption which is made without cause between parts of the same Hour seems to be a venial sin, since irreverence in prayer arises from it. Thus, e.g., if someone were to say one psalm of Prime in the morning and recite the other two psalms of this Hour in the evening, and were to do this without reasonable cause, he would sin venially. If the interruption of the Hour is only brief, a sufficient cause excusing from all fault is easily present. Thus, e.g., a confessor sitting in the confessional and awaiting penitents can recite the Office, even though he foresees several interruptions from the arrival of some confessing persons. It is also lawful briefly to interrupt the recitation of the Breviary in order to greet a friend encountered or to give a brief answer. Although Matins and Lauds constitute one Hour, nevertheless it is lawful, even without a reason, to separate Matins from Lauds in private recitation (but not in choir). Then, however, by the general prescription of the Rubric, after Matins let there be said: *Dominus vobiscum*, the prayer of the day, *Benedicamus*, *Fidelium*. But it is necessary that afterwards, before Lauds thus separated from Matins, the *Pater noster* and *Ave* be said.[264] In Matins each Nocturn can be separated from the others by a space of three hours, because even in antiquity the individual Nocturns were separated from one another by such a space. According to St. Alphonsus,[265] a *just cause for interrupting the Office* is "any advantage of one's own or another's which would inconveniently be deferred. Likewise civility or devotion, as to execute the commands of a superior; if you wish to do or note something so that you may remove a distraction or solicitude, lest you forget, provided this is not done frequently." It is also lawful to interpose some brief ejaculatory prayer in order to increase devotion. For the maxim is valid: One prayer is not interrupted by another.

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[264] Sacred Congregation of Rites, 18 May 1883 and 1 Feb. 1886 (*Decr. auth.* n. 3574, dub. II, and n. 3653).

[265] *Theol. mor.* l. 4, n. 168.

376. 4. By the mouth or vocally the Office must be recited, since by its nature it is a public prayer, which must always be vocal. Therefore the individual words must be formed with the mouth, lips, and tongue even in private recitation. Moreover, they must be so pronounced that the one praying is conscious that he is truly uttering words, even though in fact he does not hear them.[266] It is not required, however, that the uttered words be capable of being heard by those standing nearby. Indeed, it is a hardly praiseworthy custom so to utter, or rather hiss, the words of the Office in private recitation that those standing nearby suffer annoyance from it. A cleric merely reading the Office mentally or running through it with the eyes alone does not satisfy his obligation, at least if he does not have a special privilege. Leo X is said to have conceded to the Friars Minor (and through communication of privileges to all regulars) the privilege that, both in the canonical Hours and in the Mass, they are not bound to utter the words vocally, but satisfy the obligation by saying mentally those things which in the Ordinary are commanded to be said secretly. St. Alphonsus,[267] citing several authors, writes concerning this matter: "The Salmanticenses rightly argue: private recitation, in which

nothing is said in order that it may be understood by others, can by this privilege be made entirely mentally." In our times Victorius ab Appeltern, O. Cap.,[268] and *Il Monitore Ecclesiastico*[269] defend the same doctrine as safe in practice. Because of the authority of St. Alphonsus, whose opinions any confessor can follow in practice unless the Roman Curia has expressly established otherwise, I indeed would not dare to declare guilty of mortal sin a regular cleric who had said the entire Office only mentally; but not a few authors teach that this privilege conceded by Leo X no longer exists today.[270] *In choral recitation* each chorister must recite or sing the Office alternately in a loud voice. It is not required, however, that he himself be heard by the opposite choir; it suffices that he can be heard by those standing near. For the essence of choral recitation seems to consist in this: that each chorister suitably assists with his voice so that one part of the choir may worthily understand the other part.[271]

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[266] Cf. St. Alphonsus, l.c., n. 163.

[267] Ib., n. 63.

[268] *Corp. iur. regul.* q. 2-7.

[269] Vol. 14, p. 80ff.

[270] E.g., Noldin, *De praeceptis* n. 765; Ferraris, *Prompta Bibl.*, s.v. "Divinum Officium," n. 100.

[271] Cf. Concina, *In Decalog.* l. 2, diss. 2, c. 5, q. 18.

377. 5. With due intention and attention the Office must be recited. The required intention is the intention of praying, or of honoring and worshiping God. It is not required that this intention be explicit and express, but it suffices that the cleric say the Office for the sake of satisfying his obligation. This good intention is most excellently expressed in the words of the beautiful short prayer to be placed before the Hours: "Lord, in union with that divine intention with which Thou Thyself didst render praises to God upon earth, I render these Hours unto Thee."

Concerning the required attention, enough has already been said above in n. 354. According to all theologians, external attention is certainly required; whether, in addition, at least some internal attention is required for satisfying the obligation is disputed among authors. See above, n. 355ff.

Several remedies for repelling distractions are counseled: 1. at the beginning of the Office to form a vigorous and explicit intention of praising God; 2. to renew this intention at the *Gloria Patri* or at the beginning of each psalm; 3. to represent to oneself some mystery of the Passion during the recitation of the Office; 4. diligently to guard the senses; 5. to conduct oneself composedly and reverently by external gestures of the body; hence it is preferable to say the Office on bended knees or before the Most Holy Eucharist, but not sitting or lying down unless a reasonable cause is present; 7. to study the right understanding of the psalms and of the other things which occur in the Office. For not rarely distractions arise from the fact that a cleric does not perceive and has never understood the true sense of the sentences which he recites.

378. On causes excusing from the recitation of the Office. Three causes excusing from the recitation of the Hours are customarily enumerated: 1. physical inability; 2. moral inability; 3. legitimate dispensation. The first two causes excuse because no one is bound to the impossible and because a positive law does not oblige with great inconvenience; the third cause excuses because the recitation of the Office is prescribed not by natural or divine law but by ecclesiastical law alone. But the obligation of an ecclesiastical law ceases through legitimate dispensation. A few things are to be explained concerning the individual excusing causes.

1. *Physical inability* is a physical obstacle impeding the recitation of the Office. Obstacles of this sort are: lack of a breviary (if someone does not know how to recite the Office from memory), blindness, grave illness, etc. For both physical and moral inability the following general rule is valid: He who cannot recite the entire Office, but can recite a notable part, such as a Little Hour is considered to be, is bound gravely to recite this part. This rule is confirmed because the contrary was condemned by Innocent XI (prop. 54).[272] But he who cannot recite even a Little Hour is now bound to nothing, since so small a part does not notably conduce to the end intended by the law prescribing the recitation of the Office.[273] He who cannot recite the Office alone is bound to employ a companion gratuitously, if this is possible without great inconvenience. The reason is that any precept which can be fulfilled by ordinary means must be fulfilled. But to employ a gratuitous companion for reciting the Office is considered by St. Alphonsus[274] and several other authors to be an ordinary means. Authors do not agree whether a beneficiary who is unable to recite the Office alone is bound to hire a companion for the recitation of the Office from the revenues of the benefice. Some answer affirmatively, but others negatively. St. Alphonsus[275] calls both opinions probable. In practice, a dispensation or interpretation from the competent authority is then better sought.

He who is legitimately excused from the recitation of the Office because of physical (or moral) inability is not bound to say other prayers in place of the Office, because such a commutation is prescribed nowhere. Nevertheless, a cleric impeded from saying the Office laudably recites other prayers; for in this way he shows his good will to satisfy the precept of praying specially imposed upon him by the Church.

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[272] Cf. above, n. 360.

[273] St. Alphonsus, *Theol. mor.* l. 4, n. 158.

[274] Ib.

[275] Ib.

379. 2. Moral inability is a grave inconvenience which would arise from the recitation of the Office. Such an inconvenience can arise especially a) from illness, b) from grave necessary labors. "By reason of infirmity, not only those who labor under grave illness are excused from the Office, but also those who cannot recite it except with grave inconvenience or probable danger of such inconvenience. Hence those are sufficiently excused who prudently believe or fear that from the recitation of the Office there will come upon them a notable heaviness of the head, indigestion of the stomach, or weariness of strength; or if they believe that a fever will be slower to remit." Thus St. Alphonsus,[276] with several other authors. The same holy Doctor rightly asserts that this also holds even if the sick person were to read some book to console his mind. For reading of this sort, which holds still more for reading newspapers and illustrated periodicals, does not weary but rather relieves, whereas the recitation of the Office is customarily the cause of rather great weariness. He who doubts whether some infirmity sufficiently excuses from recitation of the Office can stand by the judgment of his superior, confessor, physician, or another prudent man.

It is certain and admitted by all that a grave occupation undertaken from duty or charity sometimes constitutes moral inability to recite the Office. The following can be held as a general rule: *An occupation excuses from the recitation of the Office when it is prescribed by a greater precept than that which enjoins the recitation of the Office, and it cannot be deferred to another time.* This rule is founded upon the principle admitted by all: In a conflict of two laws, the stronger law prevails. Hence there follow some practical applications:

Solutions. a) He who, when about to recite the Office, is suddenly called to administer the sacraments to a dying person ought first to administer the sacraments, even if in this manner he cannot recite the Office. For in this case the precept of charity prevails over the ecclesiastical precept of reciting the Office.

b) He who is occupied in hearing confessions which cannot be deferred to another day without notable inconvenience (e.g., during the time of a Mission), in such a way that he cannot recite the Office except at an unseasonable hour of the night or with enormous weariness, is legitimately excused from the Office. The reason is that in this case three precepts, namely, the precept of charity toward one's neighbor (the salvation of souls), the precept of fulfilling the office of confessor, and the precept of not ruining one's health, prevail over the ecclesiastical precept of reciting the canonical Hours. Casuists, however, dispute uselessly concerning the precise duration of time for which confessions must be heard in order that a confessor be excused from recitation of the Office, some excusing a confessor who hears confessions for seven hours in a day, others requiring a space of ten hours. The practical solution depends upon the bodily condition of the confessor. If after seven hours spent in the confessional he is so weary that he is no longer able to recite the canonical Hours without great weariness, he is legitimately excused; but if some confessor is so robust that even after ten hours spent in the confessional he is still easily able to recite the Divine Office, he is not excused. In practice it is better that, in these or similar cases, either a dispensation be conceded by the legitimate superior, or what must be done be determined.

c) He who needs the whole time for preparing a sermon which he cannot omit or defer without great inconvenience; he who must spend the whole day making a necessary journey on which he cannot recite the breviary, are legitimately excused. The reason is that even in these cases the law of reciting the Office ought to yield to the stronger law.

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[276] Ib., n. 154.

380. 3. Legitimate dispensation can suspend the obligation of reciting the Office or even remove it entirely. For this whole obligation arises from ecclesiastical law alone, which is dispensable. But since this ecclesiastical law is universal and obliges so gravely, no one except the Supreme Pontiff can dispense from it by his own authority. In an urgent case, however, bishops and Regular prelates can for a just cause dispense their subjects for a time. In present times bishops, by force of special faculties, can not rarely concede to their subject clerics that in place of the Divine Office they may recite the Rosary or other prayers. Clement VII[277] conceded to superiors of Regulars that they may dispense from recitation of the Divine Office their subjects occupied in preaching the word of God, hearing confessions, lecturing on Sacred Theology or the Sacred Canons, or applying themselves to study or to the salvation of souls. In place of the Office, these superiors must then prescribe seven or six psalms, the *Pater noster* seven times, and the Apostles' Creed twice. Such a faculty of dispensing seems still to exist in our days.[278]

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[277] Const. *Dudum*, § 2.

[278] Cf. our *Man. iur. can.* q. 237.

381. Scholion. On certain other prayers. Besides the canonical Hours, the Church employs several other prayers in exercises of worship; these prayers are found in various liturgical books. The Litanies are especially of frequent use. According to the present discipline, only the following five Litanies are permitted in properly liturgical offices: 1. the Litany of All Saints, which for centuries has already been in use in many ecclesiastical ceremonies, e.g., during the three Rogation days, on the feast of St. Mark, in the conferral of major orders, etc.; 2. the Litany of Loreto, which was recited from the twelfth century onward, but was approved by Sixtus V on

11 July 1587 and afterwards enlarged by certain additions;[279] 3. the Litany of the Most Holy Name of Jesus, approved by Pius IX on 21 Oct. 1862; 4. the Litany of the Most Sacred Heart, approved on 2 Apr. 1899; 5. the Litany in honor of St. Joseph, approved on 18 Mar. 1909. Besides these Litanies there exist very many others which, however, have not been approved by the Apostolic See and cannot lawfully be employed in properly liturgical offices, such as Mass, Vespers, and all devotions before the Most Blessed Sacrament solemnly exposed. Nothing, however, prevents these unapproved Litanies from being employed in private devotions, if otherwise they contain nothing worthy of reprehension. A bishop cannot approve new Litanies to be recited publicly.[280]

[279] Cf. Sauren, *Die Lauretanische Litanei nach Ursprung, Geschichte und Inhalt*, Kempten 1895, or De Santi, *Le Litanie Lauretane*, Rome 1897.

[280] Code of Canon Law, c. 1259, § 2.

Article III. On Adoration

382. Etymological notion. The name *adoration*, like the Greek word *προσκύνησις*, seems to have been taken from *ad os*, i.e., to bring to the mouth, or to kiss. For adoration was customarily made in this manner: the one adoring would kiss the feet or the hem of the garments of the person to be adored.[281] Others derive the name of adoration from *ador* (spelt, *épeautre*), which is a kind of grain customarily employed in sacrifices. Finally, others think that this word is taken from the preposition *ad* and the verb *oro*,[282] because prayer for the most part either accompanies, precedes, or follows adoration.[283]

[281] Cf. Wirthmüller, *Die moral. Tugend der Religion*, § 49.

[282] In the German language: *Anbetung*.

[283] Cf. Billuart, *De relig*. diss. 3, a. 1.

383. Real notion. In a general sense, *adoration is honor shown to another because of his superior excellence, in protestation of our submission toward him*. Therefore adoration extends less widely than honor; for an equal or even an inferior can be honored, but none except a superior is adored. Since, however, threefold excellence can be distinguished, namely, divine, created supernatural, and created natural, hence a threefold adoration is also distinguished: the first, which is of divine excellence and is called *latria*; the second, which is of created supernatural excellence existing in angels and saints and is called *dulia*; the third, which is of created natural excellence and is called *civil worship*.[284] In Sacred Scripture the name adoration is not rarely taken in the second and third senses; e.g., Abraham adored the angels and the sons of Heth;[285] Bathsheba adored King David;[286] "when Peter had entered, Cornelius came to meet him and, falling at his feet, adored."[287]

Here we speak principally of adoration which is latria. This adoration comprises a twofold act: one *internal*, namely, of the intellect (acknowledging the divine excellence and our subjection) and of the will (intending this acknowledgment and subjection); the other *external*, by which this acknowledgment of the divine excellence and of our subjection is truly manifested. The principal act by which God is adored externally is sacrifice. This act indeed is reserved to divine adoration alone; but other external acts customarily employed in adoration, e.g., genuflection, inclination, prostration, a kiss, uncovering the head, etc., can be employed not only in divine adoration but also in dulia and civil worship.

[284] Cf. ib.

[285] Gen. 23:7.

[286] 3 Kings 1:16.

[287] Acts 10:25.

384. Divisions. Since adoration is a species of worship, it is useful to set forth certain frequently occurring distinctions of worship. Therefore there is distinguished:

1. *Absolute and relative worship.* The former is that by which some person is worshiped because of a perfection and excellence intrinsic and proper to him. In this manner God is worshiped with the worship of latria, and the saints with the worship of dulia. The latter worship is that by which some thing is worshiped because of the excellence of the person whom it represents or to whom it is referred. Absolute worship cannot be offered except to persons; relative worship, however, is shown to inanimate things, e.g., the cross, images, relics, etc. In itself, indeed, nothing would prevent relative worship from being shown also to *persons*, since persons too can have a close relation to God, e.g., the Mother of God; nevertheless, in order to avoid ambiguities and occasions of error, relative religious worship is not to be shown to persons. For someone could falsely think that such worship rested in the person himself.[288] Thus, e.g., the cross can be venerated with the relative worship of latria because of its intimate connection with Christ crucified, who is God. But the Blessed Virgin, although as Mother of Christ she has a much closer relation to God than the cross has, is not to be venerated with the relative worship of latria; nor is it to be said that the Blessed Virgin can be adored relatively, as the cross is in fact adored relatively in the ceremonies of Good Friday. When danger of error is absent, nothing prevents relative civil worship from being shown not only to things but also to persons. Thus, e.g., an ambassador of a king is sometimes honored in the same manner as the king himself.

2. *Public and private worship.* The former is rendered in the name of the Church by persons legitimately deputed for this, through acts to be shown by the institution of the Church,[289] e.g., all strictly liturgical devotions. The latter is that which either was not instituted by the Church or is not performed in the name of the Church, e.g., private worship rendered to some servant of God not yet beatified.

3. *The worship of latria, hyperdulia, dulia, and civil worship.* This distinction was already indicated above. The worship of latria is adoration in the strict sense, which is shown to God alone because of His infinite dominion. Hyperdulia is the worship which is due to the Blessed Virgin alone because of her singular excellence, by which she far surpasses all angels and saints. This altogether singular excellence of the Blessed Virgin consists principally in this, that she is the Mother of God,[290] but secondarily both in the fact that she shines with most splendid virtues and in the fact that for us she is in a most special manner the mediatrix and dispenser of benefits. The worship of hyperdulia shown to the Blessed Virgin is indeed neither absolute nor relative latria (as Protestants calumniously object to us), but is very useful. Therefore proposition 26 was deservedly condemned by Alexander VIII: "The praise which is rendered to Mary as Mary is vain."[291] The worship of dulia is shown to saints and angels because of their excellence supernaturally received through the grace of God. Civil worship is shown to men because of their natural excellence, e.g., to a king, princes, superiors, etc.

[288] Cf. *S. theol.* 3, q. 25, a. 3 ad 3.

[289] Code of Canon Law, c. 1256.

[290] Cf. *S. theol.* 3, q. 25, a. 5.

[291] Denz. n. 1316.

385. Obligation of adoration. Principle 1. We must render to God the internal and external worship of latria.

a) Natural law strictly requires that we acknowledge the infinite excellence of God and subject ourselves most fully to God. But this is an act of latria or of adoration strictly so called, as is abundantly clear from the things explained above.

b) Divine positive law also commands this adoration or latria: "The Lord thy God shalt thou adore, and him only shalt thou serve."[292]

Adoration to be rendered to God does not of itself require a bodily act; and therefore the angels adore God with the mind alone. But we men, composed of soul and body, ought to adore God by acts both of the mind and of the body. Internal adoration of the mind is more principal, and without it external adoration is pure hypocrisy; and therefore Christ said: "The true adorers shall adore the Father in spirit and in truth."[293] Nevertheless, adoration made by external signs is also very useful and necessary, for through these external signs our affection is aroused to subject itself to God. Moreover, internal adoration vividly exercised is necessarily manifested by external signs, just as all vivid internal affections produce some bodily movements; finally, since adoration is the principal act of divine worship, and we ought to worship God also with external and public worship, it follows that man is bound to manifest his internal adoration by external signs.[294]

The precept of adoring God obliges in the same manner as the precept of worshiping and praying to God; hence recall the things said above in nn. 327 and 340. It has been established by the Church that God be adored on Sundays and feast days by hearing the sacrifice of the Mass, which is the most excellent act of adoration.

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[292] Matt. 4:10.

[293] John 4:23.

[294] Cf. *S. theol.* 2, 2, q. 84, a. 2.

386. Principle 2. The absolute worship of latria is due to the one and triune God alone and to Christ, God and man; but the relative worship of latria is due to the cross and the other instruments of the Passion or Redemption, and also to images of God and of Christ.

The first part of this thesis suffers no difficulty, since it is the most grave sin of idolatry if someone adores any creature whatsoever with absolute latria. Christ as man (even according to His body) can be adored absolutely, because in Christ there is only one person, namely, the divine Person.[295] Hence, e.g., I can adore the most Sacred Heart of Christ. Likewise the consecrated Host is adored with absolute latria, because the substance of bread has been converted into the body of Christ, who is God.

The other part of this thesis is disputed. For whether the cross of Christ, the instruments of the Passion or Redemption, and images of God are to be adored with proper and true latria, although relative, or are only to be venerated with some lesser worship, has been disputed from the times of Blessed Bellarmine, who was the first to assert: "It is not to be said that any images ought to be adored with latria, but on the contrary that they ought not to be so adored."[296] But St. Thomas and all the ancient theologians after the Second Council of Nicaea rightly teach with the Council of Trent:[297] "The honor which is shown to them [images] is referred to the prototypes which they represent, so that through the images which we kiss and before which we uncover the head and prostrate ourselves, we adore Christ." Hence nothing prevents us from venerating the cross and images of Christ with truly latreutic relative worship.[298]

Therefore even in the liturgy of Good Friday there is the "Adoration of the Cross," and St. Thomas painted a Cross on the wall of the convent at Anagni and wrote beneath it:

> The Cross is my certain salvation; the Cross is what I always adore. The Cross of the Lord is with me; the Cross is my refuge.

As regards the worship to be shown to the true Cross of the Lord, the following things have been established by positive law:

1. Particles of the Holy Cross must be preserved separately and exposed for veneration, but not in those reliquaries in which other relics are preserved at the same time.[299]
2. Particles of the Holy Cross can be exposed for the veneration of the faithful in the same manner as the Most Holy Eucharist. In such an exposition, one knee is to be bent whenever someone passes before that exposed particle. The incensation, however (with a triple swing), must be made while standing and not while genuflecting.[300] Benediction is given in the same manner as benediction with the Most Holy Eucharist.[301]
3. Particles of the Holy Cross must never be exposed above the tabernacle in which the Most Holy Eucharist is preserved enclosed.[302]
4. Particles of the Holy Cross are to be preserved becomingly and not openly, in a separate case and in a separate place; but those passing before that place must incline the head, but not genuflect.[303]

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[295] Cf. ib., 3, q. 25, a. 2.

[296] *De imag. sanct.* II, c. 24.

[297] Sess. 25, *De invoc. sanct.* (Denz. n. 986).

[298] Cf. *S. theol.* 3, q. 25, a. 4, and Prümmer in *Commer'sches Jahrbuch* XXII, 292-305.

[299] Sacred Congregation of Rites, 27 May 1826 and 18 Feb. 1843 (*Decr. auth.* n. 2844, where all decrees issued up to that time concerning the veneration of the Holy Cross are found collected). The Code of Canon Law, c. 1287, § 2, establishes the same.

[300] Sacred Congregation of Rites, 15 Sept. 1736 and 16 Dec. 1909 (*Decr. auth.* nn. 2324 and 4243).

[301] Sacred Congregation of Rites, 23 May 1835 (l.c., n. 2722).

[302] Sacred Congregation of Rites, 12 March 1836 and 25 May 1906, ad 1 (l.c., nn. 2740 and 4186).

[303] Sacred Congregation of Rites, 7 May 1746, ad 7 (l.c., n. 2390 ad 7).

387. Principle 3. The worship of dulia is due to the saints, the angels, and their images. If this worship is shown to the saints or angels themselves, it is absolute; but if it is rendered to their images or relics, it is relative.

Thus the Catholic doctrine, vehemently attacked by Protestants. Enough was already said above in n. 344 concerning the invocation of saints. But from such invocation the veneration of the saints already arises by that very fact, for the excellence of the saints and their intercessory power before God are acknowledged. Dulia, indeed, taken in the strict and absolute sense, is service duly shown to a ruling creature, and in this sense dulia does not pertain to the virtue of religion, because it does not directly include the worship of God.[304] But if, in the prerogatives of the saints, veneration is shown to gifts received from God, God is honored indirectly; and therefore the veneration of the saints is customarily considered an act of the virtue of religion. Nevertheless, such worship of the saints is absolute, because the saints and angels possess the dignity of a

person to whom proper veneration is due and whose worship is not to be referred totally to some prototype. (Cf. the things which the Council of Trent[305] defined concerning the worship of saints as Catholic doctrine.)

The worship to be shown to *images and relics of the saints* is relative, for it is referred wholly to the prototype. The following can be held as a general rule concerning absolute and relative worship: *If the prototype is adored with absolute latria, its image is to be adored with respective latria; but if the prototype is worshiped with absolute hyperdulia or dulia, its image or relics are worshiped with respective hyperdulia or dulia.*

Concerning the veneration of images and relics, the Church has established most wise laws, namely:

1. No relic is to be exposed for public worship unless it has first been established as genuine from an authentic document of some Cardinal of the Holy Roman Church, or of the Ordinary of the place, or of another ecclesiastical man to whom the faculty of authenticating has been conceded by Apostolic Indult.[306]

2. Relics of the blessed cannot be carried about in public processions unless there is a special indult, or unless it is in places where their Office and Mass are celebrated by concession of the Apostolic See.[307] Nevertheless, from this it does not yet seem to be prohibited that in some procession a reliquary be carried about in which, besides relics of the blessed, relics of saints are also contained.

3. Non-notable relics can everywhere be reverently preserved; but notable relics (such as the body, head, arm, forearm, heart, tongue, hand, leg, or that part of the body in which the martyr suffered, provided it is entire and not small) cannot be preserved in private houses or oratories without the express permission of the Ordinary of the place;[308] indeed, without the permission of the Holy See they cannot be transferred permanently to another church.[309]

4. Images of saints and of the blessed ought not to be printed and published without the approval of the Ordinary of the place.[310]

5. Images of the blessed can indeed be exposed everywhere throughout the world, but nevertheless they cannot be shown for public veneration or placed upon an altar except in those churches where Masses in their honor are also permitted.[311]

6. It is never lawful to place any relics or images whatsoever (even an image of the Crucifix) in such a way that the tabernacle in which the Most Holy Eucharist is preserved is their direct base.[312]

7. Men who have died celebrated by a reputation for sanctity can indeed be worshiped and invoked in a private manner, but cannot be honored with public worship in churches or oratories before they have been enrolled in the catalog of the blessed or of the saints. Likewise, it is not lawful to adorn their images with halos or to light lamps at their tombs; "their images or deeds and acts can, however, be displayed upon the walls of a church or in stained-glass windows, provided those images exhibit neither any indication of worship or sanctity nor anything profane or foreign to the custom of the Church."[313]

8. In some places there exist miraculous images to which the faithful approach as suppliants with great confidence. No special power indeed inheres in them, but by His ineffable providence God has ordained that He Himself, through the mediation of these images, produce greater and more frequent miracles or benefits. Special devotion of the faithful toward these miraculous images is entirely lawful and conformable to reason. Therefore Pius VI rejected the contrary doctrine of the Synod of Pistoia: "Likewise, the doctrine and prescription generally reproving every species of worship which the

faithful are accustomed to render to some image in particular, and to have recourse to that image rather than to another: rash, pernicious, injurious both to the pious custom practiced by the Church and to that order of providence by which God has willed these things to happen, not in all memorials of the saints alike, He who distributes His own gifts to each one as He wills."[314]

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[304] Cf. *S. theol.* 2, 2, q. 103, a. 2.

[305] Sess. 22, c. 3 and sess. 25.

[306] Code of Canon Law, c. 1283, § 1. Cf. Pontifical Commission, 17 July 1933 (*Act. Ap. Sed.* XXV, 345).

[307] Sacred Congregation of Rites, 27 Sept. 1659 (*Decr. auth.* n. 1130). Code of Canon Law, c. 1287, § 3.

[308] Code of Canon Law, c. 1282.

[309] Ib., c. 1281, § 1.

[310] Const. *Officiorum et munerum*, 26 Jan. 1897. Code of Canon Law, c. 1385, § 2.

[311] Sacred Congregation of Rites, 27 Sept. 1659. Code of Canon Law, c. 1277, § 2.

[312] Sacred Congregation of Rites, 12 March 1836 (*Decr. auth.* n. 2740 ad 1).

[313] Sacred Congregation of Rites, 14 Aug. 1894 (l.c., n. 3835).

[314] Prop. 70 (Denz. n. 1570).

Article IV. On Vows

We divide this article into eight paragraphs: 1. on the nature and division of a vow; 2. on the subject of a vow; 3. on the object of a vow; 4. on the obligation of a vow; 5. on the intrinsic cessation of a vow; 6. on the cessation of a vow or of its obligation through invalidation; 7. on the cessation of a vow or of its obligation through dispensation; 8. on the cessation of a vow or of its obligation through commutation.

§ 1. On the Nature and Division of a Vow

388. Definition. A vow (Greek *εὐχή*) is a promise made to God concerning a possible and better good. Thus a vow is most commonly defined.[315] Therefore three things are required for the essence of a vow, namely: 1. that it be a true promise; 2. that it be a promise made to God; 3. that it be a promise concerning a possible and better good. We shall treat of this last condition in paragraph 3, where there will be discussion of the object of a vow.

1. A vow must be a true promise; and therefore a mere resolution does not suffice. For in Sacred Scripture a vow is customarily explained through a promise: "If thou hast vowed any thing to God, defer not to pay it; for an unfaithful and foolish promise displeaseth him."[316] "It is much better not to vow than after a vow not to perform the things promised."[317]

In practice it is often not easy to distinguish whether a true promise or only a resolution was present. And nevertheless, it is entirely necessary to distinguish between a resolution and a promise. A promise is defined as an act by which someone intends to do something under an obligation manifested to another; but a resolution is the mere will to do or omit something, without a man thereby wishing to impose a strict obligation upon himself. Hence, if a confessor doubts whether a mere resolution or a true promise and consequently a true vow was present, let him ask the penitent: When you resolved upon that work, did you wish to impose upon yourself a true obligation, and that under sin, or did you not wish to establish such an

obligation for yourself? If the penitent responds negatively to the first part of the question, there is no vow nor grave obligation to execute the resolution, since a resolution of itself produces no moral obligation. Per accidens, however, namely, because of negligence or sloth joined to it, even the violation of a resolution can be sinful. If, after investigation, a doubt remains whether an obligatory promise or a resolution was present, the presumption stands for liberty, and therefore no obligation of a vow is present.

2. A vow must be a promise made *to God Himself*, because a vow is an act of latria by which someone obliges himself to God to do or omit something for His worship and service. Although vows are often customarily made in honor of the Blessed Virgin and the saints (e.g., someone vows that he will say the Rosary daily in honor of the Blessed Virgin), nevertheless such vows are not properly made to the saints and the Blessed Virgin, but to God alone. The signification of vows of this sort can be threefold: a) a man vows to God that he will fulfill that which he promised to the saints; or, in other words, that which is promised to the saints is not the vow itself, but the matter of the vow;[318] b) the vow is made to God, but before the saints, who are as it were witnesses of our promise; c) the vow is made principally to God, but secondarily in honor and memory of the saints, in almost the same manner as churches are erected principally for the worship of God, but secondarily in honor of the saints, and as Mass is said in honor of the saints. But if someone were to make a vow to the Blessed Virgin or to some saint without any relation to God and without the intention of obliging himself to God, but to the Blessed Virgin or the saint alone, it would not be a vow properly so called, but a certain sacred promise and an act of hyperdulia or dulia. Hence, e.g., if some girl should say: Most Holy Virgin, I promise thee perpetual chastity because I love thee; but if she thinks nothing about entering into an obligation toward God, such a promise is either no vow or a doubtful vow, and therefore a dispensation of the Supreme Pontiff is not required to free her from such a promise, as is necessary for removing a vow of perfect chastity.

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[315] Cf. *S. theol.* 2, 2, q. 88, a. 2. Code of Canon Law, c. 1307, § 1.

[316] Eccles. 5:3.

[317] Ib., v. 4.

[318] Cf. *S. theol.* 2, 2, q. 88, a. 5 ad 3.

389. The moral value and utility of vows. Since a vow is an act of the virtue of religion, and indeed of latria, as is apparent from the things said, it follows that it is a good and useful act. Protestants, however, with Wycliffe, Luther, and Calvin leading them, teach that vows (especially the vows of religious) are harmful, sinful, and immoral, since they injure human liberty.[319] Modern Protestants, however, do not agree concerning the moral goodness of vows.[320] Yet they rather commonly reject the vows of religious orders. Already in the times of St. Thomas, William of Saint-Amour indirectly attacked religious vows by condemning the religious state of the Mendicant Orders. Blessed Albert the Great, St. Thomas Aquinas, and St. Bonaventure fought victoriously against "those who attack the worship of God and religion."[321] The Quietists also spread errors concerning vows. Hence Innocent XI condemned the following propositions:[322] "Vows concerning the doing of something impede perfection"; "Superiors are to be obeyed in external things, and the extent of the vow of obedience of religious reaches only to the exterior; but in the interior the matter stands otherwise, into which God alone and the director enter." Against all these let there be the following:

Thesis. Vows prudently made from the motive of worshiping God are morally good and very useful.

Proof 1. From Sacred Scripture. In the Old Testament the Patriarchs and most holy men made vows and on that account were blessed by God.[323] In the Mosaic law fulfillment of vows is prescribed: "When thou hast

made a vow to the Lord thy God, thou shalt not delay to pay it, because the Lord thy God will require it; and if thou delay, it shall be imputed to thee for a sin."[324] In the New Testament Christ and the Apostles frequently invited men to embrace the evangelical counsels, which are not customarily put into practice without vows.[325] Concerning Aquila, a disciple of St. Paul, it is said: "For he had a vow."[326]

Proof 2. From the whole Christian tradition. From the first Christian centuries onward, pious men and women made vows[327] and either went into the desert following the examples of Pachomius and Anthony, or lived holily in their own homes. Especially was the vow of chastity frequently made. Let St. Augustine alone be heard, addressing certain spouses who, after making a vow of chastity, intended to break it: "But now, because thy pledge is held before God, I do not invite thee to great justice (if I exhort thee not to withdraw from the vow), but I deter thee from great iniquity. For thou wilt not be such as thou wouldst have remained if thou hadst vowed nothing of this sort. For then thou wouldst have been less, not worse. But now, which God forbid, thou wilt be the more wretched if thou breakest that same thing with God, by as much as thou wilt be the more blessed if thou fulfillest it. Nor therefore repent that thou hast vowed; indeed rejoice that it is no longer lawful for thee to do that which would have been lawful to thy detriment.... Happy is the necessity which impels toward better things."[328]

Proof 3. From the definitions of the Church. The Council of Trent[329] defined: "If anyone says that men are so to be recalled to the memory of the baptism they received that they understand all vows made after baptism to be invalid by force of the promise already made in baptism itself, as though by them something were detracted from the faith which they professed and from baptism itself, let him be anathema." The same is apparent from the propositions of the Quietists condemned by Innocent XI and already mentioned above.

Proof 4. From reasons. It suffices to adduce the words of the Angelic Doctor:[330] "For three reasons it is better and more meritorious to perform the same work with a vow than to perform it without a vow: first, because to vow ... is an act of latria, which is chief among the moral virtues. But the work of a nobler virtue is better and more meritorious. Hence the act of an inferior virtue is better and more meritorious from the fact that it is commanded by a superior virtue, whose act it becomes through command; just as an act of faith or hope is better if it is commanded by charity. And therefore the works of the other moral virtues (for example, to fast, which is an act of abstinence, and to practice continence, which is an act of chastity) are better and more meritorious if they are done from a vow, because thus they now pertain to divine worship as certain sacrifices to God. Hence Augustine[331] says that 'virginity itself is honored, not because it is virginity, but because it is dedicated to God, which the continence of piety cherishes and preserves.' Secondly, because he who vows something and does it submits himself to God more than he who only does it; for he subjects himself to God not only as regards the act, but also as regards the power, because thereafter he cannot do otherwise; just as he would give more to a man who gave him a tree with its fruits than he who gave him only the fruits.... Thirdly, because through a vow the will is immovably confirmed in the good. But to do something from a will confirmed in the good pertains to the perfection of virtue.... Just as also to sin with a mind obstinate in evil aggravates the sin and is called a sin against the Holy Ghost."

Protestants indeed object that liberty is destroyed by vows; but this objection is very weak. For even through marriage the liberty of withdrawing from the contract is removed; indeed, in every human contract a man is obliged to do or omit something. Therefore marriage also and all onerous contracts would have to be repudiated. Moreover, even the saints in heaven no longer have liberty to sin or to separate themselves from God, and nevertheless they are supremely free. Happy, therefore, is the necessity which impels toward better things, as St. Augustine says in the text cited above.[332] Never is man more free than when, liberated from the yoke of the passions, he perfectly fulfills the duties of the Christian life.

[319] Cf. Luther's short work on monastic vows.

[320] Cf. *Realencyklopädie für prot. Theol.*, s.v. "Gelübde."

[321] Cf. St. Thomas, *Opusc.* I, *Contra impugnantes Dei cultum et religionem*, and *Opusc.* III, *Contra pestiferam doctrinam retrahentium homines a religionis ingressu.*

[322] Denz. nn. 1223 and 1285.

[323] Cf. Gen. 28:20 and Wetzer and Welte, *Kirchenlex.*, s.v. "Gelübde bei den Israeliten."

[324] Deut. 23:21.

[325] Cf. Matt., cc. 16 and 19; 1 Cor. 7:25.

[326] Acts 18:18; cf. 21:23ff.

[327] Cf. St. Ignatius, *Ep. ad Polyc.* c. 5 (Migne, *Patr. graec.* 5, 724); Tertullian, *De virg. velandis* c. 11 (Migne, *Patr. lat.* 2, 954); St. Cyprian, *De habitu virg.* c. 4 (Migne, *Patr. lat.* 4, 456).

[328] Ep. 127 (Migne, *Patr. lat.* 33, 487).

[329] Sess. 7, can. 9, *De bapt.* (Denz. n. 865).

[330] *S. theol.* 2, 2, q. 88, a. 6.

[331] *De virg.* c. 8.

[332] Cf. *S. theol.* 2, 2, q. 88, a. 4.

390. Divisions. Vows are divided in many ways. The following divisions seem to be the principal ones:

1. By reason of the object, a vow is divided into *personal* and *real*. A personal vow principally obliges one to perform or omit some personal action, e.g., a vow of fasting, of not gambling, etc. A real vow principally obliges one to some thing, e.g., to give alms.

Besides the personal and real vow, some theologians distinguish a mixed vow, in which an action and a thing are intended and promised equally principally, e.g., a vow of making a pilgrimage to some miraculous image and offering a candle there. But a mixed vow of this kind is nothing other than two vows joined together: one personal, the other real.

2. By reason of duration, a vow is distinguished into *temporary*, which obliges for a determined time, e.g., for a year; and *perpetual*, which is promised to be observed for the whole of life.
3. By reason of manner, a vow is divided into *absolute*, which is made without any condition added, e.g., I vow perpetual chastity; and *conditional*, which does not oblige unless some condition is verified, e.g., I vow a pilgrimage if I shall have recovered my health; I vow entrance into religion if my parents shall have given consent. If someone, under the condition of a determined future fault, vows that a punishment is to be inflicted upon himself, such a vow is called *penal*; e.g., if I shall have become drunk again, I vow that I shall give an alms of one hundred francs.
4. By reason of form, a vow is distinguished into *express*, which is made in formulated words; and *tacit*, which consists in some free action to which a vow is annexed. Thus, e.g., if someone in the Latin Church freely receives the subdiaconate, he tacitly vows chastity.[333] In ancient times there also existed a tacit religious profession of the three vows of obedience, chastity, and poverty.[334] The greatest part of vows made today are express vows. Akin to this distinction is the division of a vow into explicit and implicit. For an explicit vow is the same as an express vow, but an implicit vow is that which is

contained in another. Thus, e.g., a religious who explicitly vows obedience according to the rule implicitly vows poverty and chastity.

5. By reason of the acceptance of the Church, a vow is distinguished into *private* and *public*. A private vow is that which is made by the person vowing alone without the intervention of the Church; e.g., someone vows to say the Rosary daily. A public vow is that which is accepted in the name of the Church by a legitimate ecclesiastical superior.[335] All essential vows of religious orders and congregations are public vows, provided these have been duly approved by the Church.

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[333] There are, however, some authors who teach that a subdeacon is obliged to preserve chastity not by force of a vow but by force of ecclesiastical law; discussion of this controversy will recur below, III, 819.

[334] Cf. the canonists concerning this matter.

[335] Code of Canon Law, c. 1308, § 1. A public vow, therefore, is not opposed to an occult vow.

391. Public vows are distinguished into simple and solemn. Simple public vows are those which are made in all approved religious congregations and in the ancient orders during the first three years after the novitiate. (The Society of Jesus, however, has special laws concerning this matter.) Solemn vows are those which by the authority of the Church are made a) in religious orders after three years of simple vows;[336] b) in the Society of Jesus by certain members according to the special laws of that Society; c) the vow of chastity made in the reception of the subdiaconate.[337]

It has been much disputed down to our days wherein precisely the essential difference between solemn vows and simple public vows is situated. Since this controversy seems to pertain more to canon law than to Moral Theology, it can be touched upon here only in passing. First, a twofold solemnity must be distinguished: one essential, the other accidental. The accidental solemnity of a vow consists in the Rubrics, circumstances, and conditions which must necessarily be observed by the statute of the Church, e.g., the statute of the Church that solemn vows cannot validly be made before the completion of the twenty-first year of age; or that they cannot be made unless the novitiate and at least three years of simple vows have preceded. This accidental solemnity undoubtedly depends solely upon the institution of the Church, which can freely change it and has in fact changed it several times. For it belongs to the Church to determine wisely under what conditions someone is capable of making solemn profession; just as it also belongs to the Church to establish certain things which are essentially required for validly entering Christian marriage. And just as the Church, in the course of time, instituted certain diriment impediments of marriage, so likewise it attached certain conditions without which solemn profession is not held valid. The Supreme Pontiffs Boniface VIII[338] and Gregory XIII[339] seem to speak of this accidental solemnity of profession when they assert: "We, considering that the solemnity of a vow was devised solely from the constitution of the Church...."

The essential solemnity of vows is that by which those vows are intrinsically distinguished from all other vows. Several authors, e.g., Suarez,[340] Schmalzgrueber,[341] and Wernz,[342] think that solemn vows differ essentially from simple vows because of the juridical effects annexed to them by the Church. Others, namely, St. Thomas,[343] the Thomists,[344] and several others, e.g., Lehmkuhl,[345] teach that the essence of solemn vows consists in a certain internal spiritual surrender and consecration of the person vowing, which the Church accepts in the name of God; but that simple vows contain only a spiritual surrender. This opinion seems better to us, especially because of the Council of Trent defining: "If anyone says that a ratified but unconsummated marriage is not dissolved through the solemn religious profession of one of the spouses, let him be anathema."[346] For a ratified marriage is a true marriage and indissoluble by divine law itself. If nevertheless

solemn profession dissolves such a marriage, this cannot come from ecclesiastical law alone, but from divine law; otherwise even some Supreme Pontiff could abolish the canon of Trent just cited, which indeed seems impossible. Although solemn vows consist essentially in the spiritual consecration of the person vowing, nevertheless the Supreme Pontiff can for a grave cause dispense from their obligations, just as he can also permit a consecrated chalice to be employed for profane uses.

[336] By decree of the Pontifical Commission on 15 July 1919, special laws were established concerning the profession of religious who must perform military service. Cf. our *Man. iur. can.* q. 212.

[337] This vow is more accurately called *solemnized.*

[338] C. unic. 3, 15 in VI°.

[339] Const. *Ascendente Domino*, 22 May 1584.

[340] *De relig.* tr. 7, l. 2, c. 108ff.

[341] *Ius can.* l. 3, tit. 34, n. 8.

[342] *Ius Decret.* III, n. 684, and IV, n. 377.

[343] IV, dist. 38, q. 1, a. 2.

[344] Cf. Billuart, *De relig.* diss. 4, a. 5.

[345] *Theol. mor.* I, n. 647ff.

[346] Sess. 24, can. 6 (Denz. n. 976).

§ 2. On the Subject of a Vow

392. Since a vow is an act of the virtue of religion, in the first place those things said above in n. 326 concerning the subject of religion apply to the subject of a vow. Since, however, a vow is customarily made in order to confirm the will in a good resolution, those persons whose will is perfectly confirmed in good no longer need a vow.

Hence the saints in heaven, the good angels, and Christ did not make vows. St. Thomas[347] writes: "It was not fitting for Christ in Himself to vow, both because He was God and because, insofar as He was man, He had His will confirmed in good, as one existing in the state of comprehension." That the damned are not the subject of a vow is evident of itself, since they are not capable of any act of religion.

With these excepted, therefore, all men are the subject of a vow, or capable of vowing, provided that 1. they are endowed with the perfect use of reason; 2. they have the intention of vowing; 3. they have sufficient deliberation and 4. liberty; 5. they are not prohibited by positive law from making vows.

All men can make vows.

The reason is that all men can worship God. Therefore not only Catholics but also Protestants, indeed even unbelievers, can make valid vows. Therefore the Sacred Penitentiary declared on 29 Nov. 1842 that a Protestant who made the three vows of poverty, chastity, and obedience before an Anglican minister is bound to the observance of these vows if he had a true intention of vowing.[348]

[347] *S. theol.* 2, 2, q. 88, a. 4 ad 3.

[348] *Collect. de Prop. Fide* n. 959.

393. 1. Perfect use of reason is required on the part of the person vowing for the validity of a vow.

For a vow is a certain particular law. But just as no one who does not have the perfect use of reason can establish an obliging law, so no one can impose upon himself the obliging law of a vow unless he has the perfect use of reason. Hence infants under seven years of age (unless, however, they have already attained the perfect use of reason) cannot make vows. For infants the rule is valid: *If they can devote themselves to the devil through mortal sin, they can also oblige themselves to God through a true vow.* Likewise invalid are the vows of a man who is completely drunk, insane, or hypnotized. Since the vows of religious institutes are so gravely obligatory, the Church has established that no one can make these vows before a more perfect use of reason, namely, before completion of the sixteenth year of age.[349]

[349] Code of Canon Law, c. 573.

394. 2. The intention or will of vowing is required for the validity of a vow.

Hence a fictitious vow, i.e., one made only externally without the internal intention of vowing, is null. A threefold quality of this deficient intention is subtly distinguished:

a) Someone promises and vows in words alone, but internally has absolutely no intention of vowing. In this case there is certainly no true vow before God. Hence St. Thomas says briefly: "A promise is sometimes made with the mouth and not with the heart, and such a promise, as regards God, is not a vow."[350] A fictitious vow of this sort can occur, e.g., if someone is compelled by other men to vow in some religious institute. But if someone were to make a fictitious religious vow without external compulsion, he would sin gravely; for he would mock the religious institute; sometimes he would also cause material harm, and he would be bound to repair all injuries committed.

b) Someone indeed intends internally to vow and to oblige himself, but at the same time determines not to execute the promise made. In this case theologians commonly teach that a vow truly exists, because fulfillment is not of the essence of a vow, but only the deliberate mind of obliging oneself. Nevertheless, as is evident of itself, such a person vowing sins mortally, because it is a grave irreverence inflicted upon God to promise something in honor of God and at the same time to will to derogate from this promise.

c) Someone indeed wills to promise in a vow and also to execute the promise, but by no means wills internally to oblige himself. In this case it is not so certain whether a vow is truly present. The negative opinion seems to be truer, because the internal resolution to oblige oneself is of the essence of a vow.[351] Moreover, in this case, whether a vow is present or not, the obligation of fulfilling the promise remains.

If defects of intention of this kind occur in a religious profession which someone made for merely earthly motives, or in the reception of the subdiaconate, then the confessor must insist that the penitent make a true vow as soon as possible, or refer the matter to the competent ecclesiastical authority. Since, however, some authors teach that a subdeacon is obliged to perpetual chastity not by force of a vow properly so called but by force of ecclesiastical law, such a subdeacon can receive sacramental absolution, provided he has promised that he will preserve perfect chastity.

As regards the *quality of intention* necessary for a vow, an actual or explicit intention is not required, but a virtual or implicit intention suffices. For an actual intention is not necessarily required, because in no human act is an actual intention required for its validity, but a virtual or implicit intention suffices. Hence, e.g., one who has the will to receive the subdiaconate, knowing that the vow of chastity is joined to this order, has a sufficient virtual or implicit intention of making the vow of chastity. An indirect or interpretative intention does not suffice; and therefore, e.g., if one who knows that he is prone to vowing when drunk voluntarily makes himself drunk and, while drunk, vows, his vow does not seem to be valid.

[350] IV, dist. 38, q. 1, a. 1, solut. 1 ad 2.

[351] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 201.

395. 3. Sufficient deliberation is required for the validity of a vow.

The reason is that no one is considered to impose upon himself a grave obligation, such as the obligation of a vow is, without sufficient deliberation. But the question immediately arises: What deliberation is truly sufficient for the validity of a vow? Full or perfect deliberation is customarily distinguished from imperfect or semiplena deliberation. The most common opinion is that full and perfect deliberation is required for the validity of a vow. This consists in the person vowing a) being fully master of himself; b) attending to and truly knowing that which he imposes upon himself to fulfill through the vow. Hence theologians commonly teach that for the validity of a vow there is required as much deliberation and knowledge as is necessary for completing an onerous contract or another grave business; or even as much as is necessary for constituting a grave sin from a perfect and direct voluntary act. Hence a confused notion of the obligation does not suffice for a vow, but a confused notion of the gravity of the guilt suffices for mortal sin. The reason for this opinion is that every vow, even in light matter, imposes a serious obligation of religion before God. But no one either ought or is considered to impose such an obligation upon himself without full deliberation. Nevertheless, not every disturbance or emotion of the mind destroys the validity of a vow; otherwise all those vows which are made either in a vehement spirit of devotion, in a very great desire to obtain some benefit, or at the instigation of fear would be invalid, which assuredly no one will say. Therefore only that disturbance impedes the validity of a vow which clouds the mind or at least removes the perfect use of reason.

Because of a lack of sufficient deliberation, invalid are the vows of a child not yet in perfect possession of reason, of a half-drunken man, or of a man so gravely ill that because of fever he cannot think seriously. Often invalid also are the vows of those who suffer from hysterical disease or from so-called "fixed ideas." Nevertheless, a long and prolonged discussion of all circumstances is not absolutely necessary for making a vow, although it is commonly to be counseled, provided, however, that the vow is not made precipitately. In practice a serious doubt can sometimes arise whether some vow was made with sufficient deliberation. Then, for greater security, it is expedient to obtain a dispensation or commutation of the vow so made, which indeed will easily be obtained. The faithful are diligently to be admonished not to make vows from a sudden emotion; indeed, praiseworthy is the custom of several confessors who strictly prohibit their penitents from making any vow of greater moment, e.g., a vow of chastity, without the previous consent of the confessor.

396. Sufficient deliberation is also absent if a vow was made from a notable error. But an error which invalidates a vow is twofold:

a) A substantial error, i.e., either concerning the very substance of the thing promised or concerning a substantial condition.

An error concerning the very substance of the thing promised is present if the person vowing intends an altogether different thing, e.g., if someone were to vow to give away his possession which he thinks to be made from base material but which in fact has a very great value. An error concerning a substantial circumstance or condition is considered present if some circumstance or condition inheres in the object of the vow which, had it been known, would most certainly have prevented the vow, e.g., if you vowed a pilgrimage to some sanctuary, thinking the expenses of the journey to be a few francs, when in fact they are one hundred francs.

b) Error concerning the final cause of the vow.

E.g., if someone vowed a pilgrimage for the recovery of the health of his father, whom he thought to be sick but who in fact had always enjoyed excellent health, such a vow is invalid because the principal end of the vow is absent.

But if an error concerns accidental conditions or merely impulsive causes, the vow is not indeed invalid of itself, but nevertheless it can easily be commuted or even dispensed.

E.g., if someone vowed a pilgrimage to the thresholds of the Apostles but did not know all the difficulties connected with such a pilgrimage, he is not by that very fact excused from fulfillment of the vow, but a commutation or dispensation will rather easily be conceded.

Note. The essential vows in religious institutes cannot be impugned because of unforeseen inconveniences which someone afterwards experiences in observing them, e.g., in chastity or obedience. For these inconveniences could and ought to have been foreseen. Nevertheless, according to the present discipline of the Roman Curia, a dispensation from religious vows also is rather easily conceded if someone proves that he was led into error concerning even the accidental obligations of the religious state which he professed.

397. 4. Liberty likewise is required for a vow, since a promise which was given not freely but under compulsion cannot be pleasing to God. Opposed to liberty are not only force and violence, which destroy the voluntary act and consequently every vow, but also fear.

Concerning a vow made from fear, the following things seem to have to be said:

A twofold grave fear invalidates; likewise a twofold fear does not invalidate a vow:

a) If the fear under whose influence the vow was made was so grave that the use of reason was disturbed, such a vow is certainly invalid. Thus all teach, and the reason is obvious, for such fear removes everything voluntary and all deliberation.

b) Grave fear, although it does not disturb the use of reason, nevertheless invalidates all vows if it was unjustly inflicted in order to extort the vow. Thus from positive ecclesiastical law.[352] The reason for this law seems to be that God does not accept a vow of this sort, since otherwise He would seem to approve the grave injury inflicted upon the person vowing.

c) Grave natural fear, or even grave fear justly inflicted by a free cause, does not of itself invalidate any vows whatsoever.[353] Hence, e.g., if someone in the greatest danger of shipwreck or death vows perpetual chastity; or if an ecclesiastical judge were justly to condemn a cleric to deposition unless he entered a strict monastery and made vows there, then such vows, according to the more probable and more common opinion, are valid.[354] The reason is that no injury is done to such a person vowing, and his act, notwithstanding the fear, remains free and deliberate. The same things hold concerning the validity of a vow made under the influence of grave fear which was indeed inflicted unjustly, but *not in order to extort the vow*. For such fear, in its relation to the vow, is not distinguished from natural fear. Hence, e.g., the vow is valid which someone made in order to escape a danger of death arising from an attack by robbers.

d) Light fear does not invalidate vows. Although some authors cited by St. Alphonsus,[355] e.g., Busembaum, Navarrus, and, among the moderns, Schindler and Noldin, think that even light fear invalidates a vow because such light fear also removes at least full liberty of consent, nevertheless the far more common and more probable opinion asserts that a matter as grave as a vow is not invalidated by light fear.[356]

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[352] Code of Canon Law, c. 1307, § 3.

[353] Cf. Billuart, l.c., and Ernest Müller, *Theol. mor.* II, § 52.

[354] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 197.

[355] *Theol. mor.* l. 3, n. 197.

[356] Dominic Soto discusses this matter excellently, *De iure et iust.* l. 7, q. 2, a. 1.

398. 5. On ecclesiastical law prohibiting certain vows. By natural and divine positive law, no one capable of reason is prohibited from making vows concerning suitable matter. But it is asked whether by positive ecclesiastical law certain persons are forbidden to vow. The answer is:

a) The Church renders several men incapable of making public vows, whether simple or solemn; and therefore it has attached certain conditions without which vows made in religious institutes are altogether invalid from the beginning. Canonists treat of these conditions essentially required for religious profession, whether simple or solemn.[357]

b) Since, according to a probable opinion, the Church can prescribe even internal acts, nothing prevents the Church from also attaching certain conditions to private vows to be made, without which vows of this sort are invalid. Nevertheless, it is not certainly established that the Church has in fact attached conditions of this sort to any private vow.

c) Religious bound by the vow of obedience cannot make any private vow which is contrary to the will of their superiors or to the rule professed. The reason is that such a vow would concern a thing evil and prohibited.

d) Religious can make a vow of entering a stricter order, as has been established by several Supreme Pontiffs.[358] But the transfer itself can no longer be made without the authority of the Apostolic See.[359]

e) Professed religious cannot make other private vows which are firm and not subject to invalidation by the superior. Therefore St. Thomas says simply: "No vow of a religious is firm except with the consent of his prelate."[360]

f) Generally, it is not expedient for religious to make private vows, at least without the express permission of the superior. For first, it is not certain whether these vows are valid, and secondly, a religious already bound by the three essential vows and the observance of the rule, if he wishes faithfully to observe all these things, is already sufficiently bound without needing a new obligation from some private vow.

g) Private vows made by a professed religious seem to be valid unless the superior has invalidated them or vows of this kind are expressly prohibited by the rule. Thus the more common opinion, which Cajetan,[361] John of St. Thomas,[362] Suarez,[363] the Salmanticenses,[364] and many others hold. The reason is that such vows inflict no detriment upon the jurisdiction of superiors and their right administration. For when the superior judges them inopportune, he can invalidate them. Therefore, if, e.g., some religious gravely obliged himself under vow to recite the Rosary daily, this vow is valid and its transgression is a grave sin; or if a religious bound himself by a private vow to the observance of some rule otherwise obliging under no fault, he sins by transgressing this vow which he made.

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[357] Cf. our *Manuale iur. can.* q. 213.

[358] Cf. Innocent III, c. 18, X 3, 31.

[359] Code of Canon Law, c. 632.

[360] *S. theol.* 2, 2, q. 88, a. 8 ad 3.

[361] *Comm. in* 2, 2, q. 88, a. 8.

[362] *In* 2, 2, q. 88, disp. 29, a. 16.

[363] *De relig.* l. 3, c. 5, n. 3.

[364] *Curs. theol. mor.* tr. 17, c. 1, punct. 8, n. 185.

§ 3. On the Object of a Vow

399. The object of a vow is that which is promised in the vow, e.g., alms to be given, a prayer to be said, chastity to be preserved, etc. It is also customarily called the matter of the vow. But for the validity of a vow, *suitable matter* is required, having three conditions, namely: 1. that it be possible for the person vowing; 2. that it be morally good; 3. that it concern a better good.

1. The thing promised must be *possible* for the person vowing.

For an impossible thing, whether physically or even morally, i.e., to be performed with extraordinary difficulty not foreseen, cannot be promised in a vow, since no one can seriously oblige himself to such impossible things. Hence a vow of working a miracle is invalid; likewise a vow by a poor man of distributing great alms.

It is customary to ask here: a) *Is a vow of avoiding all sins valid?* The answer is given with a distinction: α) If someone vowed that he would commit no sin, not even the lightest, throughout his whole life, such a vow is invalid; for it concerns a morally impossible thing, since no one can, without a special grace, avoid all even the lightest sins. β) If someone vowed that he wished to avoid all mortal sins, or even all fully deliberate venial sins, such a vow is indeed valid in itself, because this is possible with the ordinary help of God; but nevertheless, for a man not proved by long exercise of the virtues, such a vow is imprudent, because it is not expedient to promise under vow that which will more probably not be observed faithfully.

b) *Is a vow concerning a thing partly possible and partly impossible valid?* It is necessary to ascertain whether the matter of the vow is indivisible and whether the nature of a vow is still at least partially contained also in the possible part.[365] If the matter is indivisible, the vow becomes invalid if the whole is not possible, even though a part is possible. Thus, e.g., if someone promised by vow a pilgrimage to Lourdes and the whole journey has become impossible for him to make because of lack of strength or money, he is not bound to the part of the journey possible for him. But if the matter of the vow is divisible, and in the possible part of this matter the nature and end of the vow are still preserved at least in some manner, this possible part is to be performed; e.g., if someone promised to make a pilgrimage fasting and cannot observe the fast but can make the pilgrimage in another manner, he is not totally freed from the obligation of the vow, but is bound to make the pilgrimage, although not fasting. Moreover, in these and similar cases inquiry must first be made concerning the precise intention of the person vowing, and from this it is necessary to judge whether the obligation of the vow persists or ceases.

[365] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 202.

400. 2. The matter of a vow must be morally good and pleasing to God.

For a vow is an act of worshiping God. But God is not worshiped by dishonorable acts or by acts altogether indifferent and vain.[366]

a) To vow a *dishonorable thing* or to make a vow in order to obtain an illicit thing is a grave sin unless an erroneous conscience excuses. Hence St. Alphonsus[367] writes: "It is also more probable to me that to vow an evil, even a venial evil, is of itself a grave fault; since of itself it is blasphemy to will that evil redound to the

honor of God. But commonly, because of ignorance, this is only venial." When the end of the person vowing is evil, although the matter promised by vow is good in itself, then the vow is invalid and gravely sinful if this was the principal end; but if it is only a secondary end, the vow is valid. Hence, e.g., a vow of giving alms in order to obtain good success in theft, causing harm, adultery, etc., is invalid and constitutes a grave sin; but a vow of giving alms indeed in honor of God, but also in order to have some vain glory of one's own, is valid, although to seek vain glory is evil in itself.[368]

b) To vow a *vain and indifferent thing*, both in itself and in its circumstances, is a venial sin; but the vow itself is null. The reason is that a foolish promise of this kind displeases God. Hence a vow no longer to pass through a certain street would be invalid and lightly sinful. Almost always, however, things indifferent in themselves become good or evil because of annexed circumstances or because of the end of the agent. Therefore the vow of some girl no longer to pass through a certain street because there she experiences dangerous delights upon seeing a certain young man would be valid and lawful.

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[366] St. Thomas, *S. theol.* 2, 2, q. 88, a. 2.

[367] *Theol. mor.* l. 3, n. 205.

[368] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 206.

401. 3. A vow must concern a better good, i.e., it ought not to impede a greater good in the subject vowing.

a) Thus this quality of the object of a vow is more commonly and more correctly explained. For something can be called a greater or better good in two ways: first, comparatively to another good, e.g., it is better to render obedience than to perform bodily mortifications, but each is good. In a second manner, comparatively to the contrary omission of the same good, e.g., it is better to give alms than not to give, it is better to preserve chastity than not to preserve it. For suitable matter of a vow, it suffices that it be a better good in this second manner. For if it were necessary that the good promised by vow be better comparatively to another good, it would follow that no vow would be valid unless it concerned the most perfect work of all, since only the most perfect work has no other work more perfect than itself.[369]

b) From these things it is inferred that not only works called supererogatory, or falling under counsel, but even works already prescribed from another source can be the matter of a vow. Certainly works of counsel or supererogatory works most properly fall under vow, as the Angelic Doctor says,[370] but prescribed works are still sufficient matter of vows, or vows can also be made concerning them. The reason is that a work imposed under a precept, whether natural, divine, or ecclesiastical, nevertheless remains free and induces only a moral obligation. Nothing, therefore, prevents someone from binding himself by a new bond of religion to perform that work already prescribed from another source. Hence, e.g., a vow never again to become drunk can be excellent when made by one who has a depraved habit of intemperance. This doctrine can also be confirmed from a promissory oath, which induces an obligation of religion similar to a vow. But a promissory oath is very often employed not only by Catholics but also by non-Catholics to confirm treaties, pacts, contracts, etc., to the observance of which natural and divine law already oblige. Why cannot vows be employed in the same manner?

c) Moreover, it is to be noted that for sufficient matter of a vow it is not required that the work promised be absolutely and objectively better than its omission, but it suffices that this work be better than its omission subjectively, or relatively to the person vowing. Therefore a vow contrary to the evangelical counsels can sometimes be lawful, e.g., of entering marriage with virginity abandoned. For although the state of virginity considered objectively is more perfect than the state of marriage, nevertheless for some men marriage is better

than virginity. For St. Paul says: "It is better to marry than to burn."[371] Besides the danger of incontinence avoided, other special goods can also arise from a determined marriage, e.g., the cessation of scandal, the cessation of concubinage, the legitimation of offspring, etc. Hence St. Alphonsus calls certain and far more probable the opinion which teaches that in these cases a vow of marrying is valid and lawful.[372] Nevertheless, several grave authors contradict this, such as Dominic Soto,[373] John of St. Thomas,[374] John of the Cross,[375] Concina,[376] etc., because marriage is not the only remedy for concupiscence and other equally efficacious means are also at hand. In practice a vow of marrying does not seem to be counseled, both because perhaps it is invalid and because its utility is customarily very small. Hence, if someone agitated by the impulses of the flesh does not wish to use other remedies for preserving chastity, let him contract marriage, but let him not make a vow of marrying.

d) St. Alphonsus[377] here appends the question: "Whether, if someone too prone to vowing vows no longer to vow except with the permission of his confessor, but afterwards nevertheless vows, that vow is valid?" The answer is: 1. A vow absolutely made not to vow is indeed invalid, because it is better to vow than not to vow; but a vow not to vow except with the permission of the confessor is certainly valid for one who is too prone and inconsiderate in vowing, since it impedes imprudent vows. 2. By making the second vow without consulting the confessor, the person vowing sinned. 3. Nevertheless, this second vow is valid, provided all the other essential conditions of a vow were present.

e) Here another question is also appended which today is indeed antiquated, but which in former times occurred not rarely: *Can parents devote their children to some monastery or to the ecclesiastical state in such a way that the children by force of that vow are bound to enter the monastery or embrace the clerical state?* The answer is negative, for such a vow would be equally unjust and impossible. For children are altogether free in the choice of a state, and therefore parents injure justice if they compel their children to embrace a determined state. Then, if the children refuse to embrace the state designated for them by the parents, execution of the vow becomes at least morally impossible. But if in ancient times some parents nevertheless devoted their infant children to some monastery or to the clerical state, the Church either did not approve such vows or, after the children so devoted had arrived at the years of discretion, conceded that they could freely leave the monastery and choose another state.

f) Finally it is asked: *Is the vow made in baptism of renouncing Satan, the world, and its pomps a true vow?* It is not a vow in the strict sense, but in a broad sense, so that a baptized person sinning against the promises given indeed commits a graver sin than an unbaptized man, but nevertheless does not commit true sacrilege because of violation of the baptismal vow. Thus the common opinion.[378] The reason is that he who gives such promises in baptism does not intend to oblige himself under a special sin against religion, but only promises faithful observance of all the commandments of God.

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[369] Cf. Concina, *In Decal.* l. 4, diss. 1, c. 5, n. 5.

[370] *S. theol.* 2, 2, q. 88, a. 2.

[371] 1 Cor. 7:9.

[372] *Theol. mor.* l. 3, n. 209.

[373] *De iure et iust.* l. 7, q. 1, a. 3.

[374] *In* 2, 2, q. 88, disp. 29, a. 7, concl. 4.

[375] *De voto* dub. 2, concl. 4.

[376] L.c., n. 7.

[377] L.c., n. 210.

[378] Cf. St. Raymond, *Summa* l. 1, *De transgress. voti*; St. Thomas, IV, dist. 38, q. 1, a. 2; St. Antoninus, *S. theol.* P. 2, tit. 2, c. 2.

§ 4. On the Obligation of a Vow

Note. Since a vow is after the manner of a law which the person vowing has freely imposed upon himself, the principles concerning the obligation of a law are also generally applicable to the obligation of a vow, with this difference, however, that the obligation of a vow arises from the virtue of religion, whereas the obligation of a law arises from the virtue of obedience.

402. Quality of the obligation. Principle. Every valid vow obliges, from the virtue of religion, only the person vowing.[379]

That a valid vow obliges is of faith; hence St. Thomas[380] calls him a heretic who pertinaciously denies the obligation of a valid vow. Even the pagans acknowledged that the transgression of a vow is a sin, and therefore one who had violated a vow was called guilty of a vow. The fulfillment of a vow is most strictly inculcated in Sacred Scripture: "If thou hast vowed any thing to God, defer not to pay it; for an unfaithful and foolish promise displeaseth him; but whatsoever thou hast vowed, pay it; and it is much better not to vow than after a vow not to perform the things promised."[381] "When thou hast made a vow to the Lord thy God, thou shalt not delay to pay it, because the Lord thy God will require it; and if thou delay, it shall be imputed to thee for a sin."[382] St. Paul speaks severely of widows who, through their will to marry, violated a vow of chastity which they had made: "Having damnation, because they have made void their first faith."[383] The intrinsic reason, however, is that a vow is a promise made to God. But every true promise, provided that it is lawful and its fulfillment possible, obliges in conscience. Therefore much more does the promise which someone has made to God by making a vow oblige. For if it is an offense against a man to break the faith pledged to him, it is a much greater offense against God to break the faith pledged to Him in a vow.[384]

I say, however: a vow obliges from the virtue of religion *only the person vowing*. Therefore a vow, *as it is a vow*, never obliges others. Hence children are not bound by the personal vows of their parents; e.g., when a father made a vow of making a pilgrimage or fasting, the son is not bound to fulfill those vows if the father is impeded or has already died. Indeed, personal vows can in no way be fulfilled by another; and therefore, e.g., if someone vowed a prayer, he cannot fulfill this vow through another who is even freely willing to say that prayer. If some community, e.g., a city, parish, etc., has vowed some personal action, such as a fast to be performed on a stated day (because of a victory obtained or a calamity overcome), then the inhabitants who descend from them do not indeed violate the vow if they do not fast, but nevertheless they must fast from a particular law.[385] But real vows (and the same applies to mixed vows insofar as they are real), although they cannot impose an obligation of religion upon the heirs of the person vowing, must nevertheless sometimes be fulfilled from justice (if they do not injure the legitimate portion of the heirs or exceed the resources of the inheritance), since they are, as it were, burdens incumbent upon the inheritance. For he who accepts an inheritance ought also to take upon himself the burden connected with it.[386] Hence heirs who do not pay legacies stipulated from the vow of the testator injure justice and are bound to restitution. Real vows can also be fulfilled by another during the lifetime of the person vowing. Thus, e.g., one who has vowed alms to be given can ask another to be willing to bestow the promised alms in his place.

St. Alphonsus,[387] following the opinion of the Salmanticenses[388] and Cajetan,[389] notes that violations of vows are all of the same moral species, namely, violations of the fidelity owed to God. Hence (speaking absolutely)

some penitent can declare the matter of the sin separately from the circumstance of the violated vow, saying, e.g., so many times I broke the fast, so many times I committed fornication, without expressing the vow concerning these matters, and afterwards say: so many times I broke a vow in a grave matter, without expressing the matter. The reason is that, if a circumstance is separable from the substance of the sin, the sin and the circumstance can be declared separately; just as one who stole in a church satisfies by saying: I stole; and afterwards: I committed sacrilege. Although these things are true theoretically speaking, nevertheless they are not to be put into practice, because thereby a right judgment by the confessor concerning the conscience of the penitent and concerning the means of correction to be counseled is rendered very difficult.

[379] Code of Canon Law, c. 1310, § 1.

[380] Cf. *Quodl.* 3, a. 12.

[381] Eccles. 5:3ff.

[382] Deut. 23:21.

[383] 1 Tim. 5:12.

[384] Cf. *S. theol.* 2, 2, q. 88, a. 3.

[385] In some regions and cities there exist vows of this kind made by a community and transmitted to posterity. Thus, e.g., at Rome, from a vow, a fast is observed before the feast of the Purification of the Blessed Virgin Mary. All indeed concede that such obligations truly descend to posterity, but they do not agree whether by force of the vow. The better explanation seems to be that which asserts that such an obligation still now exists not by force of the vow but by force of a particular law or of legitimate custom having the force of law. For by making the vow the community was able to establish a particular law which also obliges posterity, unless, however, this law has been duly revoked (cf. *Decr. auth.* S.C.R. nn. 834, 932, 2113). Concerning the dispensation of such an obligation, the same things apply which were said concerning the dispensation of a law.

[386] Cf. Code of Canon Law, c. 1310, § 2; St. Alphonsus, *Theol. mor.* l. 3, n. 214.

[387] L.c., n. 224.

[388] *Curs. theol. mor.* tr. 17, c. 1, n. 101.

[389] *Comm. in* 2, 2, q. 88, a. 5.

403. Scholion. Whether the violation of every vow is sacrilege.

It is disputed among authors whether the culpable violation of any vow has the species of true sacrilege, or only of infidelity or perfidy. Cajetan[390] affirms that the violation of every true vow is true sacrilege, because the thing promised by vow is made sacred. But the violation of a sacred thing is sacrilege. The common opinion, however, denies that the sin of sacrilege is present in every violated vow. For if someone, e.g., violates a vow of fasting by an ample supper, he does not seem to have violated a truly sacred thing. Others teach that no violation of a vow other than the violation of a vow of chastity (even a private one) is sacrilege. Finally, others think that the violation of a *public vow* of chastity (whether simple or solemn) is true sacrilege. This controversy is a dispute about a name. For whether the violation of any vow is called sacrilege or not, there is always a violation of the virtue of religion, and it is grave or light according to the gravity of the matter and the intention of the person vowing.[391]

[390] Ib., q. 99, at the end of the question.

[391] Cf. below, n. 544.

404. Quantity of the obligation. Principle. A vow obliges under grave or light sin according to the quantity of the matter and according to the intention of the person vowing.

Therefore, in order that some vow oblige under grave sin, two things are required: gravity of matter and the intention of the person vowing to bind himself gravely. The reason is that a vow is, as it were, a private law. But a law obliges according to the quantity of the matter prescribed and according to the intention of the legislator, yet in such a way that light matter cannot be prescribed under grave sin, whereas matter grave in itself can be imposed under light sin. Thus similarly, *in a private vow*, someone can vow matter grave in itself under light sin; but he cannot vow matter light in itself under a grave obligation, since light matter is not capable of a grave obligation.[392]

All public vows in religious institutes and in the reception of the subdiaconate are excepted, the matter of which, grave in itself, cannot be undertaken under a light obligation. For grave harm would be inflicted upon ecclesiastical discipline if religious and subdeacons were bound only lightly to those things which they promised by vows.

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[392] There are several authors, such as Dominic Soto (*De iure et iust.* l. 7, q. 2, a. 1), Wigandt (*Tribunal confessar.* tr. 10, exam. 3, n. 32), and Concina (*In Decal.* l. 4, diss. 2, c. 1, n. 18ff.), who assert that not only public, but also all private vows in grave matter do not admit of an obligation that is merely light, because the person vowing cannot change the nature of the matter of the vow. For just as the person vowing cannot bind himself under grave sin to light matter, so likewise he cannot bind himself to grave matter under light sin. Concina (l.c.) subtly defends this opinion. Nevertheless, the opposite opinion is common today. The reason is that according to St. Thomas (*S. theol.* 2, 2, q. 88, a. 3 ad 3), "the obligation of a vow is caused by one's own will and intention." But the fact that the person vowing cannot bind himself under grave sin to light matter proceeds from this, that such a vow would be foolish; on the contrary, it can be very prudent for the person vowing to take upon himself under a light obligation matter otherwise grave.

405. The question immediately now arises: *What matter is grave in a vow?* **General rule: Grave matter in a vow is that which, if it were prescribed by an ecclesiastical law, would oblige under grave sin.**[393] But what is grave matter in an ecclesiastical law depends greatly upon the end and circumstances of the law. Thus a law prescribing that a few drops of water be poured into the wine to be consecrated is considered grave, although the matter considered in itself is most light. For this infusion has the grave signification of the union between the humanity and divinity of Christ, or of the conjunction of the faithful people with Christ the Head.

Applications. 1. Matter grave in a vow is considered to be, e.g., Communion to be received, a fast even for one day, a Rosary of five decades to be said, alms of fifty francs to be given, etc., provided, however, that it is not established that the person vowing intended in all these matters promised by vow only a light obligation.

2. In real vows, according to some authors, matter is considered grave which would be grave if the notion of justice intervened. Nevertheless this rule is not to be pressed too much. For if the same quantity were to be called grave in the violation of a vow which is grave in the violation of commutative justice, then in the violation of a vow matter absolutely and relatively grave would also have to be established; or the sin would be lighter if a rich man did not give the sum of fifty francs promised by vow than if a poor man did not give the same sum promised by vow. This certainly disagrees with the common sense both of the faithful and of theologians. Rather, the contrary is to be said: a rich man omitting a real vow of fifty francs sins more gravely than a poor man, because the rich man has greater facility in fulfilling the vow. Besides, if the culpable omission of a Rosary promised by vow is most commonly assigned as grave matter, why would alms of fifty to one hundred francs promised by vow and not given without sufficient reason not also be grave matter? Is saying a Rosary considered more grave than giving alms of fifty to one hundred francs? Hence I think that even a very rich man can bind himself under grave sin by a vow to give the sum of twenty francs, although this matter relative to him is not yet grave in justice. Lehmkuhl[394] thinks that to subtract about one percent from a notable sum promised by vow

does not seem so notable as to constitute a grave sin. Hence, e.g., if someone vowed to give ten thousand francs to some church and retains one hundred francs, he does not yet sin gravely. This opinion indeed is not approved by me if the person vowing wished to bind himself under grave sin to give the *whole* sum of ten thousand francs. For in the matter of justice the sum of one hundred francs is without any doubt grave matter. But the obligation of the virtue of religion toward God arising from a vow seems not merely lesser, but rather greater, than the obligation of justice toward one's neighbor; just as other sins against God are also generally graver than sins against one's neighbor.

3. Light matters promised by vow can coalesce into grave matter, so that one who has repeatedly violated a vow in light matter is finally guilty of grave sin. Generally, however, it can be said: Matters do not coalesce in personal vows, but they customarily coalesce in real vows. Nevertheless, exceptions are given. Hence, if someone vowed to recite a decade of the Rosary each day and neglected this vow for one month, there are indeed several venial sins, but no mortal sin, since that vow is personal; nor is there coalescence, since the daily decade of the Rosary was promised by vow as a singular thing. But one who vowed to give alms of two francs each week and neglected this vow for several weeks sinned gravely, since those matters coalesced. If, however, someone vowed to give alms every Saturday in honor of the Blessed Virgin Mary and violated this vow for a long time, it is not established whether the alms thus omitted coalesced into grave matter. The presumption indeed stands for coalescence, because the person vowing certainly wished to honor the Blessed Virgin Mary, but nevertheless seems to have intended more principally the worship of God through the relief of the poor. But if the worship of the Blessed Virgin Mary to be rendered on Saturday was altogether primary, whereas the relief of the poor was the secondary end of the person vowing, the omitted alms do not coalesce. In practice, therefore, the intention of the person vowing is first to be investigated; but if this intention is not clearly established, the position favoring the non-coalescence of the matters is to be maintained.

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[393] Cf. Salmanticenses, *Curs. theol. mor.* tr. 17, c. 1, n. 105.

[394] *Theol. mor.* I, n. 595.

406. Fulfillment of the obligation. Principle. Vows are to be fulfilled in that manner and at that time which the person vowing intended in the act of vowing. But when a doubt arises concerning the manner of the obligation and fulfillment, the same rules of interpretation are to be employed which apply to the interpretation of laws.

This principle is easily understood if it is kept before one's eyes that a vow is after the manner of a law in which the person vowing is himself the legislator, who can freely determine and limit for himself all the circumstances of the obligation.

Concerning the time for the fulfillment of a vow, the following things are to be noted:

1. A *negative vow* (e.g., of not frequenting taverns, of not gambling, etc.) obliges immediately, always, and forever, just as in general all negative laws oblige. Therefore, immediately when such a vow has been made, it is no longer lawful to perform the action concerning the omission of which the vow was made. This is evident of itself.

2. If the time for the fulfillment of the vow was determined by the person vowing, then the vow is to be fulfilled at that appointed time, without its being necessary to anticipate it, even if an impediment to its fulfillment otherwise arising is foreseen. Hence, e.g., a young man who vowed that he would make a

pilgrimage in the month of October is not bound to make the pilgrimage in September, even if he now knows that he will be impeded in October because of military service. The reason is that no one is bound to fulfill a law before it obliges.

3. One who did not fulfill a vow at the appointed time is no longer bound, nor can he even fulfill it at a subsequent time, if the appointed time was set as the terminus of the obligation or, as it is customarily said, *for terminating the obligation*. Hence, e.g., one who vows a fast every Saturday in honor of the Blessed Virgin Mary neither ought nor is able to make up such an omitted fast on the following Monday. Therefore, if the omission of the fast on Saturday was inculpable, he committed no sin and is bound to nothing further. But if the omission was culpable, he committed a sin and can no longer satisfy the vow. The time is considered to have been appointed for terminating the obligation when it is intended *per se* and not accidentally, e.g., because of a special devotion to be rendered at that time, such as to make a meditation on the Passion of Christ every Friday in Lent. But if the person vowing designated the time not as the terminus of the obligation, but rather *to urge the fulfillment*, namely, lest the fulfillment be deferred too long, then, when such time has elapsed, the obligation of the vow does not cease, but remains to be fulfilled as soon as possible. But one who did not observe the time determined for the fulfillment of the vow sins if the omission was culpable, and that gravely or lightly according to the gravity of the matter.

What matter of delay is grave is difficult to assign in practice, since this depends upon many circumstances, e.g., upon the nature of the vow, the age of the person vowing, the danger of the obligation not being fulfilled, etc. Especially in vows which suffer some diminution from delay will grave matter more easily be present. St. Alphonsus[395] thinks it to be a grave sin if someone without sufficient reason defers for more than six months entrance into religion promised by vow; but he calls lax the opinion of those who teach that a delay of this vow for two or three years made without a just cause is not a mortal sin. Certainly, if someone without any sufficient cause were to defer entrance into religion promised by vow, he would not only deprive himself of the great spiritual good of the religious life, but would also expose himself to the proximate danger of losing a religious vocation. But if some reasonable cause for the delay is present (e.g., bodily health not yet sufficiently firm, the resistance of parents, some business still to be completed, etc.), and if the proximate danger of losing the religious vocation is absent, a delay even for several years does not seem sinful. In other vows, however, which suffer almost no detriment from delay, according to several authors any delay whatsoever, even one made without cause, does not exceed a venial fault; because, they say, when someone gives all that he promised and no harm comes to the promisee from the delay, he does not seem to be condemned for a grave fault, but for light negligence.[396]

4. When no determined time has been appointed for the fulfillment of a vow, the person vowing should earnestly strive to fulfill that which he promised as soon as it can be done. For it is said in Sacred Scripture: "When thou hast made a vow to the Lord thy God, thou shalt not delay to pay it, because the Lord thy God will require it; and if thou delay, it shall be imputed to thee for a sin."[397]

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[395] *Theol. mor.* l. 3, n. 221.

[396] Billuart, *De relig.* diss. 4, a. 3, § 2.

[397] Deut. 23:21.

407. On the obligation of a conditional, disjunctive, penal, and doubtful vow.

1. If a vow was made not absolutely but conditionally, it does not oblige unless the condition has been verified. Hence the obligation of the vow remains suspended so long as the condition has not been fulfilled. It is not lawful, however, by fraudulent and unjust means to impede the occurrence of the condition. Hence, e.g., he sins against his vow who vowed to God that he would enter a monastery after the marriage of his sister, but now by fraudulent and unjust means dissuades his sister from entering marriage.

I say, however: *by unjust means*; for no one is prohibited from employing just means. Hence he who by opportune entreaties or persuasion impedes the fulfillment of the condition is not guilty of a violated vow. Likewise, a conditional vow does not strictly oblige if the condition was fulfilled not properly but only equivalently. E.g., if someone vowed entrance into a monastery when his mother, whom he is bound to support, should find a suitable marriage, he is not bound (strictly speaking) to enter the monastery if the mother should unexpectedly die, although the obstacle to entering the monastery, namely, the support of his mother, has now been removed. The reason is that a vow is a bond. But a bond ought not to bind beyond the limits clearly established. It is evident of itself that in this and similar cases it is better either to fulfill the vow or to seek a dispensation or commutation.

2. Concerning the obligation of a *disjunctive vow*, note a few things from St. Alphonsus[398] and the Salmanticenses.[399]

a) If someone has vowed disjunctively a good thing or an evil, vain, or impossible thing, such a vow is null. The reason is that the person vowing can choose the evil, vain, or impossible thing, and then the vow would be null because of the unsuitability of the matter. But since he is free to choose either matter, the whole vow is null from the beginning. E.g., if someone very oppressed by financial difficulties were to vow: either I shall enter among the Carthusians or I shall commit theft from a very rich man, the whole vow is null from the beginning.

b) If someone has vowed disjunctively several good things and consequently suitable matters of a vow, he must choose one of them. But if *after* the choice has been made the other things promised under the disjunction become impossible, he is nevertheless bound to perform the thing once chosen. Conversely, if either thing promised by vow perishes or is rendered impossible *before* the choice without fault of the person vowing, the vow ceases. The reason is that the person vowing has now been deprived of the liberty of choice, and that without his fault. E.g., if someone promised by vow that he would give one of two chalices which he possessed, and one chalice was lost to him by theft or fire, he is no longer bound to hand over the other chalice. But if, *through the fault of the person vowing*, for example because he culpably deferred fulfilling the vow, either thing became impossible, the person vowing is bound to perform the other part, since no one ought to derive an advantage from his own fault. Moreover, in these disjunctive vows the intention of the person vowing is especially to be attended to; if it is clear, the vow is to be fulfilled according to it and not according to the material sense of the words: for God, to whom the promise is made in the vow and who searches hearts, is not to be deceived by the subtleties of casuists.

3. Concerning the obligation of a *penal vow*, a doubt can arise whether the penalty imposed for the transgression of the promise is to be paid once, or as often as the promise is violated. E.g., when someone vowed that he would give ten marks if he became drunk again, is he bound to give this promised sum once after the first drunkenness committed, or as often as he should afterwards become drunk? St. Alphonsus,[400] following the Salmanticenses,[401] replies that the penalty is to be paid only for

the first time if the vow made was simple; but if the vow was twofold, namely, not to become drunk and to pay the penalty, then the penalty is to be paid as often as the vow is violated, unless, however, this penalty is most grave, such as a pilgrimage or the bestowal of great alms. In practice the intention of the person vowing is to be attended to; if it is doubtful, the position favoring the lesser obligation is to be maintained.

4. Concerning the obligation of a *doubtful vow*, judgment is to be made according to the rules given above, I, nn. 328ff., concerning a doubtful and probable conscience. Then the rules of right interpretation, to be given immediately, are to be attended to.

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[398] L.c., n. 224.

[399] *Curs. theol. mor.* tr. 17, c. 1, n. 141.

[400] L.c., n. 223.

[401] L.c., n. 177.

408. On the interpretation of vows.

Rule 1. A private vow is first to be interpreted according to the expressed or presumed intention of the person vowing.

The reason is that a vow is, as it were, a private law, whose legislator is the person vowing himself. But the best interpretation of a law is that which conforms to the expressed or presumed mind of the legislator. Therefore a private vow also is to be interpreted first according to the mind of the person vowing.

Public vows, such as the essential vows in religious institutes, are to be interpreted according to the sound doctrine of authors.

Rule 2. When the intention of the person vowing neither clearly appears nor can prudently be presumed, then the vow is to be interpreted according to the common usage of men or the general custom of the Church.

Hence one who vowed the Rosary can recite it alternately with a companion, for thus the custom of the Church bears. One who vowed a fast for a month is not bound to fast on Sundays, since fasting on Sunday is contrary to the custom of the Church; he can also use milk foods and generally employ those dispensations which are granted in his region to all the faithful during Lent. One who vowed to enter the religious state can enter any approved religious institute; but if after entrance he is dismissed by the superiors, he is not bound to make the attempt again in another religious institute, especially since according to the discipline now in force[402] no one dismissed from some religious institute after profession can be received into another religious institute without a special Apostolic dispensation. But the petition for such a dispensation (which is not so easily granted) seems to be an extraordinary means to which no one is bound for the fulfillment of his vow. One who vowed to hear Mass daily is not bound on Sundays and feast days to hear two Masses, etc.

Rule 3. In a doubt concerning the existence or extent of some vow, it is lawful to embrace the more benign part.

For the bond of a vow is not to be supposed but proved; and "in obscure matters the minimum is to be followed."[403] But when a doubt arises whether the vow has been fulfilled or not, the same rules are to be employed which were indicated above, I, nn. 230 and 333, concerning a law doubtfully fulfilled.

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[402] Cf. Sacred Congregation of Religious, 7 Sept. 1909 and 4 Jan. 1910; Code of Canon Law, c. 542.

[403] Rule of law 30 in VI°.

§ 5. On the Cessation of a Vow Intrinsically

409. Preliminary note. A vow can cease in two ways: 1. intrinsically, namely, a) from a change of matter or b) from the cessation of the end; 2. extrinsically, namely, through the intervention of legitimate authority; this indeed can occur a) through invalidation, b) through dispensation, and c) through commutation. The cessation of a vow, or at least of its obligation, through extrinsic authority will be treated in the following paragraphs; now the cessation of a vow intrinsically is to be treated briefly.

General rule. A (private) vow ceases intrinsically when so great a change has supervened either on the part of the person vowing or of the matter promised that, had it been present from the beginning, it certainly would have impeded the vow; or, as St. Thomas[404] briefly says: "That which would impede a vow from being made if it were present also removes the obligation after the vow has been made."

The reason is that a private vow does not oblige beyond the intention of the person vowing. But the person vowing is deservedly presumed not to have wished to bind himself in the case in which a notable change should occur either on his own part or on the part of the matter. For every vow, since it concerns a better good, essentially requires suitable matter, concerning which there was discussion above in n. 399. Therefore, just as a vow is null if the matter was unsuitable from the beginning, so a vow ceases when matter previously suitable afterwards becomes unsuitable. St. Thomas[405] writes to the point: "He who vows in a certain manner establishes for himself a law binding himself to something which is good in itself and in most cases. It can happen, however, that in some case it is either simply evil, or useless, or an impediment to a greater good; which is contrary to the nature of that which falls under a vow. And therefore it is necessary that in such a case it be determined that the vow is not to be observed."

[404] IV, dist. 38, q. 1, sol. 1 ad 1.

[405] Cf. *S. theol.* 2, 2, q. 88, a. 10.

410. 1. On the part of the person vowing, a notable change causing the obligation of a vow to cease is present, e.g., in the following cases:

a) if a rich man vowed alms but afterwards himself becomes poor, he is now freed from the vow;

b) if someone vowed entrance into a monastery but afterwards falls into a grave and incurable illness, he is no longer bound by his vow;

c) if someone vowed to receive Communion on a stated day, but on this day broke the natural fast, he now neither can nor is bound to receive Communion without fasting;

d) if someone vowed to make a pilgrimage on a fixed day, but on that day he must altogether attend to his sick father, he is no longer bound to the vow.

One who before lacked temptations but now is agitated by most vehement temptations against chastity is not, however, freed from a vow of chastity made. For he could and ought to have foreseen this change.

2. On the part of the matter promised, a notable change is present, e.g., in the following cases:

a) if the matter becomes *illicit*, e.g., if someone promised by vow to give alms to a determined poor man whom he knows will now abuse the alms received in order to become drunk;

b) if the matter becomes *impossible* (physically or morally), e.g., if someone vowed the construction of a chapel in some place and the civil government strictly prohibits this construction;[406]

c) if the matter becomes *useless* relative to the principal end intended by the person vowing; e.g., if someone vowed a pilgrimage in order to recover the health of his father, he is no longer bound to the vow if the father has died in the meantime; or one who vowed not to enter some house because of a seductive girl dwelling there is now freed from the vow if that girl has died or dwells elsewhere. But if the matter has become useless relative to the secondary end intended by the person vowing, the vow does not cease. Hence, e.g., if someone vowed to give certain alms each week, and he who until now received those alms has died, the vow does not thereby cease, since the determined person of the poor man was not the principal but the secondary end of the vow.

Note. No public vow ceases because of intrinsic causes. Hence essential vows made in approved religious institutes and the vow of chastity in the reception of the subdiaconate do not cease because of a notable change on the part of the person vowing or on the part of the matter. The reason is that otherwise many inconveniences would arise both for the person vowing himself and for religious institutes. Moreover, if there is an urgent reason for obtaining a relaxation of vows of this kind, a legitimate dispensation can be obtained. It is evident of itself that temporary vows, whether private or public, cease when the time of the vows has elapsed.

[406] Cf. the things said above in n. 399(b) concerning matter partly possible and partly impossible.

§ 6. On the Cessation of a Vow Through Invalidation

411. Definition. Invalidation of a vow is its annulment or suspension made by one who has dominative power[407] over the will of the person vowing or at least over the matter of the vow. Invalidation, therefore, is an act of dominative power and not of jurisdiction. According as this dominative power is exercised either over the will of the person vowing or over the matter of the vow, a twofold invalidation is distinguished: the one *direct*, or properly so called, which is the annulment of a vow made by one who has dominative power *over the will of the person vowing*, e.g., by a father with respect to all the vows of his children before puberty; the other *indirect*, or improper, which is not the direct annulment of the vow but its suspension made by one who has dominative power *over the matter of the vow*. Thus a master can indirectly invalidate vows of servants which impede the service owed.

[407] I.e., dominion (*Verfügungsrecht*).

412. Principle 1. Direct invalidation entirely extinguishes the vow; indirect invalidation, however, only suspends the obligation of the vow.

Thus from positive law,[408] which, however, is founded upon natural law.

For direct invalidation dissolves the act itself of the vow and renders it, as it were, not done; but indirect invalidation does not touch the act itself of the vow (which consequently remains intact), but only the matter of the vow. But it can easily happen that this matter of the vow is afterwards withdrawn from the power of the one invalidating. Then, however, a vow thus indirectly invalidated revives again. Hence, e.g., if a father directly invalidated the vow of his son before puberty to enter a monastery, this vow is entirely extinguished;

but if a master indirectly invalidated the vow of a maidservant who promised to assist at Mass daily, this vow revives after the maidservant leaves the service of her master.

[408] Code of Canon Law, c. 1312.

413. Principle 2. For the valid invalidation (whether direct or indirect) of vows, no sufficient cause is required; but for lawful invalidation a sufficient cause is required.

All authors agree concerning the first part of this principle; for the vows of subjects always involve this tacit condition: unless my superior should contradict.[409] But a superior can always validly exercise the power belonging to him. The other part of the principle was disputed. St. Antoninus,[410] Sylvester Prierias,[411] Cajetan,[412] Suarez,[413] the Salmanticenses,[414] etc., teach that a cause is not required even for lawful invalidation. The reason is that the vows of subjects are always made with the tacit condition of the superior's consent. But the superior is compelled by no right to furnish this consent, but can deny it according to his judgment; just as, if someone were to promise alms from the goods of another under the condition that the owner should give consent, the owner can freely deny this consent without any cause. On the contrary, Dominic Soto,[415] Sanchez,[416] Lessius,[417] Laymann,[418] and others teach that a cause is required for lawful invalidation, because otherwise the superior would impede without sufficient reason both the worship rendered to God through the vow and the utility of the subject arising from the fulfillment of the vow. This second opinion is now to be held, since the Code of Canon Law, c. 1312, § 1, establishes: "One who legitimately exercises dominative power over the will of the person vowing can render his vows invalid validly, and also lawfully for a just cause." All authors teach, however, that an unreasonable invalidation of a vow does not of itself exceed the measure of venial fault, but per accidens, e.g., if it causes grave harm or is done from contempt of religion, it is a grave sin.

Likewise, he who without sufficient reason seeks the invalidation of a vow from a competent superior sins only venially.[419]

[409] Cf. *S. theol.* 2, 2, q. 88, a. 8 ad 1 and 2.

[410] *S. theol.* P. 2, tit. 11, c. 2.

[411] *Summa Summ.*, s.v. "vow," c. 4; but he does not speak so clearly.

[412] *Summula*, s.v. "vow."

[413] *In* 3, disp. 4, sect. 2.

[414] *Curs. theol. mor.* tr. 17, c. 3, n. 31.

[415] *De iure et iust.* l. 7, q. 3, a. 1.

[416] *In Decal.* l. 4, c. 24, n. 13.

[417] *De iust. et iure* l. 2, c. 40, dub. 10.

[418] *Theol. mor.* l. 4, tr. 4, c. 7, n. 18.

[419] Cf. Billuart, *De relig.* diss. 4, a. 8, § 3.

414. Principle 3. One who has the power of directly invalidating some vow, even if he gave the subject permission to vow, or promised that he would not invalidate his vow, or finally expressly approved the vow made, can nevertheless afterwards invalidate this vow. But one who has only the power of indirectly invalidating, once permission or approval of the vow has been granted, can no longer invalidate it.

The reason for the first part is that, notwithstanding the permission given or the promise and approval made, the superior does not cease to govern the subject in all his acts and retains full dominion over the will of the subject. Therefore he can also use his power of invalidating the vow made, especially if a sufficient reason is present. This doctrine is confirmed by the fact that the successor of this superior can certainly invalidate that vow. And yet this successor does not have greater power than his predecessor.[420] Concerning the other part, the older authors dispute at great length.[421] The proposed opinion seems to me more probable. For one who has only the power of indirectly invalidating vows cannot dispose of the will of the person vowing, but only of the matter of the vow. But he permitted this matter to be handed over to God through the vow of the subject. Therefore he can no longer make any disposition of this matter by revoking the vow made by the subject.[422]

[420] Suarez (*De voto* c. 6, nn. 15ff.), Concina (*In Decal.* l. 4, diss. 3, c. 5, n. 6), and others indeed admit this doctrine if it concerns the power of a religious superior; but not if it concerns paternal power.

[421] Cf. Cajetan, *Comm. in* 2, 2, q. 88, a. 8.

[422] Cf. Billuart, *De relig.* diss. 4, a. 8, § 3.

415. Invalidation of a vow of conjugal chastity. From the things said follows the solution of a case proposed by St. Alphonsus:[423] Two spouses, with mutual consent after marriage had been contracted, made a vow of continence. The husband, perceiving that there is a grave danger of incontinence in his wife, directly invalidates her vow by virtue of the dominative power which he is said to have over the will of his wife. After the wife has thus been freed from her vow, she has the right of seeking the debt from her husband. But since he is still bound by the vow of chastity, his wife indirectly invalidates his vow, and thus both spouses are no longer bound by the vow of continence made with mutual consent. St. Alphonsus favors the opinion of those who say that this manner of acting is lawful, yet he concludes in these words: "Since this opinion is against the common opinion, ... I leave it to the wise to determine." Gury-Ballerini[424] calls this opinion safe. Likewise Lehmkuhl[425] favors this opinion, yet adds: "Nevertheless I would counsel that, at least for greater caution, a dispensation also be sought afterwards." Unless there is grave danger in delay, this opinion does not seem able to be safely put into practice, since this manner of acting is a dangerous evasion of the vow and deception of God. For in this manner spouses could very easily free themselves mutually from every vow. Moreover, St. Augustine[426] already writes concerning the same case to Ecdicia, who had made a vow of chastity with her husband: "For that which you both with equal consent had vowed to God, you both ought perseveringly to have rendered even unto the end." Add that authors commonly teach that in this case a dispensation from the vow is to be sought from legitimate authority. But it is not safe to act against the common opinion.

[423] *Theol. mor.* l. 3, n. 239.

[424] *Comp. theol. mor.* I, n. 331, at the end.

[425] *Theol. mor.* I, n. 612.

[426] Ep. 262 (199); Migne, *Patr. lat.* 33, 1078.

416. Who can directly invalidate vows?

Only he who has dominative power over the will itself of the person vowing, as was said above. Such dominative power is possessed by:

1. *The Pope, bishops, and a religious superior (superioress), over professed religious.*

For religious in their profession freely vowed obedience to legitimate superiors, and thus subjected themselves to them, so that they can perform no act without their express or at least tacit consent.

The *Pope* is the supreme superior of all professed religious and therefore has most perfect power over them. This power, however, extends only to those who have made the vow of obedience. Therefore it does not extend to *novices* not yet professed, and a fortiori not to ordinary faithful, whose vows the Pope can indeed dispense by virtue of his most perfect jurisdiction, but cannot invalidate, since he lacks dominative power over their wills.

Since, according to the present discipline, *bishops* are sometimes superiors properly so called of women religious, the same dominative power seems to belong to them, so that they can invalidate the private vows of such women subject to them in diocesan institutes.

Religious superiors who can invalidate the private vows of their professed subjects are the general, provincial, and local superior. Certain restrictions, however, are to be added: a) An inferior prelate cannot invalidate those vows of his subjects which have already been ratified by a superior prelate. b) A religious superior cannot invalidate a subject's vow of passing to a stricter religious institute. The reason is not only the positive statute of the Church,[427] but also the liberty of choosing a state of life, especially a more perfect one. For just as no one can be prohibited from choosing the religious state, so neither is it lawful to impede a suitable person from choosing a stricter and more perfect religious state. Hence the Salmanticenses and Noldin[428] deservedly teach that not even the Supreme Pontiff can invalidate a vow of passing to a more perfect religious state. c) A religious superior cannot invalidate the *public vows* of his subjects, such as the three essential vows of poverty, chastity, and obedience. The reason is that through such vows an onerous contract is entered between the religious and the institute. This contract cannot be dissolved by a superior, at least through his dominative power. d) Certain authors, such as Cajetan[429] and Sylvester Prierias,[430] teach that the private vows of religious which in no way disturb the governance of the superior, e.g., of saying no idle word, of making certain ejaculatory prayers, of exercising certain interior pious acts, etc., cannot in any way be invalidated, but can only be commuted by superiors, because the will of a religious is not totally subject to the superior, but only according to the profession of the Rule. Whatever may be the theoretical truth of this opinion, in practice a religious superior can, when a reasonable cause exists, invalidate at least indirectly absolutely all the vows of his subjects, because any private vow of a professed religious can at some time impede those things which the superior considers necessary for governance. Therefore St. Thomas[431] also says without any limitation: "Even if someone [a religious] can do something for an hour when he is not occupied with other things by the prelate, nevertheless, because no time is excepted in which the prelate cannot occupy him about something, *no vow of a religious is firm* unless it is made with the consent of the prelate."

Superioresses also can invalidate the vows of their professed subjects, because they have true dominative power, although they lack ecclesiastical jurisdiction properly so called.[432]

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[427] Cf. c. 18, X 3, 31.

[428] *De praeceptis* n. 220. Salmanticenses, *Curs. theol. mor.* tr. 17, c. 3, n. 38; cf. also above, n. 398.

[429] *Comm. in* 2, 2, q. 88, a. 8 and q. 104, a. 5.

[430] *Summa Summ.*, s.v. "vow," c. 3, q. 3.

[431] *S. theol.* 2, 2, q. 88, a. 8 ad 3.

[432] Certain theologians, such as Cardinal Gennari (*Quest. can.* n. 469) and Ojetti (*Synopsis rer. mor.* n. 2533, near the end), undeservedly think that the private vows of those simply professed cannot be directly invalidated by superiors. For superiors have

dominative power over the will even of those simply professed (c. 501). But nothing further is required by the Code of Canon Law, c. 1312, § 1, for direct invalidation.

417. 2. A father can directly invalidate all vows made by his children before puberty.[433]

Puberty is considered to occur for males in the fourteenth year of age, but for females in the twelfth year of age.[434] If the father is absent or consents, the same right belongs to the mother, guardian, and generally to all who succeed to the rights of the father.[435] This paternal power of invalidating the vows of children is derived from several texts of the old canon law,[436] and moreover is derived from natural law itself. For those before puberty at that tender age are customarily of weaker judgment and reason; and therefore it is considered equitable both in ecclesiastical law and in civil laws that all their acts be rescindable by the father or one acting in his place.

Concerning this paternal power, two things are to be noted: a) Vows made by one before puberty can be invalidated by the father not only during the child's prepuberty, but also afterwards, provided that the person vowing, having reached puberty, has not ratified them, and indeed by a *new vow independent of the first vow*. Thus the more common opinion.[437] But for the person vowing to be considered to ratify his vow in this manner, it is necessary that he be conscious that the first vow is subject to invalidation and that he will to bind himself anew, just as if he had never been bound. Therefore it does not suffice that he either began to fulfill the prior vow or frequently renewed it. For this is to approve the prior infirm bond, not to undertake a new and firm one. b) Absolutely no vow made by one before puberty is excepted from the paternal power of invalidation. Hence a father can invalidate even reserved vows, e.g., a vow of entering an approved order.

Certain authors, such as Vermeersch,[438] Génicot-Salsmans,[439] and Arregui,[440] think that the vows not only of those before puberty but also of unemancipated minors can be directly invalidated by the father or those acting in his place. The argument for this opinion drawn from the Code of Canon Law, c. 89, seems weak.

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[433] *S. theol.*, l.c., a. 9.

[434] Code of Canon Law, c. 88, § 2.

[435] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 230.

[436] Cf. c. 15, C. 22, q. 5; c. 14, C. 32, q. 2; c. 2, X 3, 33.

[437] Cf. Billuart, *De relig.* diss. 4, a. 3, § 2.

[438] *Theol. mor.* II, n. 224.

[439] *Theol. mor.* I, n. 325.

[440] *Summarium* n. 213.

418. 3. Whether a husband can directly invalidate all vows made by his wife during marriage is greatly disputed.

Many affirm it,[441] because the man is the head of the woman and therefore has dominative power over her will. The negative opinion, however, seems to be truer and more common, because the subjection of the wife arising from marriage extends only to matrimonial duties, but not to absolutely all her acts. Moreover, the right of the husband is sufficiently and completely preserved if the power of indirectly invalidating the vows of his wife belongs to him. But the arguments which are brought forward for the husband's power of directly invalidating all the vows of his wife are not convincing. For the text cited from Num. 30:7-16 is not so clear, and then it seems to contain only a judicial precept of the Old Law, which no longer obliges. Moreover, that complete subjection and dependence of the wife upon the husband is founded upon no law: not upon natural

law, because women are endowed with greater firmness of judgment than those before puberty, and indeed sometimes surpass their husbands themselves in ability; not upon positive law, for no such law exists; finally, not upon the contract and bond of marriage, since these extend only to the use of the body and the administration of the family.[442] Therefore the vows of a wife can be invalidated by her husband only indirectly, i.e., by reason of their matter, insofar as they obstruct him in the use of marriage, the administration of the family, or the governance of household affairs, e.g., a wife's vow of continence, of many prayers, pilgrimages, mortifications, alms, etc. But those vows (whether personal or real) which in no way derogate from marital rights, such as, e.g., vows of certain prayers or of alms from free paraphernal goods, cannot be invalidated by the husband. A fortiori, the husband cannot invalidate the vows of his wife concerning things prescribed from another source, e.g., of hearing Mass on feast days, of not lying, etc.

[441] St. Alphonsus (l.c., n. 234) calls this opinion more probable and cites for it St. Thomas, Dominic Soto, Sanchez, Peter Ledesma, the Salmanticenses, and several others. Certainly, considered at first sight, the words of St. Thomas teach this opinion: "No vow of a religious is firm unless it is made with the consent of the prelate. Likewise neither is the vow of a girl living in the house, unless it is made with the consent of her father; nor of a wife, unless it is made with the consent of her husband" (*S. theol.* 2, 2, q. 88, a. 8 ad 3). But nevertheless commentators more commonly explain the Angelic Doctor as speaking here only of the indirect invalidation of the vows of a wife (cf. Billuart, l.c.).

[442] Cf. Billuart, l.c., § 2.

419. Who can indirectly invalidate vows?

Every superior who has power *over the matter of the vow* can indirectly invalidate the vows of subjects which injure his right. The reason is that a vow cannot injure the right of another, and no one can firmly promise something over which he does not have full dominion. Hence:

1. The *Supreme Pontiff* can indirectly invalidate any vows whatsoever of the faithful which prejudice his rights, and notably vows made concerning ecclesiastical goods, since he is the supreme administrator of ecclesiastical goods.
2. *Parents* can indirectly invalidate vows of their children who have reached puberty but are not yet exempt, which impede the free and lawful administration of the family, e.g., a vow of a distant pilgrimage.[443]
3. A *religious superior* can indirectly invalidate the vows of novices which impede the discipline of the novitiate. But private vows which a professed religious may have made before his profession are suspended and therefore indirectly invalidated by the law itself for as long as the person vowing remains in religion.[444]
4. A *husband* can indirectly invalidate all vows of his wife, even those made before marriage, which are opposed to his matrimonial rights, as was said above. The same applies to a wife with respect to the vows of her husband; e.g., a wife can indirectly invalidate a vow of her husband by which otherwise he would be incapable of rendering the conjugal debt.
5. A *master or lord* can indirectly invalidate vows of servants and subjects which obstruct the service owed or the obedience owed, e.g., of visiting a church daily.

[443] Cf. *S. theol.*, l.c., ad 2.

[444] Code of Canon Law, c. 1315.

§ 7. On the Cessation of a Vow (or of Its Obligation) Through Dispensation

420. Definition. Dispensation can be defined: the relaxation of the obligation of a vow, made in the name of God by one having competent jurisdiction. From this definition appears the great difference between dispensation and invalidation. For:

1. Dispensation is made in the name of God, whereas invalidation is made in the name of the one invalidating.
2. Dispensation supposes jurisdiction exercised in the name of God; invalidation, however, requires no jurisdiction, but requires dominative power either over the will of the person vowing or over the thing promised by vow. Hence a woman having dominative power can indeed invalidate the vows of subjects, but can never dispense, as being without ecclesiastical jurisdiction.
3. A just cause is required for a valid dispensation, because dispensation is exercised in the name of God. But the just God cannot approve a dispensation granted without sufficient cause; for valid invalidation, however, no cause is required, as was said above, since anyone can use his dominative power even without cause.
4. The invalidation of a vow can be made against the will of the person vowing himself; but dispensation supposes the consent of him who made the vow, since he imposed upon himself the obligation of the vow. Thus at least if it concerns dispensation from a private vow.

All these things indeed are agreed among all, but it is not so agreed in what precisely the essence of dispensation consists, and whether a legitimate dispensation totally destroys the vow made, or only suspends its obligation.[445] This indeed seems certain: dispensation is not a mere declaration or interpretation of the non-obligation of a vow. For such a declaration would either be doctrinal, and then it could be made by any prudent man without the power of jurisdiction being necessary, which is false; or it would be authentic, but in the style of the Roman Curia no indication of such an authentic declaration is found. According to modern practice, not only the obligation of the vow but also the vow itself is customarily removed through dispensation.

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[445] *Gestaltung einer Ausnahme*; cf. Stiegler, *Dispensation etc. im Kirchenrecht* I, Mainz 1901, 24 and 40.

421. Requisites for dispensing. For dispensing validly two things are required: a just cause and the faculty of dispensing.

1. A *just cause* is required both for the lawful and for the valid dispensation of a vow, as was already said.

For the one dispensing acts not in his own name (as does the one invalidating), but in the name of God. But a manifest injury would be inflicted upon God if that which had been promised to Him in a vow were not performed without sufficient reason or were removed through a frivolous dispensation. Hence both the one dispensing and the one dispensed sin by employing a dispensation without sufficient cause. The Angelic Doctor,[446] however, notes that the one dispensed can and ought to acquiesce in the judgment of the dispensing superior concerning the sufficiency of the cause of dispensation (and not in his own judgment), because he himself does not act in the place of God, but the superior does. If, however, the cause of dispensation were evidently insufficient, the subject dispensed could not lawfully use the dispensation thus granted.[447]

What causes are sufficient for dispensing? Innocent III[448] admonishes that three things are to be attended to in the dispensation of vows: 1. what is lawful according to equity; 2. what is becoming according to uprightness; 3. what is expedient according to utility. In ancient times dispensation (at least in greater vows) was not customarily granted except for public causes and the common good; but in our days all vows are dispensed even for a private cause and good. All causes for dispensing can be reduced to two classes, namely, to the utility of the Church or community and to the utility or necessity of the person vowing. Thus, e.g., a dispensation from a public vow of chastity and other religious vows is granted if a member of some religious institute, because of a dissolute life, causes scandal to the whole community. A dispensation is granted if the person vowing is in grave danger of transgressing the vow; if he suffers a great and unforeseen difficulty in observing the vow; if he is troubled by great scruples because of the vow made; if the vow was made without perfect deliberation or liberty, namely, precipitately or under the influence of fear, even light fear.[449] Generally speaking, a superior ought not to be too tormented by scruples concerning the sufficiency of a cause for dispensing. For if a subject greatly insists upon obtaining a dispensation and cannot be turned away from petitioning for a dispensation, he is ordinarily already in grave danger of transgressing the vow, and therefore a sufficient cause for dispensing is present. Hence, according to the present discipline, even the Sacred Congregation of Religious grants religious a dispensation from vows if they seriously declare that they are incapable of living any longer in such an institute.

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[446] *S. theol.* 2, 2, q. 88, a. 12 ad 2.

[447] St. Alphonsus, *Theol. mor.* l. 3, n. 251.

[448] C. 5, X 3, 34.

[449] St. Alphonsus, l.c., nn. 252-253.

422. 2. The faculty of dispensing from vows certainly belongs to the Church; this is established both from Sacred Scripture and from the perpetual practice of the Church.

Christ, speaking to Peter, said: "I will give to thee the keys of the kingdom of heaven. And whatsoever thou shalt loose upon earth, it shall be loosed also in heaven."[450] Since these words are general, they must be understood concerning every bond which man can contract toward God. And in truth, just as in the name of God the Church can remit sins and the punishments of sins, although God has a strict right of exacting satisfaction and punishment for sins, so a fortiori the faculty of remitting for just causes an obligation arising from a vow belongs to the Church. This faculty of dispensing has also always been in use in the Church from the most ancient times. In the first centuries there did not indeed occur so many dispensations from vows, but the Holy Fathers knew them, which were sometimes called absolution or *oikonomia*.[451] But it would be rash and indeed heretical to assert that the Church for so many centuries had usurped for itself a power which does not belong to it.

In the Church this faculty of dispensing is exercised by: 1. the Supreme Pontiff with respect to all the Christian faithful; 2. the local Ordinary and the superior of an exempt clerical religious institute[452] with respect to their own subjects, yet with dependence upon the Supreme Pontiff and with certain limitations; 3. all who have legitimate delegation. Since the faculty of dispensing supposes not the power of orders but ecclesiastical jurisdiction, whoever is capable of ecclesiastical jurisdiction can also (at least by delegation) exercise the faculty of dispensing.

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[450] Matt. 16:19.

[451] Cf. Stiegler, l.c., 3ff.

[452] Code of Canon Law, c. 1313.

423. The Supreme Pontiff, having the most ample jurisdiction, also has the most ample faculty of dispensing from vows. Hence St. Thomas[453] says: "Because the Supreme Pontiff acts fully in the place of Christ in the whole Church, he has the plenitude of the power of dispensing in all dispensable vows." Therefore the Angelic Doctor seems to suppose that not all vows are dispensable. And in truth there is a difficulty concerning how the Pope can dispense 1. from solemn vows; 2. from vows made for the utility of a third person.

Solemn religious vows consist in a certain consecration and are probably of divine law, as was said above in n. 391. For this reason, in the thirteenth century, the doctors (thinking that a thing once consecrated could no longer be desecrated if it remained intact) denied to the Supreme Pontiff the faculty of dispensing from solemn vows. Indeed, Innocent III himself,[454] speaking of the dispensation of vows of this kind, wrote: "Nor should the abbot think that he can dispense with some monk concerning the possession of property; because the renunciation of property and the custody of chastity are so annexed to the monastic rule that not even the Supreme Pontiff can grant permission against it." St. Thomas,[455] St. Raymond,[456] St. Bonaventure,[457] Blessed Albert the Great,[458] and many others defend this opinion. Nevertheless, it is certain that the Supreme Pontiffs have often granted permission that religious of either sex, after solemn profession had been made, might lawfully and validly enter marriage. Indeed, Leo XIII[459] gave a general faculty of dispensing with the dying who, notwithstanding solemn vows, attempted marriage; this faculty the Code of Canon Law, cc. 1043-1045, has further enlarged. But it is rash to assert that so many Supreme Pontiffs arrogated to themselves some power of dispensing which in no way belongs to them. Even before the times of St. Thomas and St. Bonaventure, certain Supreme Pontiffs are said to have permitted marriage to solemnly professed religious; e.g., Celestine III permitted the nun Constance, daughter of Roger of Sicily, to marry Emperor Henry VI; Benedict IX is said to have made a similar concession to Casimir, King of Poland, and Ramiro, King of Aragon.[460]

Vows made in favor of some third person (whether physical or moral), e.g., a vow of giving alms to a determined person, not even the Supreme Pontiff can of himself dispense if that person has accepted the promise confirmed by the vow and is not subject to the dominative power of the Pope. The reason is that through such a dispensation the strict acquired right of the third party, and consequently natural law itself, would be injured. In the following cases, however, the Pope and his delegate can dispense even from vows made for the utility of a third party:

1. if that third party has freely renounced his right. This is evident of itself, since then no injury of a right is now present.
2. if that third party is a religious person or an ecclesiastical institute. For the Supreme Pontiff has full administration of ecclesiastical goods and consequently can, for sufficient reasons, dispose of the rights of all religious (professed) and ecclesiastical institutes.
3. if the promise was gratuitous and not yet accepted by that third person. For then there intervenes only the obligation of a vow and not of justice. But the Pope can dispense from the obligation of a vow. Hence, e.g., if someone vowed to give a stipend for one hundred Masses to be said for the relief of the dead, the Pope or his delegate can dispense from a vow of this kind, since acceptance of the vow cannot

be made by the dead. The same applies if someone vowed to give one hundred marks to undetermined poor persons.[461]

4. if the promise was gratuitous and *principally in honor of God* and only secondarily for the utility of a third person. Thus at least according to an opinion both intrinsically and extrinsically probable. The reason is that then the utility of one's neighbor is something secondary and accidental, which ought to follow the condition of the principal thing, namely, the vow, which is dispensable.[462]

From the things thus far said, it appears clearly that in practice scarcely any vow exists from which the Pope cannot grant a dispensation for a just cause.

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[453] *S. theol.* 2, 2, q. 88, a. 12 ad 3.

[454] C. 6, X 3, 35.

[455] *S. theol.*, l.c., a. 11.

[456] *Summa* l. 1, tit. 8, § 9.

[457] IV, dist. 38, q. 3.

[458] *In* IV, dist. 38, a. 18.

[459] 20 Feb. 1888.

[460] These dispensations are rejected as apocryphal by several authors; cf. Billuart, *De relig.* diss. 4, a. 9.

[461] Cf. Billuart, ib., a. 8, § 6.

[462] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 255.

424. On vows reserved to the Supreme Pontiff. The Supreme Pontiff has reserved to himself the faculty of dispensing from several vows, which are:

1. Almost all public vows.

Such public vows are: a) all solemn vows made in religious orders and in the reception of the subdiaconate. Although the Supreme Pontiff has sometimes dispensed so that priests who had attempted an invalid marriage could convalidate the marriage, e.g., at the time of the English schism and the first French Revolution, nevertheless no example (publicly known) exists in which the Supreme Pontiff granted to a priest of the Latin rite that he could enter a new marriage. b) All simple vows made in religious institutes approved by the Holy See. It makes no difference whether these vows are perpetual or temporary. Hence, e.g., a member of such a religious institute having vows lasting for three or five years can be dispensed from these vows before the time of obligation has elapsed by no one except the Supreme Pontiff or his special delegate.[463] But when someone having temporary simple vows (whether in an order in which solemn vows are made or in a religious congregation) is legitimately dismissed from religion by the superiors,[464] his simple vows cease by that very fact.[465] But when someone simply professed and having perpetual vows is legitimately dismissed, he is not by that very fact dispensed from his vows, but must still seek a special dispensation from the vows. Thus at least by common law, whatever may be the case concerning privileges granted to some particular institute.[466]

Note. Public vows are sometimes not reserved to the Holy See. For with an indult of secularization, which in religious institutes of diocesan right can also be granted by the local Ordinary, public religious vows cease by

that very fact.[467] Likewise with the dismissal of a religious who has pronounced temporary (but not perpetual) vows,[468] as was already said.

2. Two private vows, namely: a) of perfect and perpetual chastity; b) of entering an approved religious institute with solemn vows, provided these two vows were made absolutely and after the completion of the eighteenth year of age.[469]

Since reservation, which is considered in canon law an odious matter, is of strict interpretation, these two vows do not fall under reservation unless they are perfect both on the part of the *matter* and of the *manner*.

The *matter* of the vow is considered perfect if precisely that which is reserved in the two vows was promised. Hence there do not fall under reservation: a vow of virginity, a vow of not marrying, a vow of temporary chastity, a vow of receiving holy orders, a vow of entering some religious institute with simple vows only. The reason is that all these vows are neither a vow of perfect chastity nor of entering religion with solemn vows. In practice a doubt not rarely arises whether a member of the faithful made a vow of perfect chastity or only of virginity. Then it must first be investigated whether the person vowing principally intended the celibate life or rather perfect chastity of body and mind. If the former, the vow is not reserved; if the latter, the vow is of perfect chastity and therefore reserved.

The *manner* of these vows is considered perfect when they were made absolutely and with perfect liberty. Hence reservation is not present:

a) if such a vow was made *with a condition concerning a future contingent event*, e.g., I vow entrance into the Franciscan religious institute if I recover health. But when a condition concerning a necessary future event, or concerning the past or present, was attached, the vow is only apparently conditional and therefore in truth is absolute once the condition has been verified. Hence, e.g., once the condition has been verified, the following vow is absolute and reserved: I vow perfect chastity if my father perished in this shipwreck.

b) if the vow was disjunctive or penal; e.g., I vow either entrance into religion or the reception of holy orders; if I contract the habit of drunkenness again, I vow entrance into the order of Trappists.

c) if the vow was made *under the influence of fear, even light fear*;[470] e.g., a girl vowed entrance among the Poor Clares in order to avoid a marriage into which her parents wished to compel her under light fear.

d) if the person vowing expressly intended to impose upon himself only a *light obligation*. The reason is evident, since the violation of such a light obligation is a light sin, which cannot be the matter of reservation. Hence, if someone vowed under a light obligation perpetual chastity or entrance into religion, his vow is not reserved.

e) if the person vowing had not yet completed eighteen years of age.

Note. When these two vows have been commuted by legitimate authority into other pious works, the matter thus commuted no longer falls under reservation. Hence, e.g., if a girl, after making a vow of perfect chastity and obtaining a commutation of this vow, is bound to say the Rosary daily, any confessor having the privileges of the Mendicants can now for a reasonable cause dispense from this obligation of saying the Rosary.[471]

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[463] Const. *Conditae* II; *Normae*, art. 112.

[464] The manner of this dismissal was newly determined by the Code of Canon Law, c. 647.

[465] Code of Canon Law, c. 648.

[466] Ib., c. 669.

[467] Ib., cc. 638 and 640.

[468] Ib., c. 648 and c. 669, § 1.

[469] Ib., c. 1309.

[470] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 258.

[471] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 260.

425. The local Ordinary and other prelates having quasi-episcopal jurisdiction (such as the superiors of an exempt clerical religious institute for their subjects, even those not professed) can not only dispense for a just cause from all other non-reserved vows, but also from the two reserved private vows:

1. when there is an *urgent necessity* and recourse to the Supreme Pontiff is morally impossible.[472] Such a case can easily occur when all things are prepared for a marriage which cannot be deferred without great inconvenience, and it is discovered that one of those about to marry is bound by a vow of perfect chastity. Then the local Ordinary can dispense from the vow of chastity.[473]
2. when it concerns a vow of imperfect chastity (i.e., of not seeking the conjugal debt) made *after marriage was contracted*. The reason is that such a vow is not of complete chastity, since it cannot oblige one not to render the debt. But if it concerns a vow of perfect chastity, i.e., of neither seeking nor rendering the conjugal debt, a bishop cannot dispense by his own authority unless there is grave danger in delay.[474] A spouse cannot make such a vow of perfect chastity unless a) with the consent of the other spouse; b) unless the other spouse has lost the right of seeking the debt, e.g., because of adultery committed.
3. when it concerns doubtful vows.
4. when they have special delegated faculties, as is sometimes customary in our times. Therefore a confessor lacking the faculty of dispensing from some vow better seeks this faculty through the diocesan bishop, who can almost always grant it.

Note. The local Ordinary can dispense from vows not only with his own subjects but also *with travelers*.[475] But if he grants a dispensation by virtue of special faculties, attention is to be paid to the clauses which may exclude travelers from the dispensations to be granted.

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[472] Cf. St. Alphonsus, l.c., n. 258.

[473] Cf. ib., l. 6, n. 987, and Code of Canon Law, c. 1045.

[474] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 986.

[475] Code of Canon Law, c. 1313.

426. Regular confessors having the privileges of the Mendicants can dispense, either within or outside confession, from all vows. Reserved vows (cf. above, n. 424) are excepted, and moreover those made principally for the utility of a third party and accepted by him. Thus the most common opinion.[476]

This opinion is founded upon several privileges granted by the Supreme Pontiffs. Thus, e.g., Julius II granted to the regulars of St. Savior and the Olivetan monks "that those appointed to hear the confessions of secular persons may absolve them from each and every sin ... and commute vows made by them for the time being, in each and every case reserved to local Ordinaries, even by synodal or provincial constitutions, into other works of piety, and moreover dispense the same persons vowing from them."[477] The same faculty was granted by the

same Pontiff to other canons regular through the Constitution *Inter ceteros*; Leo X granted the same to the Camaldolese hermits.[478] But because other Pontiffs, such as Benedict XIII[479] and Leo XII,[480] speak only of the faculty of commuting vows, certain authors (Billuart, Concina, Mocheggiani) deny to regular confessors the faculty of dispensing from vows. Let Concina be heard, who most vehemently of all asserts: "The opinion which grants to regulars the privilege of dispensing from all vows not reserved to the Supreme Pontiff is false."[481] Concina indeed concedes that very many authors teach the contrary, but too confidently adds: "Among so many authors I have found no one who seriously discusses the controversy; but one trusts in the authority of another, and as one bird follows other birds, some follow others; and finally all defend themselves by their multitude, as though multitude could patronize error." Certainly the multitude of authors alone cannot make error become truth, but it is rather rash to assert that among so many and such great authors no one seriously discussed the controversy. The common opinion teaching that regular confessors enjoy the faculty of dispensing from all vows, except vows both reserved and made principally for the utility of a third party, seems safe in practice. For Sixtus IV,[482] Julius II,[483] Innocent VIII,[484] and other Supreme Pontiffs simply grant this faculty of dispensing. These indults afterwards became "privileges confirmed by bull," since they were confirmed by the Supreme Pontiffs in special form or from certain knowledge. In such form, e.g., Gregory XIII[485] confirmed all the privileges of the Franciscans. But if other Pontiffs grant regulars the faculty of commuting vows, it is in no way lawful to conclude from this that they denied or revoked the faculty of dispensing. For the word *dispensing* is not employed in one sense either in the old *Corpus iuris* or by older and modern canonists, as I proved elsewhere.[486] Moreover, St. Alphonsus[487] teaches without any hesitation that regular confessors can dispense from non-reserved vows. But in practice a confessor can always follow the opinions of St. Alphonsus which have not been expressly revoked by the Apostolic See.

G. Oesterle, O.S.B.,[488] discusses this matter excellently and learnedly, and also vigorously rejects the opinion of the adversaries. Moreover, this controversy is of almost no practical value, since ordinarily in practice it is expedient not to dispense totally, i.e., to relax, but to commute the vow into an easier work. But all teach that regular confessors can commute non-reserved vows.

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[476] St. Alphonsus, *Theol. mor.* l. 3, n. 257; Ferraris, *Prompta Bibl.*, s.v. "vow," III, 77; Reiffenstuel, *Ius can.* l. 3, tit. 34, n. 39; Noldin, *De praeceptis* n. 237; Vermeersch, *De relig. inst.* n. 519 and *Periodica* V, 57ff.

[477] Const. *Etsi ad universos.*

[478] Const. *Etsi a summo.*

[479] Const. *Pretiosus.*

[480] Const. *Plura inter.*

[481] *Theol. christ.* l. 4, *In Decal.*, diss. 3, c. 11, n. 16.

[482] In the indults both for the Minims, dated 27 May 1474, and for the Benedictines, dated 8 June 1476.

[483] Cf. the text cited above.

[484] In the indult for the Franciscans, 1487.

[485] Const. *Ex benigna*, 21 March 1578.

[486] *Commersches Jahrbuch* XXII, 605ff.

[487] *Theol. mor.* l. 3, n. 257.

[488] In *Theologie und Glaube* 1911, 389ff.

427. Whether regular confessors in a case of urgent necessity can dispense from a vow of perfect chastity with a view to contracting marriage was disputed by authors. But now, in a case in which all things are already prepared for the marriage and the marriage cannot be deferred without probable danger of grave evil until a dispensation is obtained from the local Ordinary, not only a regular confessor but any confessor (as also the pastor and the priest assisting at the marriage) can dispense from the vow of perfect chastity and other vows impeding marriage, provided that it concerns an occult case.[489]

Regular confessors can partially dispense from a vow of chastity, after marriage has already been contracted, so that the conjugal debt may be sought, when the other spouse made such a vow before marriage. But if such a marriage should be dissolved by the death of the other spouse or in another manner, the vow thus dispensed revives in the one who made it. Indeed, if one thus dispensed, during the marriage, were to commit a grave sin against chastity, e.g., pollution, adultery, etc., there would be a grave violation of the vow, and therefore not only the sin of lust itself but also the violation of the vow would have to be declared in confession.[490]

Pastors and other ordinary confessors have no power of dispensing from vows except a) from particular indults, or b) during a jubilee, or c) in the case indicated in the preceding number, namely, with a view to contracting marriage.

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[489] Code of Canon Law, c. 1045.

[490] Cf. St. Alphonsus, l.c., and l. 3, n. 258.

428. Concerning the exercise of the faculty of dispensing, the following things are to be noted:

1. It is lawful to use this faculty both within and outside the tribunal of confession, unless, however, the contrary is expressly determined.

It is very fitting, however, that a dispensation ordinarily not be granted except in the confessional; hence special faculties of dispensing almost always customarily include this or a similar clause: "for the forum of conscience and in sacramental confession."

2. One who possesses a faculty of dispensing of this kind can also use it *with himself*, since it is an act of voluntary jurisdiction,[491] unless, however, it is prescribed that the dispensation be given in the tribunal of confession.

For no one can appear before himself in the tribunal of penance. In practice it is always better to seek the dispensation of a vow from another who has the power, since no one ought to be judge in his own cause and one is easily deceived concerning the sufficiency of the cause necessary for dispensation.

3. One who can dispense from vows can also dispense from *sworn vows.*

The reason is that an oath, as something accessory to the vow in this case, is dissolved with the dissolution of the vow.[492] But a promissory oath by itself alone is never reserved.[493] This formula: "I promise, vow, and swear," is considered to contain only an oath and not a vow.

4. Bishops can dispense also from the vows of travelers, as was already said above in n. 425. Regular confessors likewise can dispense from the vows of travelers, because they act by delegation of the Roman Pontiff, to whom no member of the faithful is a traveler.[494]

5. In every dispensation that saying of Innocent III already cited above is to be attended to: "What is lawful according to equity, what is becoming according to uprightness, and what is expedient according to utility"; or, a vow is to be dispensed only when the honor of God is preserved and provision is made for the spiritual utility of the person vowing. The sufficient causes of dispensation were already discussed above in n. 421.

6. It is rarely expedient to remove the whole obligation of a vow by dispensation--this is expedient almost only with the scrupulous--but it is better to commute the vow, i.e., to impose some more suitable matter. For thus the person vowing does not lose the whole merit of the vow and acquires the new merit of obedience.

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[491] Cf. ib., l. 3, n. 256.

[492] Cf. below, n. 454.

[493] Hence St. Alphonsus (l.c., n. 250) teaches that an oath of perfect chastity or of entering religion, unless it includes a vow at the same time, is not reserved.

[494] Thus Lehmkuhl, *Theol. mor.* I, n. 620.

§ 8. On the Cessation of a Vow (or of Its Obligation) Through Commutation

429. Definition. Commutation is the transfer of the obligation of a vow from one matter to another. Or, in other words: The commutation of a vow is the substitution of another good work in place of that which had been promised by vow, made under the same obligation of the vow. Commutation, therefore, is something less than dispensation, because in dispensation the obligation of the vow can be totally removed; but in commutation there remains at least a partial obligation of the vow, whose matter alone is changed and is often somewhat remitted or even increased. The commutation of vows can be made by one's own or by ecclesiastical authority, as will be said more fully below. This, however, is the difference among the powers of invalidating, dispensing from, and commuting vows: Invalidation requires no jurisdiction, but dominative power. Dispensation always requires jurisdiction. Commutation sometimes requires jurisdiction, but not always.

Distinction. A threefold commutation of a vow is distinguished, namely, into a better, equal, or lesser work.

A *better work* is not always that which is more difficult, but that which is more pleasing to God and accords more with the spiritual salvation of the person vowing. Thus, e.g., one who vowed alms to a determined poor man who has not yet accepted the promise can give the same alms to one who is poorer or to a poor relative, since this seems to be a work objectively better and more pleasing to God.

An *equal work* is considered to be that which presents almost the same difficulty of fulfillment, e.g., saying the Rosary or other prayers of almost the same duration.

A *lesser work* is that which evidently causes less difficulty; e.g., saying the Rosary is a lesser work than hearing Mass with devotion or making a pilgrimage.

430. Principle 1. The commutation of a non-reserved vow into a work either a) evidently better or b) equal can be made even by the own authority of the person vowing.[495]

The reason for the first part is that the end of a vow is a) the worship of God and b) the spiritual good of the person vowing. But by an evidently better work this twofold end is obtained more perfectly; therefore God is presumed to consent to such a change. Hence all vows whatsoever made before religious profession are

suspended for as long as the person vowing remains in religion,[496] because all other vows concern certain particular goods, whereas through religious profession a man dedicates his whole life to the service of God. But the particular is contained in the universal. Moreover, religious profession is regarded as a civil death. But just as all vows are extinguished by physical death, so also vows are suspended by the civil death of religious profession. Therefore Alexander III[497] already established that he is not to be regarded as guilty of a broken vow who commutes a temporal service into the perpetual observance of religion.

It is said in the principle enunciated: *into an evidently better work*. This is to be understood not of a work merely objectively better and more excellent, but of that which, after all the objective and subjective circumstances of the person vowing have been considered, is better. In practice it is often difficult, not to say impossible, to determine by one's own authority which good is better between two proposed goods. Certainly one who vowed to give a silver chalice can fulfill that vow by giving a golden chalice; or one who promised one hundred marks by vow can give one thousand marks; or one who promised a fast of one day can fast for three days. All these things are evident of themselves; nevertheless, these are not commutations properly so called, but rather more abundant fulfillments of vows; and then the saying is true: The greater contains the lesser, and he does not break faith who commutes into something better. But commutation properly so called is present if the work promised is changed into another disparate work, e.g., a fast into alms or prayer. Then, however, in practice it seems scarcely ever lawful by one's own authority to commute one private vow into another. For no one can safely judge by his own authority which work is better both for himself and for the worship of God. E.g., prayer is a more perfect work than fasting, because the virtue of religion is more excellent than the virtue of temperance. But can someone by his own authority commute a vow of fasting on Saturday into the recitation of the Rosary? Therefore it is not only better but also safer not to make the commutation of a vow except through the authority of a confessor or an ecclesiastical superior. This doctrine indeed seems to be intimated by St. Thomas,[498] who says: "In commutation there is a certain contract which cannot be completed without the consent of both parties; hence, since man through a vow obliges himself to God, a commutation of the vow cannot be made unless the consent of him who acts in the place of God on earth, namely, the prelate, intervenes, *unless perhaps one vow is included in another*."

The reason for the second part is a positive ecclesiastical law.[499] Before the new Code of Canon Law, St. Alphonsus and many other theologians taught that the commutation of a vow into an equal work could not be made by the person vowing himself.

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[495] Code of Canon Law, c. 1314.

[496] Ib., c. 1315.

[497] C. 4, X 3, 34; cf. *S. theol.* 2, 2, q. 88, a. 12 ad 1.

[498] IV, dist. 38, q. 1, a. 4, solut. 4.

[499] Code of Canon Law, c. 1314.

431. Note. The following are excluded from commutation made by one's own authority: 1. *vows reserved to the Supreme Pontiff* (unless, however, the commutation is made by entrance into religion); 2. *vows made in favor of a third person* (whether physical or moral), if these vows were accepted; 3. *a vow of passing to a stricter religious institute.*[500] Concerning this last vow and its fulfillment, it is to be noted that, according to the present discipline of the Roman Curia, the permission of the Holy See is required for every passage of a professed religious to another religious institute.[501] But in ancient times any religious could by his own authority pass to another religious institute certainly stricter.

[500] Thus c. 18, X 3, 31.

[501] Code of Canon Law, c. 632.

432. Principle 2. The commutation of a vow into a work certainly and notably lesser cannot be made validly and lawfully except by one who has a special faculty.

For such a commutation is a partial dispensation from the vow. But for every dispensation from vows a special faculty is required, as was said above in n. 423. But whoever has the power of dispensing from vows also has the power of commuting them into another lesser work. For Rule of Law 33 in VI° says: "He to whom what is greater is lawful, to him surely what is lesser is lawful." It is admitted by all that regular confessors (who have the privileges of the Mendicants) possess the faculty of commuting all non-reserved vows, as was already said.

433. Principle 3. For the commutation of a vow into a better work, no cause is required; for commutation into an equal work, a light cause is required; for commutation into a notably lesser work, a grave cause is required.

The reason for the first part is that it is always lawful to perform a work which is objectively and subjectively better, without another cause rendering it fitting being necessary. The reason for the second part is that to make such a change without cause would be mere inconstancy, certainly not pleasing to God. But a light cause suffices, e.g., greater devotion of the person vowing or less danger of transgressing the vow.[502] The reason for the third part is that such a commutation is a partial dispensation, for which a reasonable and grave cause is always necessary. So great a cause as is necessary for a total dispensation or abolition of the vow is not, however, required, as is evident of itself. It is disputed among authors whether a reasonable cause is required not only for the lawful but also for the *valid* commutation of a vow into a lesser work. St. Alphonsus calls both opinions, i.e., the affirmative and the negative, probable. The affirmative opinion, however, seems more probable, because St. Thomas[503] deservedly requires a sufficient cause on equal grounds for dispensation and commutation. But just as God does not ratify a dispensation from a vow given without sufficient cause, so likewise He is not considered to approve a commutation frivolously given. But in a doubt whether the cause of commutation was sufficient or not, the Angelic Doctor[504] teaches that a subject can and ought to acquiesce in the judgment of the one commuting.

[502] Cf. St. Alphonsus, l.c., n. 245.

[503] *S. theol.* 2, 2, q. 88, a. 12 ad 2.

[504] Ib.

434. Corollary 1. After a commutation has been made, it is always lawful for the person vowing to return to the first work, even if the commutation was made into something better. A fortiori this is lawful if the commutation was made into an equal or lesser work.

The reason is that commutation is a favor which no one is ordinarily bound to use, according to Rule of Law 51 in VI°: "That which is granted for the favor of someone is not to be turned to his detriment." Although certain authors limit this doctrine to the case in which the commutation was made by one having authority, and teach that the person vowing cannot return to the first work if he himself commuted his vow into an evidently better work, nevertheless St. Alphonsus[505] deservedly rejects this limitation as unfounded and indeed concludes: "If commutation has been made several times into diverse works, the person vowing can choose whichever of them he prefers."

[505] St. Alphonsus, l.c., n. 248.

435. Corollary 2. If the work into which the vow was commuted becomes impossible (even through the fault of the person vowing), the person vowing is not bound to return to the first work, provided the commutation was made by a confessor or by a legitimate ecclesiastical superior.

The reason is that through a commutation made by legitimate authority the prior obligation is entirely extinguished. Hence, e.g., if a vow of pilgrimage was legitimately commuted by a confessor into a fast to be performed on a certain day, and such a fast became impossible because of illness, the person vowing is now bound to nothing. Thus the common opinion.[506] But when the vow was commuted by the own authority of the person vowing, then the obligation of the prior work does not seem to be entirely extinguished, and consequently, when the substituted work became impossible, the person vowing is bound to return to the prior work. Certain authors, however, teach[507] that even then there is no strict obligation of returning to the first work, because the person vowing, whether by making or by accepting the commutation, implicitly vowed the substituted matter, and therefore the prior vow is extinguished. This opinion is certainly probable theoretically; but since it is not expedient to commute any vow by one's own authority (except by making religious profession), as was said above, therefore in practice one must not depart from the first opinion.

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[506] Cf. ib., n. 249.

[507] Cf. Billuart, *De relig*. diss. 4, a. 8, § 6, Petes 4°.

Article V. On the Oath

436. Preliminary. Among the ways of worshiping God there is also the invocation of the divine name. The divine name is invoked in three ways: 1. by way of an oath, for confirming the speaker's own words; 2. by way of adjuration, for inducing others to do or omit something; 3. by way of invocation, for praying and especially for praising God. In this article we treat of the invocation of the divine name through an oath; in the following article, however, adjuration and the invocation of the divine name will be treated. But concerning prayer enough has already been said above.

This article is divided into four paragraphs: 1. on the notion and division of an oath; 2. on the lawfulness of an oath and its requisite conditions; 3. on the obligation of an oath; 4. on the violation of an oath, or perjury.

§ 1. On the Notion and Division of an Oath

437. Definition. An oath (which is sometimes also called a *swearing* and a *sacrament*) **can be defined: an invocation of the divine Name as witness to veracity.** Hence St. Thomas[508] says: "To take God as witness is called swearing."

The definition given is explained. It is said, first: *an invocation of the divine name*, insofar as man, inwardly conscious of the defect of his own veracity and knowledge, invokes as an aid God, the first truth in knowing and speaking. Hence every true oath is a true worship of God, and presupposes faith in the existence of a personal, omniscient, and omnipotent God, who knows every lie and punishes it. Therefore the oaths of atheists, pantheists, monists, materialists, etc., and generally of all who deny the existence of a personal God, are not true oaths. Therefore not even a judge can demand an oath from them; he can, however, certainly compel them under grave penalties to tell the truth. Certain jurists call this obligation of telling the truth imposed by a judge a *civil oath*, in opposition to a religious oath; but this distinction is to be rejected, since every true oath is essentially an act of religion. Since today so many men openly profess crude atheism, it has

more than once already been proposed that the oath be abolished in civil tribunals. The invocation of the divine name in an oath can be either express or tacit through signs, e.g., through touching the Gospel, through raising the fingers, etc.

It is said, second: *as witness to veracity*. For the end of every oath is the confirmation of the truth spoken. But since the truth of contingent facts cannot be proved from intrinsic causes, it must be sought elsewhere, namely, through the testimony of men. This testimony of men, however, is often insufficient and fallacious because of a defect both of knowledge and of veracity. Therefore it is necessary to have recourse to the testimony of God, who can neither be deceived nor deceive.[509] Nevertheless, the one swearing neither intends nor asks that God here and now testify to the truth by an actual and clear sign, for this would be a tempting of God, but that the omniscient, just, and omnipotent God testify to the truth how and when it shall please Him, and punish the one swearing falsely most gravely.[510]

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[508] *S. theol.* 2, 2, q. 89, a. 1. Aristotle (Pseudo-Aristotle) defines an oath: "Ὅρκος δ' ἐστὶ μετὰ θείας παραλήψεως φάσις ἀναπόδεικτος" -- "An oath is an assertion with an invocation of the gods, admitting of no proof" (*Rhet. ad Alexand.* c. 17). Also excellent is the definition given by the distinguished Göpfert: "The oath is the express or tacit invocation of God as witness of the truth, either for the confirmation of a statement or for the strengthening of a promise" (*Der Eid* [1883], 152), or in Latin: An oath is the invocation of the divine name in testimony, to establish faith in a statement or to confirm a promise.

[509] *S. theol.* 2, 2, q. 89, a. 1.

[510] Cf. ib., n. 2 ad 3.

438. Divisions of an oath. Among the several divisions of an oath, let it suffice to enumerate the following, which are necessary for a confessor to know:

1. **By reason of the object or matter, an oath is distinguished into assertory and promissory.**[511] In an assertory oath God is invoked as witness to a past or present truth; e.g., I swear that I did not commit that crime; or I swear that I am incapable of paying.[512] In a promissory oath God is invoked as witness both to a future event and to the present sincere intention of doing or omitting something; e.g., I swear that I shall fulfill all the duties of my new state.[513] A promissory oath, therefore, confirms the present sincere will and binds it lest it be changed in the future. The Angelic Doctor[514] explains both oaths in this way: "Divine testimony is sometimes introduced to assert present or past things, and this is called an assertory oath. But sometimes divine testimony is introduced to confirm something future, and this is called a promissory oath." If anyone considers a promissory oath accurately, he will find that it always includes an assertory oath; for one who swears that he will do something invokes God as witness to a certain present truth, namely, that he now has the intention of effecting that which he promises. Then he invokes God as guarantor of the future truth, namely, that he will fulfill the thing promised. Nevertheless, the division of an oath into assertory and promissory is not therefore superfluous; for although a promissory oath includes an assertory oath, the converse does not hold.

A promissory oath is customarily subdivided into a sworn resolution, a sworn promise or sworn pact, a sworn vow, and a vow with a sworn pact. a) A *sworn resolution* (which is also called a simple promissory oath) is a resolution, confirmed by an oath, of doing or omitting something; e.g., I swear that I shall no longer play cards. b) A *sworn promise* is a promise made to a man and confirmed by an oath; e.g., I promise you marriage and swear that I shall fulfill the betrothal thus contracted. Since this promise is a contract or pact, such an oath is also called a *sworn pact*. c) A *sworn vow* exists if a promise is made not to a man but to God and is confirmed

by an oath. d) Finally, a vow can be made for the benefit of some third person and accepted by him. If an oath is added to such a vow, there is then a *vow with a sworn pact.*

2. **By reason of form, an oath is distinguished into invocatory and execratory (imprecatory).**[515] The first simply invokes God as witness to the truth, and therefore is also customarily called a contestatory oath; e.g., I swear by God that the matter is so. The other invokes God not only as witness to the truth, but also as avenger of falsehood. The one swearing can imprecate vengeance for falsehood upon himself in three ways: a) directly from God Himself; e.g., May God destroy me, may He punish me, if I have not spoken the truth. In Sacred Scripture the words, "May God do these things to me and add these things," are often used as the formula of an oath of this kind.[516] In canon law the formula now in force is: "So may God help me and these holy Gospels of God"; its meaning is: May God no longer help me if I pronounce what is false. b) Through creatures, God so permitting; e.g., May lightning kill me, may the devil seize me, may the earth swallow me, etc., if I do not speak the truth. David uttered an oath of this kind, saying: "If I have rendered evil to those who repaid me, let me deservedly fall empty before my enemies."[517] c) Through persons intimately joined to him, who are to suffer harm; e.g., a father swears by the head of his son; its meaning is: Let my dearest son be punished capitally if I lie.
3. **By reason of manner, an oath is distinguished into solemn**, which is made with a certain solemnity, e.g., with candles lit, before a crucifix, with the Gospels touched, etc., **and simple**, which is pronounced privately, without these solemnities, in whatever words are preferred. A solemn oath can be made not only by words but also by gestures, e.g., by touching the Gospel, kissing the Bible, etc. Since a solemn oath is always employed in trials, it is also called a *judicial oath.* But an extrajudicial oath is every other oath, whether it is in solemn form or in simple form. A judicial oath has very many subdivisions, e.g., an oath against calumny, an oath against malice, a supplementary oath, an oath tendered, etc., which we omit here because knowledge of them pertains not to Moral Theology but to either ecclesiastical or civil law. For all oaths are of the same moral species because they all agree in the invocation of the divine name, although they differ accidentally.
4. **By reason of invocation, an oath is distinguished into explicit and implicit.** The first is that by which God Himself is explicitly and immediately invoked as witness, e.g., God is my witness. The other is that by which a creature is indeed immediately invoked, but God Himself mediately, because in such a creature a special relation to God shines forth. Thus Moses swore implicitly, saying: "I call heaven and earth as witnesses today that I have set before you life and death, blessing and cursing."[518]

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[511] In German: *Aussage-* and *Zusageeid* [assertory oath and promissory oath].

[512] *Offenbarungseid* [oath of disclosure].

[513] *Amts-* or *Diensteid* [oath of office or service].

[514] *S. theol.*, l.c., a. 1.

[515] *Zeugnis-* and *Verwünschungseid* [testimonial oath and imprecatory oath]. Cf. *S. theol.* 2, 2, q. 89, a. 1 ad 3.

[516] Cf. 1 Kings 14:44; 2 Kings 3:35.

[517] Ps. 7:5.

[518] Deut. 30:19.

§ 2. On the Lawfulness of an Oath and Its Requisite Conditions

439. Many have denied the lawfulness of an oath. Already the Pelagians and Messalians[519] seem to have denied the lawfulness of an oath. They were followed by the Waldenses,[520] Beguines and Beghards, Fraticelli, Wycliffe,[521] the Hussites,[522] Anabaptists, Mennonites, Quakers,[523] and others. Among philosophers, Kant and Fichte fought against the lawfulness of an oath. Against all these is set down:

Thesis. An oath clothed with the due conditions is lawful and licit.

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[519] Cf. St. Augustine, Ep. 156 (al. 88); Sermon 180, c. 10, n. 11.

[520] The following profession of faith was prescribed to the Waldenses: "We do not condemn an oath; indeed, we believe with a pure heart that it is lawful to swear with truth and judgment and justice" (Denz., n. 425; cf. also n. 487).

[521] Cf. proposition 43 condemned by the Council of Constance (Denz., n. 623).

[522] Cf. "Questions to Be Proposed to Wycliffites and Hussites," nn. 12-14 (Denz., nn. 662-664).

[523] Cf. concerning all these errors Göpfert, *Der Eid*, 112ff. Since the Mennonites so abhor the taking of an oath, the civil laws of Germany have permitted them to employ other formulas confirming the truth to be spoken in place of an oath. Cf. Z.P.O. § 484.

440. Proof 1. From Sacred Scripture, which often acknowledges the lawfulness of an oath, e.g.: "Thou shalt fear the Lord thy God and shalt serve Him alone, and shalt swear by His name."[524] St. Paul himself swore several times: "For God is my witness, whom I serve in my spirit";[525] "But I call God to witness."[526] But if Christ[527] and James seem to reprove every oath, they are to be understood concerning an unlawful oath, or one not clothed with the due conditions. For St. Paul certainly knew the words of Christ, and nevertheless he himself swore several times. St. Augustine[528] writes excellently on this matter: "Because it is impious to say that Paul was guilty of violating the precept, especially in epistles composed and published for the spiritual life and salvation of peoples, it must be understood that the word 'altogether' was placed for this purpose: that, insofar as it lies in thee, thou shouldst not seek, love, or desire an oath as though it were a good with some delight; ... namely, lest by swearing one come to readiness in swearing, and from readiness to habit, and from habit fall into perjury."

Proof 2. From the practice and doctrine of the Church. No one denies that the oath has always been employed in the Church as well as in the civil commonwealth. The doctrine of the Church on this matter is found in several decisions against the Waldenses, Wycliffites, Hussites, Quesnel, and the Synod of Pistoia, cited above in the preceding number.

Proof 3. From reason. An act whose origin and end are good is lawful in itself. But an oath is such. For an oath proceeds from faith in God as omniscient and as avenger of justice; but the end of an oath is to terminate controversies, obtain the full truth, and confirm promises. Therefore an oath clothed with the due conditions is something lawful and is an act of religion.[529]

But although an oath is lawful and licit in itself, nevertheless it is not to be sought for its own sake or employed too frequently, since otherwise abuses easily creep in.[530] Because of these abuses, certain Holy Fathers spoke more severely concerning the oath, especially St. John Chrysostom and St. Jerome.[531] Therefore it is also said in Sacred Scripture: "Let not thy mouth be accustomed to swearing; for in it there are many falls.... A man that sweareth much shall be filled with iniquity, and a scourge shall not depart from his house. And if he make it void, his sin shall be upon him; and if he dissemble it, he offendeth double; and if he swear in vain, he shall not be justified."[532] The intrinsic reason is that an oath is, as it were, a medicine against the defect of human veracity and credibility. For if every man were always truthful, so that full faith could be

given to his assertions, an oath would already be superfluous. Moreover, an oath can easily introduce a danger of sinning, since all the conditions required for its lawfulness are often absent. Therefore it is clear that an oath is not to be sought for its own sake, just as a man does not seek medicine except in a case of necessity.

Conditions required for a valid and lawful oath.

For a *valid* oath two conditions are required, namely: 1. the intention of swearing; and 2. an oath-formula. For a *lawful* oath, moreover, three conditions are required, namely: 1. truth; 2. justice; 3. judgment.

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[524] Deut. 6:13.

[525] Rom. 1:9.

[526] 2 Cor. 1:23; cf. also Phil. 1:8; Heb. 6:13-18.

[527] "You have heard that it was said to them of old: Thou shalt not forswear thyself, but thou shalt perform thy oaths to the Lord. But I say to you not to swear at all.... But let your speech be yea, yea; no, no; and that which is over and above these is of evil" (Matt. 5:33ff., 37). St. James teaches the same: "But above all things, my brethren, swear not, neither by heaven, nor by the earth, nor by any other oath whatsoever. But let your speech be: yea, yea; no, no; that you fall not under judgment" (James 5:12).

[528] *De mendacio* c. 15, n. 28 (Migne, *Patr. lat.* 40, 507).

[529] Cf. *S. theol.* 2, 2, q. 89, a. 2.

[530] Cf. ib., a. 5.

[531] There is no space to explain the texts of the Holy Fathers who apparently rejected the oath; for it is certain that the same Holy Fathers sometimes themselves declared an oath lawful. See Billuart, *De relig.* diss. 5, a. 3.

[532] Ecclus. 23:9, 12ff.

441. A. Conditions required for a valid oath:

1. An *internal intention of swearing* (whether actual or at least virtual) is altogether necessary for the validity of an oath; therefore, the external and material pronouncement alone of an oath-formula is not a true but a feigned oath. A feigned oath, however, seems to be a grave sin[533] (at least if it is done freely and deliberately), since it is a grave injury inflicted upon God, who is dishonored by a deceitful invocation and is induced to deceive those hearing the oath. Hence proposition 25 was condemned by Innocent XI: "With a cause it is lawful to swear without the intention of swearing, whether the matter is light or grave."[534] Hence those who freely take the oath-formula in a tribunal but inwardly withhold the intention of swearing do not escape the penalties of perjury either before God or before men. For a true and sufficient intention of swearing, it is required that the one swearing know what an oath is and that he have sufficient deliberation both concerning the act itself of swearing and concerning the matter of the oath. Because of a defect of a true intention of swearing, very many confirmatory formulas customarily used in human conversations are not true oaths; e.g., I assert this by my faith, by my honor, by my conscience; these things are as true as the light of the sun, as the existence of God; may the devil seize me if this is false, etc. Certainly these and similar formulas of speech signify that the speaker intends a great confirmation of his assertion, but it is by no means certain whether he really wills to invoke God as witness. The faithful are to be admonished to abstain from locutions of this kind as vain and indeed often sinful. "Let your speech be: yea, yea; no, no"; thus the Lord admonishes. In the external forum a true intention of swearing is always presumed when a true oath-formula has been pronounced.

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[533] If certain authors call a freely made feigned oath a venial sin or even no sin, they either teach falsely or take a feigned oath in the broader sense, insofar as it is a mere vain assumption of the name of God.

[534] Denz., n. 1175.

442. 2. An oath-formula is required for the validity of an oath, because it must be an external sign for confirming the assertion made. This formula necessarily contains an explicit or at least implicit invocation of God, since the invocation of God as witness to the truth pertains to the essence of an oath. In ecclesiastical law the oath-formula customarily employed is: "So may God help me and these holy Gospels of God." In civil laws also, determinate formulas are customarily prescribed; if neither in themselves nor from the intention of the legislator they contain an invocation of God, they are not true religious oaths.[535] In private oaths no determinate formula is required, but it suffices that someone intend by signs or words to invoke the divine name in testimony to the truth; indeed, an oath could be made to God Himself by an internal act, e.g., someone, in order that he may will firmly to avoid some occasion of sin, internally invokes God as witness.

[535] Thus, e.g., the formula employed by the Mennonites, "I swear by the truthfulness of a man," is not a religious oath.

443. Scholion. On rightly understanding oath-formulas. Authors customarily weave here a rather long list of formulas of explicit or implicit oaths; likewise, they present several ambiguous formulas, or formulas certainly containing no oath. These seem to be of little utility, both because the validity of an oath, although not solely, nevertheless principally, depends upon the intention of the speaker, and because in diverse regions these formulas are understood differently. Let the following be noted briefly:

a) Formulas of speech in which God is explicitly or implicitly invoked as witness to the truth are true oaths, *objectively speaking*; e.g., "May God be my witness"; "I swear by God, by Christ"; "I swear by the Blessed Virgin, by the Cross, by the Gospels, by my soul," etc. But *subjectively speaking*, these or similar formulas of speech are sometimes to be regarded as a true oath neither from the intention of the speaker, who pronounces them without any serious deliberation and from inveterate habit, nor from their understanding by the hearers. For if someone confirms almost every assertion of his by exclaiming, "It is so, by God!"[536] this manner of speaking is certainly to be reproved seriously as an intolerable abuse of the name of God; but neither the speaker himself nor the hearers think that every assertion thus confirmed is an oath.

b) Formulas in which God is neither explicitly nor implicitly invoked as witness are not an oath. Hence, if someone should say, "By my conscience, by my honor"; or if a priest should say, "By my consecration"; or if a prince should confirm his word, "By my royal honor," he does not indeed make a religious oath; nevertheless, these or similar formulas of speech are customarily regarded as such great confirmations of truth that their violation is considered truly base and scandalous.

c) Formulas by which the truth of an assertion is compared with truths of faith are not themselves an oath either. Hence the formulas, "This is as true as God exists; as Christ is in the venerable Sacrament; I am as innocent as the Blessed Virgin," etc., do not contain an oath, since they are not invocations of God's testimony; nor are they blasphemies, since the speaker is not accustomed to intend that his assertion have the same certainty as the truth of faith stated.[537] But it is clear of itself that locutions of this kind are to be avoided altogether.

[536] "By God, that is true!"

[537] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 137.

444. B. Conditions required for a lawful oath.

For a lawful oath three conditions are required, already enumerated above, which are customarily called *the companions of an oath*,[538] and which are already indicated by Jeremiah: "Thou shalt swear: The Lord liveth, in truth and in judgment and in justice."[539] If even one of these conditions is absent, an oath lacks due reverence toward God and consequently is unlawful.

1. The *truth* of an oath does not signify the objective truth of the assertion made, but the veracity of the speaker, who does not speak contrary to his mind, or who does not tell a moral lie. This truth, therefore, presupposes a firm will to speak the truth (in an assertory oath) or to fulfill what is promised (in a promissory oath). Truth is the principal companion of an oath; if it is absent, there is the very grave sin of perjury, concerning which the discourse will return below in n. 456ff. But it is required not only that the one swearing avoid every moral lie, but also that he have moral certainty concerning the things asserted. Hence it is not lawful to swear either with doubtful truth or with merely probable truth. Likewise, it is never lawful to swear with a purely mental restriction. Thus holds the most common opinion, which is corroborated by the condemnation of propositions 26 and 28 pronounced by Innocent XI.[540] But to swear *with a broadly mental restriction* is not lawful except for a grave cause; namely, in the case in which no other means is at hand to defend oneself or others against an unjust aggression, an unjust manner of questioning, or another grave evil. Thus a confessor who is unjustly compelled to give sworn testimony concerning things which he learned under the seal of confession can, and indeed must, swear with a mental restriction.

It is asked how great a sin it is to swear without sufficient cause with a broadly mental restriction. Many authors teach that such an oath is a mortal sin, since it is a grave irreverence against God to employ the invocation of His name to deceive others. St. Alphonsus[541] admits this doctrine concerning an oath in a trial or in contracts, but thinks it more probable that it is only a light sin if someone without sufficient reason employs a broadly mental restriction in other private oaths, because truth is not absent in such an oath, since the words pronounced can easily be understood in a right sense; nor is justice absent, because the questioner has no right, as is supposed, to a simple answer without restriction. Therefore only the third companion of an oath, namely judgment or discretion, is violated, and its violation is only a light sin. Although these things are true, nevertheless in practice this case seems scarcely possible. For it has already been prohibited that anyone swear without necessity or a grave reason. Therefore it is prohibited much more severely that anyone swear without necessity with a mental restriction.

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[538] *Eidesgefährten* [companions of an oath].

[539] Jer. 4:2. Cf. also *S. theol.* 2, 2, q. 89, a. 3.

[540] Cf. what was said above in n. 171 concerning mental restriction.

[541] St. Alphonsus, *Theol. mor.* l. 3, n. 151.

445. 2. Justice as the second companion is required in both an assertory and a promissory oath; it consists in this, that the one swearing neither asserts nor promises anything that is unlawful.

In an assertory oath, justice requires that no one unduly injure the reputation of another, e.g., by manifesting without sufficient cause the occult crime of another; that no one injure his neighbor in fortune; and that no one boast of a crime he himself has committed. A violation of justice in an assertory oath is a sin whose gravity depends a) upon the gravity of the injustice committed, and b) upon the intention of the one swearing. Hence it seems to be a mortal sin if someone, e.g., uses an oath *as an instrument* for proving a grave

detraction,[542] because one who thus invokes God as witness represents Him, as it were, as an assistant in his crime. Almost the same seems to be said (although certain persons, e.g., Göpfert, contradict it) if someone for the sake of boasting confirms by an oath a narrative of his own grave sins. Nevertheless, in practice one must first see whether a true oath was present in these locutions; for often neither does the locution itself contain an invocation of the name of God, nor does the speaker have the intention of invoking God as witness to his sin.

In a promissory oath, justice requires that the one swearing promise nothing evil. Hence he who swears that he will perpetrate some grave crime (e.g., adultery, homicide, etc.) certainly commits a twofold grave sin: one sin offends the virtue which he intends to violate; the other sin is a grave violation of the virtue of religion, because the one swearing invokes God, almost mockingly, as witness that he wills to offend Him gravely. Thus all teach. But if the oath concerns the doing of a slightly evil thing, e.g., concerning a lie or a slight deception, certain grave authors, such as Dominic Soto,[543] Cajetan,[544] Sylvius,[545] Busenbaum,[546] Noldin,[547] etc., judge that it is only a venial sin, because it is only a slight irreverence toward God. Other authors, however, such as St. Alphonsus,[548] Billuart,[549] Tanquerey,[550] Göpfert,[551] etc., think that in this case also a grave sin is committed, because it seems to be a grave injury inflicted upon God to invoke Him as witness and, as it were, patron of even venial iniquity. For it seems to be contempt and mockery of God (who abhors all sins, even light ones) if a man, willing to commit a light sin, confirms his depraved intention by invoking divine testimony.

You resolve: From what has been said follows the solution of the following cases: 1. A certain Freemason swears that he will persecute the Church. There are certainly two mortal sins, namely, the persecution of the Church and a sacrilegious oath. 2. Someone swears that he will tell a jocose lie. There are two sins, namely, the light sin of a jocose lie and the perhaps grave sin of a sacrilegious oath. Rarely, however, do confirmatory formulas concerning a future venial sin to be committed have the character of a true oath, because of a defect of intention both in the one who speaks and in those who hear the speaker. Hence the first opinion, although considered theoretically it is less true, nevertheless can be held in practice.

Theologians commonly teach that it is only a light sin if someone swears to omit some good act which is counseled but not commanded, e.g., not to enter religion, not to give alms outside a case of necessity. Concerning this case the Angelic Doctor[552] says: "But if someone swears that he will not do some better good which nevertheless he is not bound to do, he sins indeed by swearing, insofar as he places an obstacle to the Holy Ghost, who is the inspirer of a good resolution; nevertheless, he does not sin by keeping the oath, but does much better if he does not keep it."

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[542] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 146.

[543] *De iure et iust.* l. 8, q. 2, a. 3, concl. 5.

[544] Commentary on 2, 2, q. 89, a. 7.

[545] Commentary on the same place.

[546] In St. Alphonsus, l.c., n. 146.

[547] *De praeceptis*, n. 255.

[548] L.c.

[549] *De relig.* diss. 5, a. 4.

[550] *De virt. relig.* n. 951.

[551] *Moraltheol.* I, 355.

[552] *S. theol.* 2, 2, q. 89, a. 7 ad 2.

446. 3. Judgment (*Besonnenheit*, deliberateness) **as the third companion of an oath requires due discretion, so that there be a) a just cause for swearing; b) due reverence in the act itself of swearing. A defect of this companion ordinarily is only a venial sin, provided, however, that the other two companions of an oath are present.**

The reason is that the whole malice of a defect of judgment consists in this, that divine testimony is invoked vainly and superfluously, or not sufficiently reverently; this of itself does not seem to exceed venial guilt.[553] Therefore those sin of themselves only venially who swear frequently without necessity, who swear jocularly, or who swear with insufficient reverence. But accidentally a defect of judgment in an oath can be a grave sin, namely, if grave scandal or a proximate danger of sinning against the truth or justice of the oath arises from it.[554] Since a defect of judgment is so often present in oaths and introduces so many dangers of sin, Christ, St. James, St. John Chrysostom, and St. Jerome commended not swearing at all.[555]

[553] Cf. Billuart, *De relig.* diss. 5, a. 4.

[554] *Fahrlässiger Meineid* [negligent perjury].

[555] Cf. the texts cited above in n. 440, and Göpfert, *Der Eid*, 61ff.

447. Scholion. Who can swear. By natural law every rational creature using reason, whether angel or man, whether having reached puberty or not, and even Christ Himself as man, can swear. The reason is that all creatures can confirm their statements by invoking divine testimony. If God Himself is at times introduced in Sacred Scripture as swearing, this is not an oath properly so called, because no one can invoke himself as witness to the truth; and especially it is not done as though the divine words needed confirmation, but such oaths show the immutability of God.[556]

By *ecclesiastical law*, several persons are not admitted to a solemn oath, e.g., those who have not reached puberty, infamous persons, and those who have already been convicted of perjury.[557] Clerics ought not swear in a lay tribunal unless the prior permission of the bishop or legitimate prelate has been obtained.[558] Priests, by reason of their dignity, ought not swear even in an ecclesiastical trial except for a grave cause, because to doubt their veracity is to derogate from their state.[559]

By *civil laws*, those who have not yet completed sixteen years are not customarily admitted to a judicial oath.[560] Likewise, several others are excluded. Others, on the contrary, can refuse an oath. Concerning all these things, as pertaining solely to ecclesiastical or civil law, there is no space to treat more extensively here.

[556] *S. theol.* 2, 2, q. 89, a. 10 ad 4.

[557] Code of Canon Law, c. 1757.

[558] Holy Office, decree of 23 Jan. 1886, and Code of Canon Law, c. 120.

[559] *S. theol.*, l.c., a. 10.

[560] Cf. German Code of Civil Procedure, § 435, and Code of Criminal Procedure, § 56.

§ 3. On the Obligation of an Oath

448. Preliminary. In treating of the obligation of an oath, the discourse is principally about a promissory oath. For although an assertory oath, in the very act of swearing, strictly requires and obliges that the truth be spoken, since otherwise the most grave sin of perjury is committed, nevertheless, once an assertory oath has

been duly taken, no other obligation remains. Certainly a grave obligation can arise to repair damage caused by a false or unjust assertory oath, but such an obligation arises only accidentally, namely, from the abuse of the oath; and it is not proper to an oath, but common to every unjust action. It remains, therefore, that only the obligation of a promissory oath be treated. This obligation is twofold: 1. the one swearing must, in the act of swearing, have a sincere will to fulfill the things promised; 2. the one swearing must, at the established or opportune time (if no time was established), actually fulfill the things which he promised by oath. In order, we treat: 1. of the obligation itself of a promissory oath; 2. of the interpretation of this obligation; 3. of the cessation of this obligation.

1. Existence of the obligation.

449. Principle. a) A promissory oath clothed with the due conditions binds, from the virtue of religion, only the person swearing to those things which were sworn. b) This obligation is grave or light according to the gravity of the matter promised.

Explanation. a) That a promissory oath clothed with the due conditions binds in conscience is easily proved both from Sacred Scripture and from reason. "Thou shalt perform thy oaths to the Lord."[561] "If any man vow a vow to the Lord, or bind himself by an oath, he shall not make his word void, but shall fulfill all that he promised."[562] The reason is added: By swearing, a man invokes God as though the guarantor of the execution of the thing promised. But it is a great irreverence inflicted upon God if someone culpably does not keep such a promise, since this is contempt and disparagement of God as witness. An oath, as a personal act causing a personal obligation, binds from the virtue of religion only the person swearing;[563] therefore it cannot validly be taken through a proxy, at least in ecclesiastical law.[564] Therefore the same things also apply which were said above in n. 402 concerning the obligation of a vow.

One who violates a simple promissory oath commits one sin, namely, irreverence toward God. One who violates a *sworn vow* commits two sins, namely, a sin of irreverence because the oath is violated, and a sin of infidelity toward God because the vow is violated. For although both the violation of an oath and the violation of a vow are against the same virtue of religion, nevertheless in each there is a specifically diverse malice, since in such an oath the invocation of divine testimony is violated, but in a transgressed vow the fidelity promised to God is violated. One who violates a *sworn pact* likewise commits two sins: one against religion, the other against justice. Finally, one who violates a *vow with a sworn pact* commits three sins because of a threefold violation, namely, of the vow, the pact, and the oath.

You ask: Which obligation is more grave (other things being equal), that of a vow or of an oath? Other things being equal, the obligation of a vow seems to be more grave, since it binds from fidelity toward God; but a promissory oath binds rather from reverence toward God as the guarantor invoked. Fidelity, moreover, seems to be a stricter obligation than simple reverence, since every infidelity contains irreverence, but not conversely.[565]

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[561] Matt. 5:33.

[562] Num. 30:3.

[563] *S. theol.* 2, 2, q. 98, a. 2 ad 4.

[564] Cf. Code of Canon Law, c. 1316, § 2.

[565] *S. theol.* 2, 2, q. 89, a. 8.

450. b) The second part of the stated principle is greatly disputed. All indeed teach that it is a grave sin of perjury if someone culpably does not render grave matter promised by oath; but several distinguished authors, such as Cajetan,[566] Lessius,[567] Valentia,[568] and especially Concina,[569] think that there is no slightness of matter in the violation of a valid promissory oath, because every violation of an oath is perjury and every perjury is a mortal sin. These authors admonish, however, that they speak only of valid oaths made with serious deliberation, and not of those which are made without serious deliberation or an intention of swearing. Hence even they concede that mothers do not sin mortally who promise children under oath an apple which they nevertheless do not afterwards actually give; on the contrary, they say that he sins mortally who seriously and deliberately swore that he would give one obol and afterwards culpably refuses this obol.

The far more common and more probable opinion admits slightness of matter in the violation of a promissory oath. Certainly, if someone swearing *from the beginning* did not will to execute the oath even in light matter, there is a mortal sin of perjury, not indeed because of the matter itself to be rendered, but because of a *lie confirmed by an oath*. But then not only the promissory oath but also the assertory oath is violated; for this man asserts under oath that he wills to give this light matter, and in reality he does not will this. Therefore such a one swearing invokes God as witness to a lie; this is a grave irreverence and consequently a grave sin. But that there is slightness of matter in the violation of a promissory oath is already inferred from the fact that the obligation of a promissory oath is less than the obligation of a vow, as was said above from the Angelic Doctor. But in the violation of a vow there is slightness of matter, as all concede. Therefore, a fortiori, there is slightness of matter in the violation of a promissory oath. Moreover, as St. Thomas[570] says, "one who promises something, if he has the intention of doing what he promises, does not lie, because he does not speak contrary to what he bears in mind; but if he does not do what he promises, then he seems to act unfaithfully by this, that he changes his intention." But infidelity certainly admits slightness of matter, so that in a small thing it is not a grave sin. St. Antoninus,[571] St. Alphonsus,[572] Dominic Soto,[573] John of St. Thomas,[574] Sylvester Prierias,[575] and almost all modern authors[576] defend the proposed opinion concerning slightness of matter in a promissory oath as probable or even as more probable.

Hence, if someone swore to observe the statutes of some college, chapter, or University, and afterwards violated some small statute, he sins only venially; if someone swore that he would no longer drink wine, and afterwards took a little, he does not sin gravely. But what is slightness in the violation of a promissory oath? The same things are to be said as were established above in n. 405 for the violation of a vow; indeed, since an oath, other things being equal, does not bind as strictly as a vow, the matter of transgression in it can be increased somewhat before a grave sin is reached.

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[566] Cajetan (in his *Summa*, s.v. "promissory oath") simply teaches that every violation of a promissory oath is a mortal sin; this doctrine he mitigates somewhat in his Commentary on 2, 2, q. 89, a. 7.

[567] *De iust.* l. 2, c. 42, dub. 5.

[568] *In* 2, 2, disp. 6, q. 7, punct. 3, concl. 3.

[569] *In Decal.* l. 5, diss. 2, c. 1.

[570] *S. theol.* 2, 2, q. 110, a. 3 ad 5.

[571] *S. theol.* P. 2, tit. 10, c. 4, § 1.

[572] *Theol. mor.* l. 3, n. 173.

[573] *De iure et iust.* l. 8, q. 1, a. 7, dub. 1.

[574] *In* 2, 2, q. 88, disp. 29, a. 8.

[575] *Summa Summ.*, s.v. "Iuramentum" 4, q. 1.

[576] Cf. Göpfert, *Moraltheol.* I, 357.

451. Conditions required for inducing an obligation.

The due conditions of a promissory oath for inducing its obligation are similar to the conditions indicated above in n. 392ff. for the validity of a vow; therefore, they are required both on the part of the *matter* and on the part of the *person swearing*.

On the part of the matter it is required that the thing promised by oath be: a) possible; b) good and lawful.

Hence an oath is invalid a) concerning an impossible thing, because no one can bind himself to an impossible thing; b) concerning a dishonorable thing, because otherwise a manifest conflict of duties would arise: for by natural law a man is bound to avoid every dishonorable and unlawful act, but by the oath he would have to perform the same act. Hence Rule of Law 58 in VI° says: "An oath taken against good morals is not obligatory."[577] c) Concerning an entirely vain and useless thing, because every true oath ought to intend the worship of God. But God cannot be worshiped by entirely vain and useless things.[578] Because of inept matter, the oaths of Freemasons, an oath concerning telling a lie, and an oath concerning taking revenge are invalid, for example. The oaths also of parents or masters by which they threaten that they will punish, beat, or cast out their children or servants in such a determinate way are almost always invalid, both because a true intention of swearing is absent and because it is very doubtful whether such an oath concerns apt and useful matter.

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[577] Cf. also c. 1, II 11 in VI°.

[578] Cf. what was said above in n. 400 concerning the matter of a vow.

452. Scholion. On the obligation of an oath of fidelity. A special difficulty can arise concerning the so-called *oath of fidelity*,[579] i.e., an oath of obedience and fidelity which officials, soldiers, and indeed, in certain regions, bishops must take to princes or to the public authority. This oath of fidelity (a legitimate government being supposed) is lawful of itself. If priests or bishops should at any time be compelled to take an oath of this kind, first the concordats in force between the Holy See and the civil power are to be attended to. Then the one swearing neither can nor ought from the virtue of religion to bind himself to observe each and every law, even the unjust laws, of that region, but must always understand the clause: *the laws of God and of the Church being preserved*. For the rest, the meaning of the oath taken is customarily no other than that the priest or bishop wills to undertake nothing against legitimate civil authority and that he intends faithfully to exercise the office entrusted to him. Officials and soldiers are not bound by force of an oath of fidelity to unlawful things, since no one can bind himself before God to an unlawful thing. A soldier who, after making an oath of fidelity, deserts the army certainly sins, unless, however, a) he was unjustly compelled to military service; b) because of military service he is placed in the most urgent danger of eternal salvation. In our times either case can scarcely ever occur if it concerns laymen destined for military service. For dangers to eternal salvation existing in the army can be guarded against by means other than desertion, e.g., by avoiding evil companions or denouncing them to legitimate authority. A soldier who has already deserted the army in an unlawful manner ought not be compelled by a confessor to return to the army, both a) because the most bitter penalties will be inflicted upon him and therefore the fulfillment of the oath has become morally impossible, b) because so grave a loss is not caused to the commonwealth by the desertion of one or another soldier, and c) because the admonition of the confessor would probably be ineffective.[580]

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[579] *Diensteid, Amtseid, Fahneneid* [oath of service, oath of office, military oath].

[580] Cf. above I, n. 301.

453. On the part of the person swearing there are required: a) an intention of swearing; b) sufficient deliberation; c) liberty; d) absence of substantial error.

a) Concerning the intention necessary for the validity of an oath, something has already been said above in n. 441.

b) That deliberation is considered sufficient which is required for a perfectly human act or even for entering an onerous contract. Because of a defect of sufficient deliberation, the oaths of the intoxicated, the demented, the furious, and others lacking the perfect use of reason are invalid.

c) Liberty is required for the validity of an oath, so that an oath extorted by irresistible force or physical violence is altogether invalid.

It was greatly disputed whether an oath made under the influence of grave fear is valid. All indeed agreed that oaths made under the influence of grave fear unjustly inflicted can be rescinded by legitimate authority; likewise, all conceded that one who made an oath from grave fear unjustly inflicted can recover in court the things which he paid because of such an oath. Finally, positive law so establishing, certain oaths made from grave fear are by that fact invalid, e.g., concerning entering betrothals and marriages,[581] and concerning making religious profession.[582] But apart from these cases, the more common and more probable opinion taught that oaths made from grave fear are valid. Thus teach St. Thomas,[583] St. Alphonsus,[584] Dominic Soto,[585] Billuart,[586] Suarez,[587] Lugo,[588] Göpfert,[589] and others. This opinion has now been defined in Code of Canon Law, c. 1317, § 2, which establishes: "An oath extorted by force or grave fear is valid, but can be released by an ecclesiastical superior." On this matter the Angelic Doctor already briefly handed down the whole doctrine:[590] "In an oath which someone makes under compulsion there is a twofold obligation: one indeed by which he is bound to the man to whom he promises something; and such an obligation is removed by compulsion, because the one who inflicted the force deserves this, that the promise not be kept to him. But the other is the obligation by which one is bound to God to fulfill that which he promised by His name; and such an obligation is not removed in the forum of conscience, because he ought rather to sustain temporal loss than to violate the oath."

"He can, however, recover in court what he paid; or denounce the matter to the prelate, notwithstanding that he swore the contrary, because such an oath would tend to a worse outcome, for it would be against public justice."

d) *Substantial error* invalidates an oath in the same way that it invalidates a vow made with such an error; accidental error, however, invalidates neither an oath nor a vow. Cf. what was said above in n. 396 concerning vows made with error.

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[581] Cf. below in the tract on marriage III, n. 719.

[582] C. 1, X 1, 40; Council of Trent, sess. 25, c. 19 *de regularibus.*

[583] *S. theol.* 2, 2, q. 89, a. 7 ad 3, and q. 98, a. 3 ad 1. Cf. above n. 266.

[584] *Theol. mor.* l. 3, n. 174.

[585] *De iure et iust.* l. 8, q. 1, a. 7.

[586] *De relig.* diss. 5, a. 6, § 3.

[587] *De relig.* tr. 5, l. 2, c. 10, n. 4.

[588] *De iust.* disp. 22, n. 194.

[589] *Der Eid*, 288.

[590] *S. theol.* 2, 2, q. 89, a. 3 ad 3.

454. 2. The interpretation of an oath is to be made according to the following three rules:

First rule. A promissory oath is of strict interpretation.[591] The words of an oath are indeed to be understood in their obvious sense; but when a prudent doubt arises, as small an obligation as possible is to be imposed upon the one swearing. The reason is that the one swearing is not considered to have willed to bind himself beyond the strict sense of the words. Nor is it an objection that an oath is to be interpreted in favor of religion, because the more benignly an oath is interpreted, the more rarely it is violated, the more securely it is observed, and the more sacredly religion is preserved.

Second rule. In every promissory oath, however absolutely pronounced, the following conditions and limitations are understood, whether from the nature of the matter, from a provision of positive law, or from custom:

a) "*If I shall be able physically and morally, I shall observe the oath.*" For no one of sound mind wills to bind himself to the impossible.

b) "*The right of the superior being preserved.*" For a subject cannot diminish the right of the superior; but the latter, for a just cause, can release or dispense an oath.

c) "*Unless the other remits my obligation, yielding his right.*"[592] For the principal obligation of an oath arises from the promise made. But if the other remits the obligation of the promise, by that very fact he also remits the obligation of the oath. Hence sworn betrothals can be dissolved by free mutual consent.

d) "*If circumstances have not been notably changed.*"[593] For a notable change supervening produces, as it were, a new object to which the intention of the one swearing is not presumed to have extended; e.g., if a young man promised a girl marriage under oath, nevertheless he is no longer bound to execute the sworn promise if the girl has committed fornication or has fallen into a grave and incurable disease. For the rest, the things which we said above in n. 410 concerning the cessation of a vow because of a notable change of matter apply here.

e) "*If the other has stood by his promises.*" For let faith be broken with one who breaks faith; or, as Rule of Law 75 in VI° says: "In vain does anyone ask that faith be kept with himself by one to whom he refuses to keep the faith pledged by himself."

Third rule. A promissory oath generally follows the nature and conditions of the act to which it is added; therefore, if such an act tends directly to the harm of others or to the prejudice of the common good or of eternal salvation, it obtains no firmness therefrom.[594] The reason is that an oath is assumed for confirming an act by adding an obligation of religion, and therefore it is something accessory to the principal act. But "it is fitting that the accessory follow the nature of the principal," as Rule of Law 42 in VI° says. From this rule it is deduced that one who swore that he would observe the decrees and statutes of some congregation, chapter, or University is not bound to observe all these otherwise than they are observed by the other good members of the same society. Hence those things which are commonly neglected can also be neglected by him; those things which of themselves bind under light sin are not to be observed otherwise because of the oath made; those things which bind from a certain fittingness alone also do not bind more from the oath.[595]

[591] Code of Canon Law, c. 1321.

[592] Ib., c. 1319, n. 1.

[593] Ib., n. 2.

[594] Code of Canon Law, c. 1318.

[595] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 181. Even an oath concerning keeping a secret is understood according to the gravity of the matter, so that the violation of this secret in grave matter is a grave sin; in light matter, a light sin; in matter of no importance, no sin. Cf. Billuart, l.c.

455. 3. The cessation of the obligation of a promissory oath can be produced either by extrinsic causes or by intrinsic causes. From *intrinsic causes* the obligation of an oath ceases in almost the same way as a vow, namely, through a substantial change of matter (as if it has become unlawful or impossible); through the cessation of the essential end (as if someone promised alms by oath to poor Peter, who has now suddenly become rich or has died); through the failure of the condition under which the oath was made.[596]

The *extrinsic causes* which produce the cessation of an oath are:

a) the remission by the other person in whose favor the promise confirmed by oath was made, as is clear from the second rule, letter c), cited above.

b) *invalidation, dispensation, commutation.* Before the Code of Canon Law was published, certain controversies existed concerning this matter. But now c. 1320 simply establishes: "Those who can invalidate, dispense, or commute a vow have the same power and in the same manner concerning a promissory oath; but if the dispensation of an oath tends to the prejudice of others who refuse to remit the obligation, the Apostolic See alone can dispense the oath because of the necessity or utility of the Church." Therefore, e.g., betrothals confirmed by a promissory oath can be dispensed by the Holy See alone, unless, however, both betrothed parties consent to the dissolution of the betrothal. Apart from this oath in favor of a third person, no other seems to be reserved to the Holy See.[597]

c) *Release*,[598] which differs from dispensation in this, that dispensation is customarily granted in favor of the *person swearing*, but release from an oath is commonly imposed because of grave reasons on the part of the one in whose favor the oath was pronounced. This release is similar to the invalidation of an oath, but since it tends to the prejudice of others, it is not exercised except by the Supreme Pontiff,[599] and indeed:

a) for preventing harm to the common good. For a private good ought to yield to the common good. Therefore the Pope releases even sworn betrothals for a grave cause if, e.g., otherwise an unbelieving betrothed man would contract a merely civil marriage or live in concubinage. Certainly the betrothed woman thus abandoned can suffer great harm from such a release, but the Church cannot compel the unbelieving betrothed man to the promised nuptials, and on the other hand, for the sake of the common good, she must avoid merely civil marriages and concubinages as far as possible. b) As punishment for a crime committed. Therefore in ancient times the Supreme Pontiffs more than once released the citizens' oath of fidelity because of the crimes of an excommunicated prince. c) For repairing an injury which was inflicted upon the one swearing, if, namely, he was induced to the oath by fear or fraud.[600]

[596] Cf. what was said above in n. 410 concerning the cessation of a vow, and Code of Canon Law, c. 1319, nn. 2 and 3.

[597] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 259.

[598] *Eideslösung, délier d'un serment* [release from an oath].

[599] Cf. *S. theol.* 2, 2, q. 89, a. 9 ad 3; Code of Canon Law, c. 1320.

[600] *S. theol.*, l.c., a. 7 ad 3.

§ 4. On the Violation of an Oath, or Perjury

456. Definition. Perjury taken in the broad sense is any unlawful oath which, namely, lacks one of the three companions indicated above. *Perjury in the strict sense* (*Meineid*) is a moral lie confirmed by an oath. But perjury is not present if someone under oath asserts an error which he invincibly thinks to be the truth. If someone afterwards culpably does not fulfill a thing seriously promised under a promissory oath, he commits rather a breaking of the oath (*Eidbruch*) than perjury; nevertheless, he can truly be called perjured.

457. Principle 1. An oath pronounced with a defect of truth, or perjury strictly so called, is a mortal sin from its whole genus.

Thus holds the most common and certain opinion. Therefore Innocent XI condemned proposition 24: "To call God as witness to a light lie is not so great an irreverence that on account of it He wills or can condemn a man."[601] And among the questions to be proposed to Wycliffites and Hussites there is also this: "Whether he believes that perjury knowingly committed, from whatever cause or occasion, for the preservation of his own bodily life or that of another, even in favor of the faith, is a mortal sin?"[602] The intrinsic reason is that every perjury is essentially a notable injury and *contempt of God*, who can neither deceive nor be deceived. Therefore the Angelic Doctor[603] says: "Those things which of themselves are venial sins, or even good in genus, if they are done in contempt of God, are mortal sins. Hence much more, whatever by its nature pertains to contempt of God is a mortal sin. But perjury by its nature imports contempt of God.... Hence it is manifest that perjury by reason of itself is a mortal sin.... He who perjures himself in jest does not avoid divine irreverence, but in some respect increases it more, and therefore he is not excused from mortal sin." Therefore, if even a jocose lie confirmed by an oath is a mortal sin, there is no slightness of matter in perjury; consequently, it is a mortal sin from its whole genus, i.e., it always induces the guilt of mortal sin unless there is an imperfection of the act because of insufficient knowledge or will. Since these things are so, it is easily understood why the most severe penalties against the perjured have been enacted by divine, ecclesiastical, and civil law. God Himself threatens the perjured with a curse and exclusion from the kingdom of heaven;[604] the Church excludes the perjured from giving testimony and punishes them at the prudent judgment of the Ordinary;[605] and civil laws are accustomed to punish the perjured with the penalty of grave imprisonment.[606]

Note. He also commits true perjury who swears with a *purely* mental restriction, as is clear from proposition 26 condemned by Innocent XI.[607]

Likewise, a feigned oath seems to be referred to perjury, as was already said above in n. 441.

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[601] Denz., n. 1174.

[602] Denz., n. 664.

[603] *S. theol.* 2, 2, q. 98, a. 3c and ad 2; cf. 3, dist. 39, q. 1, a. 5, sol. 1, where St. Thomas says: "If [someone] swears falsely, I believe that he always sins mortally, whether the oath is solemn or not solemn."

[604] Cf. Zech. 5:3ff.

[605] Code of Canon Law, c. 1757, § 2, n. 1; c. 1795, c. 2; c. 2323.

[606] Cf. Penal Laws for the German Empire, § 153ff.

[607] "If someone ... for any other end whatever should swear that he did not do something which he really did, understanding within himself something else which he did not do, or another way from that in which he did it, or anything else true added, he does not really lie nor is he perjured" (Denz., n. 1176).

458. Principle 2. An oath pronounced with a defect of judgment is from its genus a venial sin. Thus holds the common opinion.

The reason is that the irreverence inflicted upon God in this way does not seem to be so great as to constitute a mortal sin, because no divine attribute is directly violated, and notably not the veracity and justice of God. Moreover, through a defect of the companion of judgment, the principal end of an oath, namely, the confirmation of the truth spoken, is not lost. "Hence," St. Thomas[608] says, "it is not necessary that swearing without cause always be a mortal sin, as is swearing falsely." But accidentally an oath made without judgment can be a mortal sin, e.g., because of grave scandal caused, as if a priest should swear in this way, or because of a proximate danger of perjuring oneself.

[608] 3, dist. 39, q. 1, a. 5, sol. 1 ad 3.

459. Principle 3. An oath pronounced with a defect of justice is from its genus a grave sin.

Enough has already been said concerning this matter above in n. 445; hence it is to be recalled briefly: a) An assertory oath made against justice is a grave sin if the assertion itself was gravely sinful; otherwise it is a light sin, namely, when the assertion itself was lightly sinful.[609] Hence one who confirms a grave unjust detraction by oath commits two mortal sins, namely, detraction and abuse of an oath. But one who confirms a lightly evil detraction by oath commits two light sins: one of light detraction, the other of light abuse of an oath. b) A promissory oath made without justice, i.e., containing an unlawful promise, is certainly a grave sin if the thing promised is gravely unlawful, e.g., adultery, an irreligious marriage, etc. But if the thing promised is in itself lightly evil, e.g., a lie, slight harm, etc., nevertheless, according to the more probable opinion, such an abuse of an oath seems to be so irreverent toward God as to constitute a mortal sin. Hence one who swears that he will commit adultery commits two mortal sins, namely, against chastity and against religion. But one who swears that he will inflict slight harm upon his neighbor commits one light sin, namely, the slight harm intended, and another probably grave sin, namely, the grave abuse of an oath.[610] Thus objectively speaking. In practice, however, judgment must often be otherwise, both because of a defect of a true intention of swearing and because of the erroneous conscience of the one swearing.

[609] There are those who teach (e.g., Noldin, *De praec.* n. 255) that an assertory oath which lacks justice is always a venial sin from its genus.

[610] Cf. Ballerini in the notes to Gury (*Comp. theol. mor.* I, n. 309), who endeavors well to reconcile the diverse authors apparently disagreeing on this matter.

Article VI. On Adjuration

460. Definition. Adjuration is the interposition of the divine name or of a sacred thing, by reverence, fear, or love of which the person adjured is induced to do or omit something.[611]

Adjuration therefore differs from other invocations of the name of God: first, from an oath, in which God is invoked as witness or guarantor for confirming some truth; but in adjuration the divine name is invoked to obtain something from another. Adjuration likewise differs from prayer, in which God is invoked to obtain something directly from Him; but in adjuration the one adjuring endeavors to obtain something from another on account of God. Adjuration is an act of religion, since through it we profess that the divine name is so

venerable that, when it is heard, others are induced to do or omit something. Adjuration is an act of *latria* when it is made by the direct interposition of the name of God, or at least of some thing in which the divine majesty especially shines forth, e.g., by the Passion, death, or blood of Christ. Adjuration is an act of *hyperdulia* or *dulia* insofar as it is made by the Blessed Virgin or the saints considered in themselves. But if it is made by the death, life, or love of a father or mother, etc., it is not properly a religious adjuration.

All who have some knowledge of God can be adjured, namely, God Himself, Christ, the Blessed Virgin, the saints, wayfaring men, and finally demons; to the latter, however, only a compulsive adjuration can be directed, as will be said below.

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[611] Cf. *S. theol.* 2, 2, q. 90, a. 1. Adjuration, in German: *Beschwörung*.

461. Divisions. Adjuration is divided:

1. Into *solemn* and *simple* (or private).

A solemn adjuration is one made in the name of the Church by ministers of the Church according to prescribed ceremonies, e.g., the exorcism employed in baptism. A simple or private adjuration lacks solemnities of this kind and can be made by anyone.

2. Into *deprecatory* and *imperative* (or compulsive).

A deprecatory adjuration exists when by prayers we strive to obtain something, with the name of God interposed. Thus St. Paul adjured the faithful Romans, saying: "I beseech you therefore, brethren, by the mercy of God, that you present your bodies a living sacrifice, holy, pleasing unto God."[612] Adjuration of this kind also occurs frequently in the Litanies, e.g., "By the mystery of Thy Incarnation, by Thy Passion, deliver us, O Lord." But then they are called rather *obsecrations*.[613] A deprecatory adjuration can be directed to any person, whether superior, inferior, or equal, with the demon alone excepted.

An imperative adjuration exists when, with the name of God interposed, something is commanded only to subjects. Thus St. Paul adjured the Thessalonians, saying: "I charge you by the Lord that this epistle be read to all the holy brethren."[614] Thus the prince of the priests adjured Christ Himself, considering Him as his subject: "I adjure Thee by the living God that Thou tell us if Thou be the Christ."[615] Thus demons especially are adjured in an exorcism.

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[612] Rom. 12:1.

[613] Cf. above, n. 337.

[614] 1 Thess. 5:27.

[615] Matt. 26:63.

462. Principle. Adjuration clothed with the due conditions is an act of the virtue of religion and therefore is licit and lawful.

That a right adjuration is an act of the virtue of religion is easily understood, because through it we venerate God by interposing His authority as most efficacious for obtaining the things requested. But if adjuration is an act of religion, it is also clear that it is in itself licit and lawful. The same is clear from the perpetual use and doctrine of the Church.

The conditions required for the lawfulness of an adjuration are the same as for a lawful oath, namely, truth, justice, judgment.

a) *Truth* in adjuration requires that the one adjuring have a sincere will to obtain the thing requested and that he present a true and not feigned cause for his request; or briefly: that the one adjuring not deceive the person adjured. The absence of this condition rarely exceeds venial guilt. Hence a man who pretends to be poor and adjures a rich man by the divine mercy in order to obtain alms ordinarily sins only venially. For although he abuses divine authority to render his unjust petitions efficacious, nevertheless this abuse does not yet seem of itself to be a grave sin, because divine authority is employed not to confirm a lie but to move another to perform a good work. If, however, the pretense itself concerns grave matter and is consequently a grave sin, then, according to certain authors, even the adjuration employed to put such a pretense into execution is a grave sin.

b) *Justice* demands that the one adjuring intend to obtain a lawful thing. A defect of justice in adjuration is more probably a grave or light sin according as the action requested is gravely or lightly evil. Hence he commits two mortal sins who adjures a simple and ignorant girl by the love of God to commit fornication; but he who adjures another by the love of God to tell a jocose lie commits two venial sins. St. Alphonsus[616] thinks that even in this last case there is a grave sin because of the abuse of adjuration, since it seems to be a sufficiently grave irreverence to induce another to an evil thing by the aid of divine authority.

c) *Judgment* requires that adjuration be made for a just cause and with due reverence, and not, as it were, from a disorderly habit. A defect of this condition is of itself only a venial sin, because not so great an irreverence is thereby inflicted upon God, and because such an adjuration seems to be nothing other than a vain assumption of the name of God. Beggars who always add adjurations to their petitions often sin venially through a defect of this condition.

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[616] *Theol. mor.* l. 3, n. 193.

463. Scholion 1. On exorcisms. An exorcism properly so called is the expulsion of the devil from an obsessed man; broadly so called, it is the annulment of diabolical influence in some other creature. That the devil can, God permitting, truly besiege a man and dwell in him is of faith, since Christ Himself often cast the devil out of men thus obsessed. Hence there also exists in the Church a special order of exorcists for casting out demons. When a solemn exorcism is employed publicly, all those things which the *Roman Ritual*[617] prescribes concerning this matter are to be observed. Before all things, however, the express and special permission of the Ordinary is required,[618] whose office it is to judge whether a diabolical obsession is truly present and whether it is expedient to perform a public exorcism. For great scandal can arise from a public exorcism imprudently employed. But privately and secretly, not only clerics who by force of the order of exorcist possess special power over demons, but also laymen, can pronounce an exorcism. For this is nowhere prohibited to laymen, nor does any inconvenience arise from it. Hence we read in history that certain lay saints, such as St. Catherine of Siena and St. Anthony the Hermit, cast out demons.

An exorcism duly pronounced, even by a priest or by a bishop, does not have an infallible effect, at least a complete one, i.e., the complete expulsion of the devil from an obsessed man. Therefore the words of Sacred Scripture, "These signs shall follow them that believe: In My name they shall cast out devils; they shall speak with new tongues,"[619] do not signify that all believers can always and immediately cast out demons, but that they can do so when the progress of the Gospel shall demand it; just as all believers cannot always speak with new tongues either. Nevertheless, with St. Alphonsus[620] and several other authors, it must be admitted that an

exorcism pronounced by a cleric marked with the order of exorcist produces *ex opere operato* at least an attenuation of the powers of the obsessing demon.

An exorcism *broadly so called* is employed in baptism; indeed, irrational creatures are sometimes thus exorcised, e.g., salt, water, clouds, so that diabolical influence may be averted from them. For the Church deservedly supposes that the devil sometimes, God permitting, greatly harms man both immediately by himself and through the mediation of irrational creatures. Therefore Noldin[621] rightly says: "It is greatly to be recommended to ministers of the Church that they perform a simple exorcism more frequently, mindful of the word of the Lord: 'In My name they shall cast out devils'; but especially over those who are troubled by a vehement temptation, and over penitents whom they notice to experience difficulties in eliciting sorrow and a purpose concerning their sins or in sincerely manifesting their sins. They can use this or a similar formula: 'In the name of Jesus I command thee, unclean spirit, to depart from this creature of God.'" Experience proves that an exorcism is sometimes employed with good fruit in the confessional, provided that it is done in an entirely secret manner, so that not even the penitent notices it.

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[617] Tit. II, c. 1.

[618] Cf. decree of Leo XIII, 18 May 1890 (*Collect. de Prop. Fide*, n. 2303); Code of Canon Law, c. 1151, § 1.

[619] Mark 16:17.

[620] *Theol. mor.* l. 3, n. 193.

[621] *De sacr.* n. 53, note 3.

464. Scholion 2. On the invocation of the divine name through praise. The Angelic Doctor[622] treats of this matter immediately after adjuration. Let the following be said briefly: God is to be praised not only with the heart but also with the mouth, because a) this pertains to the external worship of religion, and b) thereby we ourselves and others hearing are induced to greater reverence for God. This praise is very fittingly expressed by beautiful and becoming song. The contrary doctrine of the Waldenses and Wycliffites, who compared clerics singing with the prophets of Baal, has been rejected by the ecclesiastical practice of all centuries. And indeed, singing performed worthily and devoutly in church serves greatly for increasing devotion. Hence St. Augustine[623] says concerning himself: "I wept in hymns and canticles, deeply moved by the voices of Thy Church sweetly sounding." Cajetan[624] rightly admonishes that two things are to be guarded against in ecclesiastical singing: namely, that it not be sung as though the song itself according to itself were more pleasing to God; and that it not be sung for the sake of our own or another's delight in ecclesiastical Offices.

The use of organs and other musical instruments had not yet been introduced into ecclesiastical Offices in ancient times.[625] When organs were first introduced is not so certain. Some say that this was done in the time of Charlemagne; but, as appears sufficiently clearly from *S. theol.* 2, 2, q. 91, a. 2 ad 4, in the times of St. Thomas the use of organs was not yet universal in all churches. Pius X issued excellent statutes concerning ecclesiastical singing in the motu proprio of 22 Nov. 1903.

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[622] *S. theol.* 2, 2, q. 91.

[623] *Confess.* 9, 6 (Migne, *Patr. lat.* 32, 769).

[624] Commentary on 2, 2, q. 91.

[625] Cf. Wetzer and Welte, *Kirchenlexikon*, s.v. "Orgel" [Organ].

Article VII. On the Observance of Sunday and Feast Days

Preliminary Note. Since this article is rather long, it is divided into four sections: 1. on the nature and origin of this worship; 2. on the utility of this worship; 3. on hearing Mass, which is the first part of this worship; 4. on cessation from servile works, which is the other part of this worship.

This article treats of all those things which are prescribed both in the third precept of the Decalogue: "Remember that thou keep holy the sabbath day,"[626] and in the first precept of the Church concerning the observance of feast days.

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[626] Ex. 20:8.

§ 1. On the Nature and Origin of the Worship to Be Rendered on Sundays and Feast Days

465. The observance of Sunday and feast days is deservedly numbered among the principal external acts of the virtue of religion. Now the precept of sanctifying Sundays and feast days is partly of natural law, partly of positive divine law, and partly of ecclesiastical law.

a) The precept is indeed of natural law insofar as it commands that some time be allotted to divine worship, and not only to private worship, but also to public and social worship. For there is in man a natural inclination to allot some time to every necessary thing, just as a determined time is allotted, for example, to bodily refreshment and sleep.[627] Internal and external, private and public divine worship is altogether necessary for man, as was said above in n. 327. Therefore natural law itself demands that a determined time be allotted to divine worship. Hence there has never been any nation so uncultivated or so barbarous that it did not consecrate feast days to its gods.[628]

b) The precept of observing Sunday is of positive divine law insofar as it commands that on one day of each week there be cessation from every servile work in praise of the Creator.[629]

c) Finally, this precept is of ecclesiastical law insofar as it has been determined by the Church alone on which fixed days and in what ways God is to be worshiped. Hence St. Thomas[630] says: "The observance of Sunday in the New Law succeeds the observance of the sabbath, not by force of a precept of the law, but from the constitution of the Church and the custom of the Christian people."

It cannot be proved that Sunday was instituted by divine law (Sporer-Bierbaum[631] almost alone teaches this). In the earliest times the apostles seem to have assembled in the temple to praise God not on Sunday but on the sabbath;[632] this indeed is a most manifest sign that the sanctification of Sunday was not instituted by Christ Himself; for otherwise the apostles would certainly have obeyed the command of their Lord. But when Sunday first began to be sanctified in place of the sabbath is not so certainly established. Several authors teach that the apostles themselves introduced this practice. Thus St. John says: "I was in the spirit on the Lord's day."[633] St. Luke relates:[634] "And on the first day of the week, when we were assembled to break bread," that is, according to the meaning of this phrase: on the first day after the sabbath, or our Sunday. Hence St. Augustine already says of this text:[635] "The first day of the week is called the day which is now called the Lord's day." By the second century the sanctification of Sunday seems already to have been universal.[636] The reasons why Sunday was sanctified in place of the sabbath are indicated in this manner by St. Leo I:[637] "On this day the world took its beginning. On this day, through the Resurrection of Christ, death received its destruction and life its beginning. On this day the apostles receive from the Lord the trumpet of the Gospel to be preached to all nations, and receive the sacrament of regeneration to be brought into the whole world.... On this day, finally, the Holy Spirit promised by the Lord came."

[627] *S. theol.* 2, 2, q. 122, a. 4 ad 1.

[628] Cf. *Catech. Rom.* P. 3, c. 4, q. 6.

[629] Thus rightly Fr. Schmid in *Linzer Theol.-prakt. Quartalschrift* 1900, 12-26; Noldin, *De praeceptis* n. 260; Tanquerey, *De virt. relig.* n. 1011; Göpfert, *Moraltheol.* I, 338. For God Himself selected every seventh day as assigned to divine worship: "Six days shalt thou work, and shalt do all thy works. But on the seventh day is the sabbath of the Lord thy God: thou shalt do no work on it, thou and thy son and thy daughter, thy manservant and thy maidservant, thy beast and the stranger who is within thy gates" (Ex. 20:9ff.). If it had not been established by divine law that on every seventh day there be cessation from servile work in honor of God, then, absolutely speaking, the Church could define that throughout the world Sunday rest be had every tenth or twentieth day; this, however, is not commonly admitted.

[630] *L.c.*, ad 4.

[631] *Theol. mor.* tract. 3, n. 484.

[632] Cf. Acts 3:1; 5:12.

[633] Apoc. 1:10.

[634] Acts 20:7.

[635] Ep. 55 (al. 119), in Migne, *Patr. lat.* 33, 212.

[636] St. Ignatius admonishes: "Let us no longer sabbatize in the Jewish manner.... But after the sabbath let every lover of Christ celebrate the Lord's day" (*Ep. ad Magnes.*, in Migne, *Patr. graec.* 5, 768ff.). Cf. also *Didache* c. 14.

[637] *Ep. ad Diosc.* (Migne, *Patr. lat.* 54, 626).

466. Corollary. From what has been said it follows in what sense the sanctification of Sunday and feast days pertains to the third precept of the Decalogue, and in what sense it pertains to the first precept of the Church. For the precept of worshiping God on fixed days by cessation from servile work is prescribed by divine-natural law, and consequently by the Decalogue. Probably it is also contained in the precept of the Decalogue that on every week some day of rest be observed in honor of God. But the selection of Sunday in place of the sabbath, as well as the special manner of sanctifying Sunday by hearing Mass, the sanctification of other feast days, and the determined manner of ceasing from servile work: all these things pertain to the first precept of the Church. For the sake of brevity and also of clarity, the observance of Sunday and feast days according to both natural-divine law and ecclesiastical law is treated together here, as we have already said above.

467. The scope of the precept of sanctifying Sundays and feast days is discerned by considering 1. the persons obligated, 2. the days to be sanctified, and 3. the works to be performed.

1. What persons are obligated by this precept?

This precept binds under grave sin all baptized persons possessing the use of reason after the first seven years of age. Hence the proposition (52) was condemned by Innocent XI: "The precept of observing feast days does not bind under mortal sin, scandal being set aside, provided contempt is absent."[638] But since this precept binds all baptized Christians possessing the use of reason after the first seven years of age, it also binds Protestants and other heretics, since they are subjects of the precepts of the Church. Nevertheless, it may rightly be supposed that our pious Mother the Church does not wish to urge this obligation for them with exact rigor; and consequently, when heretics return to the bosom of the Church, they are not to be accused of as many mortal sins as the times they applied themselves to servile labors on Sundays and feast days, provided, however, that they satisfied the precept of natural law to worship God externally at some time.

2. What days are to be sanctified?

[638] Denz. n. 1202.

468. Besides Sunday, the Church commanded several other days to be celebrated during the course of the year; the list of these presented by Urban VIII was afterward increased by one feast by Clement XI.[639]

According to the discipline now in force, however, feast days under precept in the universal Church are only: each and every Sunday, and in addition ten feasts, namely, the Nativity, Circumcision, Epiphany, Ascension, and the Most Holy Body of Christ; the Immaculate Conception and Assumption of the Blessed Mary, Mother of God; St. Joseph, her Spouse; the Blessed Apostles Peter and Paul; and, finally, All Saints. "Wherever any feast among those enumerated has been legitimately abolished or transferred, let nothing be changed without consultation with the Holy Apostolic See."[640] "But if in any nation or region the bishops judge that any one of the abrogated feasts ought to be retained, let them refer the matter to the Holy See."[641] Therefore those statutes concerning the celebration of feasts which were made for certain regions remain in use, for example, for France, where the feasts (apart from Sundays) have been reduced to four, namely, the Nativity and Ascension of the Lord, the Assumption of the Blessed Virgin Mary, and the feast of All Saints. Particular statutes are also had for England, Ireland, and North America. Pius X expressly declared that the suppression of feasts concerns the faithful only as regards the obligation of hearing Mass and abstaining from servile works; on the contrary, the obligation of applying Mass for the people and solemnly celebrating the Offices in church according to the former discipline remains.[642]

3. What is to be performed on feast days?

[639] Const. *Universa*, 13 Sept. 1642.

[640] Code of Canon Law, c. 1247, §§ 1 and 3.

[641] Motu proprio of Pius X *Supremi*, 2 July 1911 (cf. *Acta Ap. Sedis* III, 305ff.).

[642] Cf. Sacred Congregation of the Council, 3 May 1912 (*Acta Ap. Sedis* IV, 340).

469. On all Sundays and non-suppressed feast days the faithful are bound to two things: a) to hear Mass, because the Sacrifice of the Mass is the most excellent of all acts of worshiping God; b) to abstain from servile and forensic works, because these works are accustomed to hinder a man from applying his mind perfectly to divine worship.

The precept of hearing Mass seems to have been in force from the beginning of the Church, as is indicated not obscurely by the celebrated text in *Didache* c. 14: "But on the Lord's day, having assembled, break bread and give thanks, after you have confessed your sins, that your sacrifice may be clean." The so-called Canons of the Apostles and the Council of Agde presuppose the existence of this precept. In canon 10 it is had: "Let all the faithful who assemble in church for the sacred solemnities hear both the Scriptures of the apostles and the Gospel. But those who do not persevere in prayer until Mass is completed, nor receive Holy Communion, ought to be deprived of communion as persons causing disturbances in the Church."[643] The Council of Agde (a. 506) speaks still more clearly:[644] "By a special ordinance we command secular persons to hear the whole Mass on Sunday, so that the people do not presume to depart before the priest's blessing." The precept of abstaining from servile works on Sunday likewise seems always to have been in force in the Church. The Emperor Constantine sanctioned Sunday rest also by civil penalties.[645]

[643] Thus c. 61, D. 1 *de consecr.*

[644] Thus c. 64, D. 1 *de consecr.*

[645] Cf., for a historical exposition, Tanquerey, *De virt. relig.* n. 1006ff., and Theod. Zahn, *Geschichte des Sonntags vornehmlich in der alten Kirche* (1894), 196-240.

470. Besides hearing Mass and abstaining from servile and forensic works, the faithful are bound to nothing else by strict ecclesiastical law. Therefore there is no obligation of ecclesiastical law to hear a sermon or catechetical instruction, to assist at Vespers and other devotions, and much less to assist at the sermon and other Offices in the parish church. Nevertheless, an obligation of natural law to assist at a sermon, catechetical instruction, and other religious exercises can easily be present, for example, for the sake of fostering the interior spirit of devotion, acquiring and preserving sufficient knowledge of matters of faith and morals, and avoiding scandal. Wherefore the faithful are to be earnestly exhorted not to be content with hearing a private Mass, but also to assist on Sundays and feast days at a sermon or catechetical instruction and other religious exercises. Certain authors wished to prove the existence of an ecclesiastical precept of hearing a sermon in the parish church from the fact that the Council of Trent[646] ordered pastors to exercise the office of preaching on Sundays and feast days. For if pastors are bound to preach, parishioners must hear their preaching. Other authors, however, most commonly teach that the Tridentine precept contains nothing other than that pastors are bound to provide parishioners an opportunity to hear the word of God in the parish church. But the parishioners are not strictly bound to assist at this preaching.

[646] Sess. 24, c. 4 *de reform.*

§ 2. On the Utility of the Sanctification of Sunday and Feast Days

471. Alas, sad experience demonstrates more than sufficiently that, in those regions and families in which the sanctification of Sunday and feast days is little esteemed, faith soon vanishes, morals become corrupt, family life perishes, and even industrial progress is impeded. On the contrary, the due sanctification of Sunday and feast days produces the greatest benefits. For through it there is produced:

472. 1. The preservation of man's natural powers.

The physical powers of man, since they are limited, are quickly consumed unless they are restored by at least weekly rest. This rest is obtained much more certainly and efficaciously if determined days are appointed at fixed intervals, on which not only ordinary labors are interrupted, but spiritual refreshment also is furnished through religious worship. Certainly a man could also choose a day of rest of his own accord and worship God in a private manner, but this end is attained much more efficaciously if a determined day is established for all men by ecclesiastical and civil law. For by the force of the unavoidable competition existing everywhere, many men (especially laborers and artisans) would be compelled to labor more than is just, so that no time of rest would remain, if the law itself did not command Sunday and feast-day rest.

473. 2. A precious aid for the whole spiritual life.[647]

For man, oppressed by continual labors to sustain himself and his own, often distracted by various cares and anxieties, and enticed by many pleasures, gradually becomes totally immersed in material things; as the sad experience of all ages and peoples, among whom the faithful practice of religion was neglected, demonstrates. Witnesses are the ancient pagans, whose detestable vices and altogether irrational life St. Paul describes so graphically.[648] "Bread and Circuses" cried those pagans, thus manifesting that they desired nothing other than sustenance and pleasure. But if on Sundays and feast days all are bound by force of law to cease from servile works and apply themselves to religious exercises, hearts are raised above matter to spiritual and heavenly things. After Sunday rest has been duly completed, men return eagerly, equipped with new powers of mind

and body, to their daily labors, which they perform with greater energy. Hence it has happened that those peoples who faithfully observe Sunday rest are accustomed to surpass, even in commerce and industrial affairs, other nations which are accustomed to make little of the observance of Sunday. Therefore Sunday rest in no way impedes even the industrial progress of peoples. To this is added that, through religious exercises performed on Sundays and feast days, the moral and religious life of man is efficaciously promoted. Through sermons heard concerning matters of religion and morals, and through graces received in religious exercises, man is greatly assisted to detest vices and to lead a well-ordered life.

[647] Cf. Tanquerey, *l.c.*, n. 1014, and Gilfillan, *The Sabbath Viewed in the Light of Reason, Revelation, and History.* Edinburgh, 1867.

[648] Rom. 1:21ff.

474. 3. The integrity of family life is fostered.

For the various members of a family are often compelled to occupy themselves with different labors throughout the entire week. Spouses are separated from one another, and parents from their children; but when they are reunited in the evening hours after their labors have been completed, they generally cannot, being tired in their powers, sufficiently enjoy the consolations of domestic life. But if Sunday rest is well observed, then all the members of the family can converse pleasantly together at least once in the week and foster mutual love. Especially, the good education of children is almost impossible without Sunday rest. For unless children are incited by the example of their parents to religious worship, they scarcely, if indeed at all, guard against irreligion and bad morals.

475. 4. The propagation of social worship, and even of the true Church herself, is obtained.

Christ founded a visible Church and consequently also requires visible worship performed by His Church. Such worship is social, that is, it must be performed by ecclesiastical society. Further, it is impossible for social worship to be completed in the due manner unless all the faithful are bound to assemble in churches at determined times. Moreover, it is very fitting and efficacious that such assemblies take place on Sundays and feast days, as perpetual experience demonstrates. It is likewise evident how good an influence religious services performed in our churches on Sundays and feast days exercise even upon non-Catholics who may be present. Therefore very many conversions have taken their beginning from attendance rendered at religious services. Thus the true Church is propagated through the social worship of Sunday and feast days.

From these things it is apparent that every effort must be made so that the observance of Sunday and feast days may take root more and more in the Christian people. Hence those associations founded for the protection of Sunday rest are to be fostered; hence civil laws already in force in several kingdoms concerning the observance of Sunday are to be commended; hence violators of Sunday rest are to be prudently admonished, and indeed, if they cause public scandal, they are to be denounced to the competent superior; hence, finally, let each person, by most religiously observing the Sunday precept, furnish a good example to others and procure spiritual profit for himself.

§ 3. On the Precept of Hearing Mass

The requisites for satisfying this grave precept and the excusing causes will be treated. Four things are required for satisfying the precept of hearing Mass, namely: 1. bodily presence; 2. an entire Mass; 3. religious assistance; 4. a due place.

476. The gravity and scope of this precept. Since the precept of hearing Mass is an essential part of the precept of observing Sunday and feast days, without any doubt it binds under grave sin, so that its violation is

a mortal sin from its genus. This is also evident from proposition 52 condemned by Innocent XI and already cited above in n. 467. All the faithful of either sex, when after the first seven years of age they possess the use of reason, are obligated to hear Mass on Sundays and feast days. Therefore infants and the insane who lack the use of reason are exempt. Hence a child who after the age of seven has not yet attained the use of reason is not bound to hear Sunday Mass; but if he has certainly acquired the use of reason before the age of seven, he is not in himself bound to assist at Mass, since it has been established generally that those who, although they have attained the use of reason, have not yet completed their seventh year of age are not bound by merely ecclesiastical laws, unless the law expressly provides otherwise.[649] In practice, however, parents are to be admonished to bring their children to Mass as soon as possible. The precept of hearing Mass also binds clerics, as is evident of itself; but a priest celebrating Mass (even in a private oratory) by that very fact satisfies this precept. The same seems to hold for the server of the Mass.

[649] Code of Canon Law, c. 12.

477. 1. Bodily presence is the first requisite of the Sunday precept. This presence is judged to be sufficiently present when the person hearing Mass is morally united with the celebrant, so that it can truly be said that the one assisting has morally heard Mass and offered the Sacrifice with the celebrant. Therefore the following satisfy the precept as regards bodily presence:

a) all who are *within the church*, even if they stand in a side chapel or behind a column, where they can neither see nor hear the priest celebrating, provided, however, that from the sound of the bell or from the signs of others who stand nearer to the Mass they perceive in some manner what is being done by the celebrant;[650]

b) also those who stand *outside the church* near the door (even a closed door), and indeed even in a neighboring house, provided they can still perceive the ceremonies in some manner. Lugo[651] and, after him, several others limit this by saying: provided that house is not more than thirty paces distant from the church; but in reality this cannot be determined mathematically. For if someone truly can attend religiously to the ceremonies of Mass, and there is a true moral union with the celebrant, sufficient moral presence seems to be present. Besides, this manner of assisting from a neighboring house and generally from a place outside the church cannot be permitted without a reasonable cause, for example, sickness. Sufficient bodily presence certainly does not seem to be present if someone hears Mass by means of the new invention which is called "Radio."

[650] Cf. St. Alphonsus, *l.c.*, n. 312.

[651] *De euchar.* disp. 22, n. 21.

478. 2. Presence must continue during the entire Mass, that is, from the beginning of Mass through the priest's blessing inclusively. The Last Gospel does not seem to pertain to the integrity of the Mass. Hence it is said in the text of the Council of Agde cited above:[652] "By a special ordinance we command secular persons to hear the whole Mass on Sunday, so that the people do not presume to depart before the priest's blessing. But if they should do so, let them be publicly confounded by the bishop." The reason is that in the ancient liturgies of the East and West no Gospel was read after the priest's blessing.[653] But since, according to the universal liturgy now in force, the Gospel of St. John (or another Gospel) is always read at the end of Mass, it is irreverent if the faithful depart immediately after the priest's blessing without a sufficient reason. On the Nativity of the Lord and on other days[654] on which priests can celebrate three Masses by common or particular law, the faithful are strictly bound to hear only one Mass. One who cannot assist at an entire Mass is bound at least to be present at an essential part, for example, the consecration or Communion, if this is possible. But

one who is able to assist only at an accidental part, for example, through the Gospel, is bound to nothing. Therefore one who arrives before the consecration and cannot assist at another Mass is bound at least to remain until the end of Mass. But one who arrives after the consecration, according to several casuists, is no longer bound to assist at the remaining part. St. Alphonsus,[655] however, asserts: "We say that he is indeed obligated to hear the remaining part of the Mass; for one who certainly cannot fulfill the precept imposed is bound at least, if he can, to fulfill it probably." Besides, all those things which follow after the consecration until the end are certainly a notable and essential part of the Mass, and consequently one who can hear that part is also bound to do so.

All teach that one who culpably does not hear a notable part of Mass sins gravely. But the casuists disagree greatly about what part is truly notable, although they agree on two things: 1. The notability of a part is to be judged not only from its duration, but especially from its dignity. Hence, if someone culpably omits the consecration and Communion, although he hears all the other parts, he certainly sins gravely, because he did not hear a notable part of Mass according to dignity. 2. Generally, one third of the Mass is judged a notable part and grave matter.[656] Among the many diverse opinions reviewed by St. Alphonsus,[657] the following are rather commonly admitted today:

The omission is judged *light*: everything from the beginning of Mass up to, but not including, the Offertory; likewise, everything after Communion; likewise, everything from the beginning through the Epistle together with everything which follows Communion.[658]

The omission is judged *grave*: everything from the beginning through the Offertory inclusively; likewise, everything from the beginning through the Gospel together with those things which follow Communion;[659] likewise, from the Preface until after the consecration; likewise, from the consecration through the *Agnus Dei*, etc.

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[652] c. 64, D. 1, *de consecratione*.

[653] Cf. concerning this matter Thalhofer, *Handbuch der kathol. Liturgie* II (1912), § 40.

[654] The Day of the Commemoration of All the Faithful Departed. Code of Canon Law, c. 806.

[655] *Homo apost.* tr. 6, n. 33; cf. also *Theol. mor.* l. 3, n. 310.

[656] Thus St. Antoninus, *S. theol.* P. 2, tit. 9, c. 10, § 1.

[657] *L.c.*

[658] Cf. Lehmkuhl, *Theol. mor.* I, n. 718; Tanquerey, *De virt. relig.* n. 1023; Noldin, *De praeceptis* n. 265; Göpfert, *Moraltheol.* I, 344.

[659] Al. Piscetta, *Theol. mor.* II, n. 237, thinks this omission is light.

479. Casuists are accustomed to ask here whether one satisfies the precept who, from two Masses, hears those parts which, joined together, constitute a whole Mass. For example, Peter arrives at church when Mass has already proceeded as far as the Canon; he assists at this Mass until the end; then from another Mass he hears everything through the Canon. Authors commonly teach: If the consecration and Communion are had *in the same Mass*, the precept is satisfied in this way; but not if the consecration and Communion do not pertain to the same Mass. The reason is that the consecration and Communion constitute the essence of the Mass.[660] Therefore, if someone heard these parts in the same Mass, he had the essence of the Sacrifice; but if he heard the consecration and Communion from different Masses, he had the essence from neither Mass. Certainly, however, one does not satisfy the precept of hearing Mass who hears two or more parts of Masses celebrated *simultaneously* by different priests. This is established from proposition 53 condemned by Innocent XI: "He

satisfies the precept of the Church concerning hearing Mass who hears two of its parts, or indeed four, simultaneously from different celebrants."[661]

From what has been said, certain practical resolutions follow:

You will resolve: a) Peter arrives after the Gospel has already been said. He is bound under light sin afterward to supply from another Mass the part of the Mass already said. Even a light inconvenience excuses from this supplementation.

b) Peter arrives at church after the Offertory has already been completed. He is bound either to remain until the end of this Mass and then hear from another Mass everything through the Offertory inclusively, or, having left the first Mass, to hear another whole Mass. This obligation is grave, and only a grave inconvenience excuses from it.

c) Peter arrives after the consecration. He is bound to hear another entire Mass; if he cannot do this, he is bound at least to remain at this Mass until the end, as was said above from St. Alphonsus.

Things to be noted for practice. In order to render a correct judgment concerning the gravity of the sin of those who approach the church after Mass has already begun, or who depart before Mass has been finished, attention is to be given not only to the material part omitted, but especially to their negligence and perverse will, namely, whether this was done without any sufficient reason, whether with great or slight negligence, and whether they could have heard another entire Mass. When there was grave negligence and a notable part was omitted, there is also a grave sin. If either of these is absent, grave sin also is absent.

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[660] Thus also St. Alphonsus (*l.c.*, n. 311), who adduces and refutes several other opinions on this matter. There are several authors who reject the proposed opinion, especially Concina (*De praec. Eccl.* l. 1, diss. 3, c. 2, n. 6), citing Suárez and Azor for his opinion.

[661] Denz. n. 1203. Diana, Bonacina, Busembaum, etc., held this proposition at least as probable; cf. St. Alphonsus, *l.c.* 3, n. 311.

480. 3. Religious assistance is commanded. Merely physical presence during Mass does not suffice; otherwise one who slept deeply throughout the whole Mass would also satisfy the precept, which certainly no one will say. For a truly religious act is prescribed, which cannot be had without at least some religious intention and attention.

a) First of all, a due *intention* is required, namely, of worshiping God or hearing Mass.[662] Wherefore one does not satisfy the precept who, for example, approaches the church solely to hear the music or to accompany another. But I say: solely for that or another profane end; for if, besides the end, although principal, the true worship of God is still intended, the precept is satisfied. Hence a young man who approaches Mass principally from fear of his parents or from the motive of seeing a girl, but at the same time wishes to satisfy the precept, truly satisfies it, although he sins because of the perverse principal motive. Thus the common opinion.[663]

b) Next, due *attention* is required. Those things which were said above in n. 354 concerning the diverse modes of attention are to be recalled. To satisfy the precept of hearing Mass, external attention is certainly required, that is, the omission of an external work incompatible with internal attention. Thus all teach. Wherefore one does not satisfy the precept who during a notable part of Mass attentively reads profane books for the sake of study or recreation, who writes, who converses during almost the whole Mass, who sleeps during a notable part of Mass, etc. But one who merely dozes sleepily satisfies the precept, because he has at least imperfect attention. According to several followers of Lugo,[664] no internal attention is required by the precept of the Church, but external attention suffices, so that even one who is voluntarily distracted during the whole Mass and thinks about very sinful things nevertheless satisfies the precept.[665] Their reason is that nothing other

than the worship of God is commanded by the Church. But the worship of God can subsist even with voluntary distraction. Therefore someone can satisfy the ecclesiastical precept even if he is voluntarily distracted. Moreover, they say, prayer itself does not necessarily require anything other than external attention. Therefore, *a fortiori*, external attention suffices for hearing Mass. According to St. Alphonsus,[666] however, and many other authors, it is more probable that, in addition to external attention, at least some imperfect internal attention to the essential parts of Mass is required. And in truth, both arguments of the opposite opinion seem to be futile. For above in n. 355 we already proved that true moral prayer is impossible with voluntary distraction. Indeed, to will to elevate the mind to God through prayer, and at the same time directly to will to direct the mind to something altogether disparate, seems to be impossible and to imply a contradiction. Next, the true worship of God does not seem able to coexist with wholly voluntary distraction during Mass. For every rightly instructed Christian knows that wholly voluntary distractions during Mass are sinful, especially if the thoughts concern unlawful objects. How, then, can one and the same man will to worship God and at the same time explicitly will to be distracted and consequently to offend God? Therefore I think that voluntary distraction destroys the very intention of worshiping God. Nevertheless, in practice so great a difference does not exist between the two opinions; for it is scarcely possible that someone should will to hear Mass and nevertheless also will to be distracted throughout the whole Mass. Therefore, by force of the initial intention, some internal attention already seems to be present. Now the second opinion teaches that any, even the least, internal attention suffices for satisfying the precept.

Since prayer properly so called is not required for satisfying the precept of hearing Mass, but the worship of God and religious assistance suffice, those sufficiently satisfy the precept who during Mass read a pious book, perform an examination of conscience, sing, play the organ, collect alms, etc., provided that from intention they attend in some manner to the rite of the Mass.

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[662] Cf. I, n. 223.

[663] Concina teaches the contrary (*De praec. Eccl.* l. 1, c. 4, n. 2), who does not seem rightly to allege St. Antoninus for his opinion, since the latter speaks of those who assist at Mass solely for a perverse end, "who otherwise would not hear it." Cf. what was said above in I, n. 122 concerning the influence of the end upon the morality of an act.

[664] *De euchar.* disp. 22, nn. 27-31.

[665] Cf. Noldin, *De praeceptis* n. 263.

[666] *Theol. mor.* l. 3, n. 313.

481. It is asked especially: *whether one who confesses his sins during the whole time of Mass or during a notable part of it satisfies the precept?* Several authors, such as Ballerini,[667] Génicot,[668] Noldin,[669] Göpfert,[670] and Tanquerey,[671] think that confession probably does not impede external attention and consequently that the one confessing satisfies the precept. This opinion can be admitted only with difficulty *in theory*.[672] For if conversation, as the cited authors themselves agree, impedes external attention and consequently the satisfaction of the precept, the same must be said of confession, which is speech requiring very serious and intense attention on the part of the penitent. *In practice*, however, confessions during Mass can be permitted for the following reasons: a) because almost always penitents of this kind cannot conveniently receive the Sacrament of Penance at another time, either because of the multitude of their own labors or because of the scarcity of confessors, and therefore Holy Mother Church is presumed in these cases to interpret the precept of hearing Mass benignly; b) because such confessions often last only through a small part of Mass, and then they certainly do not impede the satisfaction of the Sunday precept. But if they last for a longer time, let the confessor command the penitent to remain silent for a short time and attend to the Mass, at least during the

consecration and Communion, so that he may thus satisfy the precept at least according to its substance. Thus also runs the practice of confessors.[673]

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[667] In the notes to Gury, *Comp. theol. mor.* I, n. 346.

[668] *Cas. consc.* I, 341.

[669] *L.c.*

[670] *Moraltheol.* I, n. 345.

[671] *De virt. relig.* n. 1027.

[672] St. Alphonsus says of it (*l.c.*, n. 314): "It does not seem altogether destitute of probability; and I myself formerly judged it probable. But because I later observed that it was rejected by several grave doctors, I now do not dare to call it probable."

[673] Cf. Göpfert, *l.c.*

482. 4. A due place is required for satisfying the precept.

The ancient law by which the faithful on Sundays and feast days were bound to hear Mass in the parish church has long since been abrogated, both by privileges granted to the Mendicant Orders by the Supreme Pontiffs[674] and by contrary custom. Hence no bishop or pastor can now strictly command that the faithful must hear Mass in the parish church. The people can, however, be admonished to approach their parishes frequently, at least on Sundays and the greater feasts.[675] According to the discipline now in force, all the faithful can satisfy the precept of hearing Mass a) in any church, b) in a public or semipublic oratory, c) under the open sky, and d) in private chapels of cemeteries.[676] In private oratories, however, only those who enjoy a special indult can satisfy this precept. When by special permission Mass is said in another profane place, those for whom the permission was given satisfy the precept. The local Ordinary can give such permission to say and hear Mass, but only *by way of an act*,[677] that is, in an extraordinary case, and only when a just and reasonable cause exists.[678]

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[674] Cf. Leo X, Const. *Intelleximus*, a. 1517; Paul III, Const. *Christifideles*, a. 1549; St. Pius V, Const. *Etsi Mendicantium*, 16 May 1567.

[675] Council of Trent, sess. 22, *de observ. et evit. in celebr. Missae.* Benedict XIV treats this question excellently, *De syn. dioec.* l. 11, c. 14, n. 10, where he teaches: "A bishop today cannot command his subjects to present themselves at the parish Mass, because he cannot abolish a custom which, since it flourishes throughout the whole world, has now assumed the nature of common law." Nevertheless, for a grave reason a bishop can command that the faithful not be admitted to hear Mass in a particular oratory on Sundays and feast days.

[676] Code of Canon Law, c. 1249.

[677] Ib., c. 822, § 4.

[678] Sacred Congregation of the Sacraments, 22 March 1915 (*Acta Ap. Sed.* VII, 147). Code of Canon Law, c. 1194.

483. A public oratory is a place which, by the authority of the bishop, has been perpetually dedicated to public worship, blessed, or even solemnly consecrated. It is required, moreover, that at least during the time of divine Offices the right of the faithful universally to approach it be legitimately established.[679]

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[679] Sacred Congregation of Rites, 23 Jan. 1899 (*Decr. auth.* n. 4007). Code of Canon Law, c. 1188, § 2. Even ships' chapels which have a fixed place on the ship are judged public oratories for those sailing, and consequently Sunday Mass can be heard in them (Sacred Congregation of Rites, 4 March 1901 ad V, *Decr. auth.* n. 4069).

484. Semipublic oratories are judged to be: a) "those which, although they have been erected by authority of the Ordinary in a place that is in some manner private or not absolutely public, nevertheless serve for the

convenience not of all the faithful, nor only of a private person or family, but of some community or assembly of persons. As the Most Holy Sacrifice of the Mass can be offered in these by authority of the Ordinary, so all who are present at it can satisfy the precept of hearing Mass. Oratories of this kind are those which belong to seminaries and ecclesiastical colleges; to pious institutes and societies of simple vows and other communities under a rule or at least under statutes approved by the Ordinary; to boarding schools and residences destined for the instruction of youth in letters, sciences, or arts; to hospitals, orphanages, and also to fortresses and prisons; and similar oratories in which by institution some assembly of the Christian faithful is accustomed to convene to hear Mass. To these must be added chapels duly erected in a cemetery, provided that at the celebration of Mass access is open not only to those to whom they belong, but also to other faithful";[680] b) those which can be erected by privilege in the houses of Cardinals, bishops (even titular bishops[681]), and religious orders and congregations. For in the cited decree of the Sacred Congregation of Rites it is added: "But His Holiness willed that the rights and privileges of oratories which the Most Eminent Cardinals of the Holy Roman Church, the Most Reverend Sacred Prelates, and regular orders and congregations enjoy remain whole and intact." Therefore the Ordinaries of exempt religious still seem able to erect oratories (even several) in their houses, and this without special permission of the diocesan bishop.[682] The faithful can satisfy the precept of hearing Mass in oratories of this kind.

A bishop can erect for himself an oratory in any becoming place (and not only in his own house), so that any priest can celebrate there and the Christian faithful can satisfy the precept of hearing Mass on feast days.[683]

The local Ordinary can indeed by his own authority grant one public or semipublic oratory to all the institutes and communities enumerated above; and indeed, if necessity or great utility requires it, several semipublic oratories. But he cannot by his own authority grant the reservation of the Most Holy Eucharist in any public or semipublic oratory,[684] unless it is the principal oratory of some pious or religious house, or of some ecclesiastical college governed by secular clerics or religious.[685] By the very fact, however, that a parish or quasi-parish church is legitimately erected, permission to reserve the Most Holy Sacrament is judged to have been granted. The same holds for churches annexed to a house of exempt religious, whether of men or women.[686]

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[680] Thus the Sacred Congregation of Rites, 23 Jan. 1899 (*Decr. auth.* n. 4007). Chapels erected in a cemetery by families or private persons for their burial are indeed of themselves private oratories, as are also the oratories of Cardinals and bishops (Code of Canon Law, c. 1189ff.); nevertheless, the precept of hearing Mass can be satisfied there.

[681] Sacred Congregation of Rites, 19 May 1896 (*Decr. auth.* n. 3906). Code of Canon Law, c. 1189.

[682] Cf. Code of Canon Law, c. 1192, § 4.

[683] Sacred Congregation of the Council, 16 Dec. 1893 (*Collect. de Prop. Fide* n. 1855), and Sacred Congregation of Rites, 19 May 1896; Code of Canon Law, c. 1189.

[684] Sacred Congregation of Rites, 8 March 1879 (*Decr. auth.* n. 3484).

[685] Code of Canon Law, c. 1265, § 1, n. 2.

[686] Code of Canon Law, c. 1265, § 1, n. 1.

485. Private oratories are those which have been erected by an indult of the Holy See in private buildings for the convenience of a determined person or family. In them Communion can indeed be distributed to all the Christian faithful who assist at the Sacrifice of the Mass (with the rights of parishes preserved),[687] but only those who are enumerated in the pontifical indult can satisfy the precept of hearing Mass.[688] Several clauses and restrictions are customarily placed upon indults of this kind, for example, the indult is granted for only

one low Mass on any day; certain principal feasts are excepted, on which Mass is prohibited;[689] Mass cannot be celebrated unless the holder of the indult is present, etc. Therefore all these clauses and restrictions are to be diligently observed. If they seem excessively restrictive, a broader indult can rather easily be obtained from the Holy See, provided a reasonable cause subsists. Ordinarily, the indult is customarily extended to the blood relatives and relatives by marriage of the holder of the indult through the fourth degree; likewise to his servants actually necessary; finally, to noble guests. Under the name of guests come also those who have been invited only to dinner; but all those are judged actually necessary servants who are necessary for the becoming dignity of the holder of the indult.

It is asked: *If the holder of the indult of a private oratory cannot approach a church or public oratory to satisfy the precept of hearing Mass, is he bound to use his privilege by procuring Mass in his private oratory?* The response is made with a distinction. If the holder of the indult cannot procure Mass without great inconvenience, he is not bound to use his privilege. Thus all teach. But if Mass can be procured without inconvenience, certain authors[690] still teach that the holder of the indult is not bound to use his privilege, because every privilege is a favor which no one is bound to use. More rightly, however, others with St. Alphonsus[691] affirm the obligation of using the privilege; because everyone is bound under grave sin to hear Mass on days of precept unless excused by notable inconvenience. But in this case there is no notable inconvenience. Therefore the holder of the indult is bound to procure that Mass be said in his private oratory. *A fortiori*, a priest having the privilege of a portable altar and able to celebrate without inconvenience seems to be obligated to celebrate if otherwise he himself (and others) would not hear Mass on days of precept. For example, a lame priest who has the privilege of a portable altar and all things prepared for Mass, but is unable to go to a distant parish church, seems to sin if he does not say Mass on days of precept.[692]

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[687] Sacred Congregation of Rites, 8 May 1907 (*Decr. auth.* n. 4201).

[688] What concerns private oratories in cemetery chapels was said above in n. 484, note 675, and what concerns the celebrating priest and the serving minister in n. 476.

[689] The bishop can permit that in a particular case Mass be said in a private oratory even on these excepted days (Sacred Congregation of the Sacraments, 22 March 1915); Code of Canon Law, c. 1194.

[690] Thus Noldin, *De praeceptis* n. 267; Ballerini in the notes to Gury, *Comp. theol. mor.* I, n. 348.

[691] *Theol. mor.* l. 3, nn. 319 and 324.

[692] Cf. above I, n. 267. For fuller doctrine concerning oratories, see the canonists, for example, Many, *Praelect. de locis sacris* n. 65ff.

486. The causes excusing from the obligation of hearing Mass can all be reduced to physical or moral inability or, as others say: necessity, charity, and office excuse from the obligation of hearing Mass.

Since the precept of hearing Mass is not reckoned among the greater precepts of divine law and pertains rather to ecclesiastical law, "any moderately grave cause excuses, namely, one which involves some notable inconvenience or harm in the goods of the soul or body of oneself or one's neighbor."[693] Dispensation in this law will be discussed below in n. 498.

a) By reason of necessity the following are excused:

1. the sick and convalescents who, because of bodily weakness, prudently fear some detriment to health from assistance at Mass. In doubt, the judgment of a physician, confessor, or another prudent and religious person suffices. To the sick in this matter are to be equated hysterical persons, pregnant women, and other persons who can breathe the air of the church only with difficulty;

2. those who are far distant from a church, so that they cannot approach the church without notable labor or expense. But what constitutes a long distance that excuses cannot be determined mathematically, because this depends greatly upon the particular circumstances of the person, place, time, inclemency of the air, etc. Thus a journey of one hour is not a grave inconvenience for most persons when the weather is clear and the road level and easy; but it is an excusing cause if one must proceed in snow, under rain and cold, or along a rough road. Likewise, the elderly and other weak persons are more easily excused than robust young persons, as is evident of itself.

Here it is useful to note briefly that those Catholics who dwell in regions of infidels or non-Catholics far from any Catholic church do not indeed sin by omitting the hearing of Mass, since they are in moral inability to approach a church; nevertheless, they must strive according to their powers to leave such regions as soon as possible, because, as sad experience testifies, otherwise they are endangered in the orthodox faith and gradually neglect all religious exercises. Travelers are not of themselves excused from hearing Mass unless the journey was undertaken for a just and proportionate cause. Since in present times very many travelers make journeys for the sake of recreation alone, they are to be exhorted not to omit hearing Mass on days of precept because of excursions of this kind. Cf., however, what was said above in I, n. 237 concerning causes excusing from a human law;

3. those who deservedly fear loss of honor, for example, those who lack suitable clothing; girls pregnant from a fault, unless, however, their fault is already publicly known. Wherever it is judged unbecoming for a girl to assist at a Mass in which her betrothal is proclaimed, such a custom is indeed to be condemned; but while it remains in force, the girls seem to be excused from the precept of hearing Mass;
4. wives and children because of the grave indignation of a husband or parents. If, however, such indignation arises solely from hatred of religion, it must be resisted with all one's strength and is not of itself a sufficient excusing cause. The same is to be said of soldiers, who are excused from hearing Mass if they must thereby suffer grave vexations from commanders and fellow soldiers.

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[693] Thus St. Alphonsus, *Theol. mor.* l. 3, n. 324.

487. b) By reason of charity and office the following are excused:

1. those who must assist the sick during the time of Mass; those who hope that by their presence they can prevent the grave sins of others. For example, a servant suspects that his fellow servant is going to commit a sin of lust with a maidservant during the time of Mass, and hopes that the former will be prevented from this sin if he himself remains at home and does not go to church. In this case it is lawful to omit Mass in order to prevent the grave sin of another;
2. mothers and nurses who can neither leave little children alone nor bring them with them to church;
3. soldiers, guards of cities and flocks, several officials on the railway, and certain laborers in factories who must attend to and supervise machines;
4. generally, all who would undergo notable material harm from hearing Mass, for example, drivers, sailors, barbers, bakers, etc. Although these are sometimes excused from hearing Mass, nevertheless they are *not always* excused; hence let them either leave their office, if this can be done, or at least sometimes assist at Mass on weekdays. For since the Eucharist is the greatest gift granted to the world,

some authors not without reason think that hearing Mass is commanded not only by ecclesiastical law, but also sometimes by divine law, just as every priest is also sometimes bound by divine law to celebrate Mass. Wherefore one who can never assist at Mass on Sundays and feast days is bound at least sometimes to assist on weekdays.[694]

Practical admonition. The faithful are to be earnestly exhorted to assist diligently at Mass on days of precept. For although the omission of Mass is sometimes not a sin because of excusing causes, nevertheless, as experience testifies, repeated omission is accustomed to produce the worst effects: for faith and religion gradually grow lukewarm; man becomes immersed in earthly things; he becomes weak in temptations; he easily falls into many sins.

[694] Cf. Lehmkuhl, *Theol. mor.* I, n. 724, who thinks that by divine law a man is bound to hear Mass at least three or four times a year.

§ 4. On Cessation from Servile Works

488. The precept of sanctifying Sundays and feast days is at once affirmative and negative. Insofar as it is affirmative, it commands the due worship to be rendered to God through hearing Mass, as has thus far been explained. But insofar as it is negative, it commands abstention from certain works which impede the worship of God.

Distinctions. In the present matter a fourfold genus of works is distinguished: servile, liberal, common, and forensic works.

1. **Servile works** are those which a) are accomplished chiefly by bodily labor, b) are immediately ordered to the utility of the body, and c) in ancient times were customarily done by servants.[695] Such works are, for example: rural works, such as digging, plowing, sowing, reaping, etc.; mechanical works, such as spinning, sewing, constructing walls, making shoes, etc. It is to be carefully noted for practice that servile works are to be judged from the end of the work, and in no way from the end of the worker, nor from the duration of time, nor from the fatigue joined with the work. Therefore a work which is accomplished chiefly by bodily labor and immediately serves bodily convenience does not cease to be servile if it is done for the sake of recreation, without remuneration, from a holy end, or for a brief time. Hence, for example, a woman who spins or sews to make clothing for the poor truly performs a servile work and sins unless there is an excusing cause, which will be discussed below in n. 496.
2. **Liberal works** are said to be those which a) proceed chiefly from the powers of the soul, b) immediately regard the cultivation of the mind, and c) were customarily done by free men, such as reading, teaching, singing, playing the organ, writing, drawing, etc. Such works remain liberal even if they are performed with great fatigue and are undertaken to obtain wages. Hence, for example, it is lawful to teach, sing, etc., on Sundays and feast days, even if this is done for the sake of remuneration.
3. **Common works** (also called intermediate and natural) are those which are performed indiscriminately by free men and servants and serve especially for the daily care of the body, such as eating, playing, hunting, and making a journey.
4. **Forensic works** are those which include a twofold genus of actions: a) actions of a judicial forum, such as judging in a tribunal, accusing, defending a defendant, etc.; b) actions of a commercial forum, such as buying, selling, leasing, etc.

[695] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 273.

489. Note. There are several works whose character is doubtful and which cannot certainly be numbered among either liberal or servile works. To resolve a doubt of this kind, one must attend not only to the nature of the work, but also to the estimation of men. Therefore it can happen that a work which is of itself servile is held lawful on Sundays and feast days because of the estimation of men. For example, rowing and guiding horses as a driver are of themselves servile works; but if they are done for the sake of recreation on feast days, they are held lawful from the common estimation of men. Making rosaries and sewing scapulars are of themselves servile works, but by a sufficiently common estimation they are held lawful on days of precept, provided they are done for the sake of devotion and not profit.

490. Special doubts concern the following works:

1. *Whether it is lawful to write and transcribe on a feast day?* The response is: It is lawful to write, even by means of a machine, since this is a liberal work in which the mind chiefly acts. Thus all teach. Transcribing (at least sometimes) certainly seems to be a liberal work, for example, if it is done for the sake of aiding memory, teaching, learning, preaching, etc., because then it serves to cultivate the mind. But if someone transcribes as a mere copyist, and especially by means of a machine, to make a profit, such a work can only with difficulty be numbered among liberal works,[696] since many transcribe things which they do not understand at all. In practice, the common estimation existing in a particular region is to be attended to. But since copyists of this kind are often oppressed by poverty, they are to be judged benignly if for a few hours on feast days they have transcribed for the sake of profit. Typesetting is similar to transcription, because today both transcription and the composition of type are customarily done by means of a machine; and therefore St. Alphonsus[697] thinks it lawful to compose type on feast days. But according to the common estimation in our regions, the typographic art is held to be mechanical and the composition of type is considered a servile work; hence it is not lawful on Sundays and feast days without necessity or another excusing cause.
2. *Are drawing, painting with a brush, and sculpting servile works?* The response is: Drawing is a liberal work, provided it is done in an artistic manner, because it is accomplished by the mind rather than the body. But if it is done in a mechanical manner, with a stencil or pattern, then the same seems to hold as was said concerning transcription. For such drawing is not unlike transcription. Painting with a brush seems to be a liberal work, provided it is done in an artistic manner and not with great apparatus. For if writing is a liberal work, *a fortiori* painting artistically with a brush is a liberal work, since it serves to express concepts of the mind. Painting in a manner that is mechanical rather than artistic is a servile work. Hence those who whitewash walls or paint upon walls in a decorative manner cannot lawfully do this on days of precept; and in our regions a true scandal would arise if a painter, for the sake of profit, adorned, for example, the walls of a church with his decorative art on days of precept. Sculpting is commonly held among the mechanical arts,[698] but artistically finishing an already nearly completed work by sculpting is deservedly judged a liberal work, because such completion of a work requires almost no bodily labor but great spiritual attention.
3. *Are the diverse manual works which women customarily perform in a more or less artistic manner servile works?* The response is: This seems to depend upon the art or at least the attention required for those works. For if almost no art or special attention of mind is necessary in performing a particular work, such a work is mechanical and servile, as, for example, knitting, crocheting, and embroidering with a needle; but if special attention and art are required, such a work is judged to be liberal, as, for example,

artistic embroidery with a needle. Generally it can be said: Those manual works of women which can also be performed by means of a machine (although not in so perfect a manner) are held to be mechanical and servile works, such as spinning, sewing, weaving, etc.; but those works which necessarily are handmade can be considered liberal. Besides, it will be said below in n. 496 how women's manual works can sometimes be permitted in practice on days of precept.

4. *Are photographs, phototypes, and other reproductions perfected by means of light servile works?* The response is: If works of this kind require great attention of mind and little bodily labor, they can be considered liberal works; otherwise, mechanical and servile works. In practice, a sufficient cause is rather easily present for permitting photography and other similar arts on days of precept.

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[696] Cf. Billuart, *De relig.* diss. 6, a. 3; Cajetan, Commentary on 2, 2, q. 122, a. 4, n. 12.

[697] *Theol. mor.* l. 3, n. 279.

[698] St. Alphonsus, *Theol. mor.* l. 3, n. 321.

491. Subdivision of servile works. Works which are chiefly prohibited on Sundays and feast days are called servile according to that precept of the Old Testament: "You shall do no servile work on it."[699] Under the Jewish Law, prohibited servile works were enumerated in particular; but in the New Law a far milder practice exists. St. Thomas[700] observes excellently: "A work is called servile from servitude. Now there is a threefold servitude: one, indeed, by which man serves sin, according to the saying: *He who commits sin is the servant of sin.*[701] And according to this, every work of sin is called servile. Another servitude is that by which man serves man; but a man is the servant of another not according to the mind, but according to the body, and therefore servile works according to this are called bodily works *in which one man serves another.* The third is the servitude of God, and according to this a servile work could be called a work of latria, *which pertains to the service of God.*"

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[699] Lev. 23:7.

[700] *S. theol.* 2, 2, q. 122, a. 4 ad 3.

[701] John 8:34.

492. Principle 1. On Sundays and feast days a servile work taken in the first and second sense is prohibited; but a servile work in the third sense (although it is joined with bodily labor) is in no way prohibited, but rather commended.

a) Servile works taken in the first sense, that is, sins (especially external and public sins), are most opposed to the sanctification of Sunday and feast days and to divine worship. Wherefore the Angelic Doctor[702] teaches: "Because man is impeded from divine things more by a work of sin than by a lawful work, although it be bodily, therefore he who sins on a feast day acts more against this precept than one who performs another lawful bodily work. Hence Augustine[703] says: 'A Jew would do better to perform something useful in his field than to be seditious in the theater; and their women would do better to work wool on the sabbath day than to dance immodestly the whole day at their new moons.'" Therefore all theologians teach that an *external sin* committed on days of precept is graver than if the same sin were committed on another day. Thus at least objectively; for subjectively several of the faithful do not notice the difference of the days. Although, however, an external sin of this kind is graver, nevertheless the circumstance of sacred time does not constitute a grave and new moral species, so that this would have to be explained in confession, at least if a special reason of grave scandal is absent. Thus Cajetan,[704] Sylvester Prierias,[705] Sylvius,[706] Billuart,[707] St. Alphonsus,[708] and commonly all modern authors teach more probably, against Concina[709] and several ancient authors cited by

him. For although every sin is more against the worship of God than any other bodily work, nevertheless it cannot be called a servile work except in a metaphorical or mystical sense;[710] but in the third precept of the Decalogue servile works are prohibited only in the literal sense. Next, the precept of avoiding sins is a general precept, while the precept of sanctifying Sunday and feast days is a particular precept. Finally, the same is established from the universal practice both of confessors and of devout penitents, of whom neither are the latter accustomed to accuse themselves, nor the former to interrogate them, concerning the circumstance of sacred time, unless there was a special reason of grave scandal, as, for example, in public and scandalous drunkenness. But if St. Thomas, St. Bonaventure, St. Antoninus, and other grave authors say that sins are against the observance of the sabbath, this is most true insofar as the virtue of religion commands especially that sins not be committed in sacred time, since they not only impede the worship of God, but are also against the end and spirit of the third precept of the Decalogue. But from this it by no means follows that through sins committed on those days the virtue of religion is wounded in a specifically diverse manner. Hence confessors and preachers indeed act well when they proclaim that sins of lust, drunkenness, quarrels, etc., are greatly opposed to the sanctification of feast days and Sunday; but let them by no means teach that a twofold grave sin specifically diverse is thereby committed, which must necessarily be declared in the confessional.

b) A servile work taken in the second sense, that is, one which is accomplished chiefly by bodily powers and immediately serves the necessities of the body, is directly prohibited on Sundays and feast days. Thus the Code of Canon Law expressly establishes in c. 1248. The reason is that such a servile work a) absorbs the application of the worker and hinders him from elevating his mind to divine things; b) is accustomed to cause great bodily fatigue; and c) is perceived by others, who can easily suffer scandal from it. Wherefore from servile works performed without necessity in sacred time are induced all the moral and social inconveniences which arise from violation of the third precept and which were discussed above in n. 471. Certainly man can also be impeded from the worship of God by liberal works performed in sacred time (as if someone, for example, attentively read a profane book throughout the whole Sunday); nevertheless, this does not happen so frequently nor exercise so evil an influence upon others, since they do not perceive it so easily. Hence liberal works impede the worship of God accidentally rather than of themselves, and therefore they are not prohibited in the third precept of the Decalogue. Nevertheless, one would certainly sin who neglected divine worship in sacred time even because of liberal works.

c) A servile work taken in the third sense is lawful, because through it the mind is not only not withdrawn from divine worship, but rather is induced to honor God. It is required, however, at least commonly, that these works immediately serve divine worship and be done gratuitously and without material wages; because otherwise their principal end would not be the worship of God but the obtaining of material wages. Servile works of this kind are: on Sundays and feast days to carry crosses, images, and banners, to ring bells, to adorn altars with garlands and candlesticks, to wash purificators, to make vestments, etc. But if a sacristan or others receive wages for these works, they then approach servile works strictly so called and are not lawful except because of the necessity either of worship or of the worker. Servile works which serve divine worship not immediately but remotely, such as sweeping a church, making garlands for altars, cutting or transporting stones or wood for constructing a church, manufacturing chalices, washing altar cloths, etc., are gravely prohibited unless necessity or legitimate dispensation excuses. Such a dispensation can be granted rather easily if the church is so poor that it cannot expend suitable wages so that works of this kind be performed on weekdays.

[702] Cf. *S. theol.* 2, 2, q. 122, a. 4 ad 3.

[703] Sermon 9 (al. 96) *de tempore*, c. 3.

[704] Commentary on 2, 2, q. 122, a. 4.

[705] *Summa Summ.*, s.v. "Confessio" I, n. 11.

[706] In Suppl. 9, a. 2.

[707] *De relig.* diss. 6, a. 2.

[708] *Theol. mor.* l. 3, n. 273.

[709] *De praec. Eccl.* l. 1, diss. 2, c. 2.

[710] Thus also St. Thomas, 3, dist. 37, a. 5, sol. 2 ad 2.

493. Principle 2. Besides the servile works enumerated above, forensic works and public markets are also prohibited on Sundays and feast days.

Thus from the law of the Decretals,[711] which has been modified in some manner by the Code of Canon Law establishing:[712] "On feasts of precept ... there must be abstention ... from forensic acts, and likewise (unless legitimate customs or particular indults provide otherwise) from public markets, fairs, and other public purchases and sales."

The following seem to be established for practice: 1. Abstention from forensic (and servile) works binds from midnight to midnight, for example, from midnight on Saturday to midnight on Sunday.[713] Forensic works are also prohibited on the last three days of Holy Week (at least for ecclesiastical tribunals). The forensic acts which are prohibited are: serving citations, holding hearings, examining parties and witnesses, receiving proofs, rendering, pronouncing, and executing decrees and sentences, unless, however, necessity, Christian charity, or the public good should demand otherwise in the judgment of the judge.[714] Acts which are done without judicial contention are not prohibited, for example, consulting an advocate, lodging an appeal, etc.

2. Under the name of public markets are understood not only fairs (whether annual or weekly[715]), but also all clamorous acts of trading, for example, contracts of public purchase, sale, lease, etc. Hence the following acts seem to be *unlawful*: a) public sales at auction of greater things. For such auctions are accustomed to be conducted with great clamor, which accords little with Sunday rest. But when a reasonable cause exists, it can be permitted that small things be sold at auction on days of precept. b) solemn contracts of sale, purchase, lease, etc., namely, those which are completed before a public authority and with instruments drawn up by notaries.

The following acts seem *lawful*: a) fairs in which small things are sold, such as flowers, small images, and certain foods, such as apples, pears, cherries, grapes, etc.; nevertheless, these things must be brought to the place of the fair not on the feast day, but on the day before, at least if they are of a greater quantity. b) private contracts of purchase, sale, etc., in shops. Hence universal custom holds that things necessary for daily use are bought and sold even on days of precept, for example, butter, bread, meats, etc. Likewise, country people who, because of continual labor, are not accustomed to approach the city except on feast days lawfully buy for themselves in shops shoes, clothing, and other things of lesser importance.[716] Likewise, it is lawful to hire workers, lease houses, and indeed, according to certain authors,[717] buy beasts of burden and sell horses. This last, however, cannot lawfully be done except where such a universal custom exists. Happily, it has also been established by the civil laws of many regions that workshops and commercial shops must be closed on days of precept, or at least not opened except for a few hours.

[711] c. 1, X 2, 9.

[712] c. 1248.

[713] c. 1246.

[714] Code of Canon Law, c. 1639.

[715] *Jahr- und Wochenmärkte* [annual and weekly markets].

[716] Cf. Billuart, *De relig.* diss. 6, a. 2.

[717] Thus St. Alphonsus, *Theol. mor.* l. 3, n. 285.

494. Principle 3. The precept of abstaining from unlawful servile and forensic works is grave from its genus, but admits slightness of matter.

Thus all teach. But authors do not agree on what constitutes grave matter in the transgression of this precept. The Salmanticenses[718] adduce seven diverse opinions in this controversy, which it would be long to recount here. The two extreme opinions are these: 1. There is no grave transgression unless someone spends a third part of the whole day in servile labors; or, one does not sin mortally unless he labors for eight hours without any excusing cause. 2. It is a grave sin if someone performs servile works for one complete hour. Each opinion is evidently false. Today theologians commonly teach that the matter is grave, and consequently the sin grave, if someone without any excusing cause performs truly servile works for more than two hours (whether continuously or with intervals interposed and the parts of the labor coalescing into two hours). But if the labor is not so servile, but rather light or in some manner liberal, a space of three hours seems to constitute grave matter.[719] In forensic works, however, the gravity of matter is derived not so much from the duration of time as a) from the quality of the work[720] and b) from the scandal arising from it. The Church even today has determined nothing concerning this controversy. In practice, in order to judge the gravity of a transgression one must also attend to whether scandal arose, whether not even the least excusing cause was present, and whether the worker acts with an erroneous conscience. Thus, for example, a master who commands ten workers to perform servile works for one hour does not indeed sin mortally by transgressing the positive precept of Sunday rest, because the works of the laborers are not united to form grave matter, and each matter taken individually is light matter;[721] but he can easily commit a grave sin because of scandal or contempt. But if the same master commands one worker to labor for ten hours, without doubt he sins gravely, since he commanded a gravely evil work. Therefore in the first case the master commanded ten venial sins; but in the other case he commanded one mortal sin.

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[718] *Curs. theol. mor.* tr. 23, c. 1, n. 319.

[719] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 305.

[720] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 307.

[721] Cf. Billuart, *De relig.* diss. 6, a. 2, and St. Alphonsus, *l.c.*, n. 306. Concina, *De praec. Eccl.* l. 1, diss. 2, c. 8, teaches the contrary vehemently.

495. The causes excusing from this law can be reduced to three categories, which are: 1. one's own or another's necessity; 2. legitimate custom; 3. legitimate dispensation. Certain authors also enumerate piety toward God among the excusing causes. For servile works which are immediately ordered to divine worship are permitted, such as ringing bells, carrying banners, etc. Above in n. 492, in the first principle, we proved from St. Thomas that works of this kind not only do not turn the mind away from the worship of God, but rather lead it thereto, and consequently are lawful. If, however, such servile works conduce only remotely to

divine worship, as, for example, whitewashing the walls of a church, building a church, transporting stones and wood, etc., then they are not of themselves lawful; but they are sometimes permitted by legitimate authority if they are done gratuitously for poor churches.

496. 1. By reason of one's own or another's necessity, whether this is of the body or of the spirit, the following are excused:

a) farmers who, because of past or imminent rain, must immediately gather crops or fruits. In practice, it is better that the pastor of the place in these circumstances declare publicly that agricultural labors are permitted on such a day. For thus both scandal and the danger of deception are avoided;

b) tailors, shoemakers, and other craftsmen who must make or repair altogether necessary clothing, for example, for impending weddings or funerals. The same are excused if otherwise they would have to suffer great harm;

c) the poor who truly cannot sustain themselves and their own without labor performed on days of precept;

d) servants, wives, and children who are compelled to labor by a master, husband, or parents, provided, however, that such compulsion does not proceed from hatred of religion;

e) workers who must keep watch over machines in large factories; repairers of bridges, railways, etc., if there is danger in delay. Next, all who immediately prepare foods necessary to be eaten on Sundays and feast days. For if a man is not bound to fast on those days, he also has the right that necessary foods be prepared for him. Hence the labors of a cook and his assistants are lawful. But labors which are necessary for the remote preparation of foods are not lawful, for example, slaughtering an ox to obtain meat;

f) some necessity also exists if there is a danger of sinning from idleness. Hence a confessor can readily permit women to perform certain light manual works with a needle and other instruments on days of precept; likewise, that young persons take photographs. Certain clauses, however, are to be imposed, namely: that such labors not last for too long a time; that no scandal arise therefrom; that such workers piously assist at Mass and other religious exercises; that the workers receive no material wages therefrom. When these conditions are fulfilled, it is much better that someone perform a light labor on days of precept than spend the time in dangerous idleness, or in reading novels, or in dangerous games and conversations, or in frequenting a tavern. Nor let anyone say that these persons can apply themselves to other lawful liberal works or pious readings and thus shake off idleness; for this is sometimes morally impossible because of diverse circumstances. Besides, every difficulty vanishes if these women make ornaments for poor churches or clothing for the poor,[722] because then there is always the excusing cause of piety.

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[722] Cf. St. Alphonsus, *l.c.*, n. 302.

497. 2. By reason of custom the following are excused:

a) barbers, whether they shave their own or another's beard. Likewise, in barbers' shops it is lawful that hair be cut, washed, etc.;

b) drivers, whether of public carriages[723] or even private carriages, for transporting persons, but not (at least in our regions) for guiding carts laden with merchandise, unless necessity compels. In the time of St. Alphonsus[724] a milder practice seems to have existed in Italy;

c) hunters and fishermen, provided, however, that they act without great bodily labor. Hence, for example, it seems lawful to fish with a hook on feast days,[725] but not with large nets;

d) sellers of things of lesser importance in public streets, for example, those who go through the streets to sell newspapers, flowers, fruits, postcards, etc.

[723] Commonly *Kutscher, cocher* [coachman].

[724] Cf. *l.c.*, n. 276.

[725] Cf. *l.c.*, n. 285.

498. 3. The following can dispense in the law concerning the observance of Sunday and feast days: the Supreme Pontiff for the whole Church; in a particular case, Ordinaries of places for their district; in exempt clerical religious institutes, superiors for their individual subjects, after the manner of a pastor. A reasonable cause, however, is always required for both the validity and liceity of the dispensation, since this law is not merely ecclesiastical, but also partly divine. A pastor also can in individual cases by his own authority dispense individual faithful or individual families subject to him, even outside the territory, and within his own territory even travelers.[726] A confessor, although he cannot dispense, can nevertheless for a just cause declare that the law does not bind the penitent in a particular case.

[726] Code of Canon Law, c. 1245, § 1.

499. Scholion. On offerings, first fruits, and tithes. St. Thomas[727] also numbers among the acts of religion and worship offerings, first fruits, and tithes given for carrying out divine worship or for sustaining the ministers of the Church. Canonists treat this matter more broadly. Let the following be noted very briefly as pertaining to Moral Theology.

An **offering** generally is the bestowal of some thing not requested; but the offering which is treated here is a spontaneous bestowal for divine worship and the sustenance of sacred ministers. The offerings which are in use today are especially the so-called "collections" made for pious causes and manual stipends for Masses.

First fruits are the first fruits of the earth and of animals which are offered for divine worship as a sign of reverence and gratitude toward God. Today first fruits of this kind are in use almost nowhere.

Tithes (ecclesiastical), by force of the name, are the tenth part of fruits to be rendered to the ministers of the Church for their suitable sustenance. Since, however, not always a tenth part, but sometimes a twelfth or twentieth part of revenues is to be expended for this end, tithes are better called certain taxes imposed upon the faithful for the suitable sustenance of the pastoral clergy.[728] These taxes or subsidies according to their substance are prescribed by natural and divine law itself; but according to their determined quantity they are of positive human law. Wycliff taught that tithes were not strictly due but mere alms which the faithful could deny at will; but this doctrine was condemned by the Council of Constance.[729]

Since *natural law* commands the external worship of God, as was proved above in n. 327, and since this worship cannot be had in a suitable manner without churches, ornaments, ministers, etc., the faithful are bound through offerings to procure that the things necessary for external worship be had. Wherefore St. Thomas[730] writes: "For natural reason dictates that the people furnish the necessities of life to those who ministered in divine worship for the salvation of the whole people; just as the stipends of life are also owed by the people to those who watch over the common utility, namely, princes and soldiers and others of this kind. Hence the Apostle also proves this through human customs, saying: 'Who ever serves as a soldier at his own expense? or who plants a vineyard and does not eat of its fruits?'"

The *divine law* of both the Old and New Testaments expressly prescribes that due sustenance be rendered by the faithful to the ministers of the altar. In the Old Testament God carefully and abundantly provided for the sustenance of priests and Levites;[731] in the New Testament St. Paul writes: "Know you not that they who work in the sanctuary eat the things that are of the sanctuary; and they who serve the altar partake with the altar? So also the Lord ordained that they who announce the Gospel should live by the Gospel."[732] Hence even the Waldenses returning to the bosom of the Church had to profess: "We believe that tithes, first fruits, and offerings are to be paid to clerics by the precept of the Lord."[733]

Ecclesiastical law, c. 1502, prescribes concerning this matter: "As regards the payment of tithes and first fruits, particular statutes and laudable customs are to be observed in each region."[734]

From these things it follows that those who defraud the taxes necessary for divine worship commit a twofold sin, namely, of irreligion and injustice, and consequently, strictly speaking, are bound to restitution unless the Church freely renounces the exaction of this restitution. Although in certain regions a special ecclesiastical precept has been issued concerning the payment of tithes or other offerings necessary for worship,[735] nevertheless the Church does not seem to urge her right, or at least renounces the exaction of restitution for defrauded ecclesiastical taxes. Indeed, the faithful who deny or diminish this subsidy or tax are not readily to be accused of a grave sin committed, unless thereby priests are compelled to indigence and the rest of the faithful to excessive contributions. Hence Kenrick[736] deservedly says: "So long as the burden is imposed and defined by no certain law, we do not dare to condemn of mortal sin one who omits to contribute an equitable portion, whenever there is no danger that priests should be in need for that reason or that other faithful should be too heavily burdened." *A fortiori*, such faithful are not to be compelled, under threat that absolution will be denied, to pay all ecclesiastical taxes. Most worthy of note are the words of St. Thomas[737] concerning this matter: "The ministers of the Church ought to have greater care for promoting spiritual goods among the people than for collecting temporal goods; and therefore the Apostle did not wish to use the power handed down to him by the Lord, namely, that he receive the stipends of life from those to whom he preached the Gospel, lest some impediment be given to the Gospel of Christ." Besides, experience establishes more than sufficiently that clerics who labor strenuously for the honor of God and the salvation of souls never lack suitable sustenance.

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[727] *S. theol.* 2, 2, qq. 86 and 87.

[728] Commonly *Kultussteuer, denier du culte*, support of the pastors.

[729] Proposition 18 was condemned: "Tithes are pure alms, and parishioners can withdraw them at their own will because of the sins of their prelates" (Denz. n. 598).

[730] *S. theol.* 2, 2, q. 87, a. 1.

[731] Cf. the whole of chapter 18 of Numbers.

[732] 1 Cor. 9:13ff.; cf. Matt. 10:10ff.

[733] Denz. n. 427.

[734] Cf. also c. 1504.

[735] The Third Council of Baltimore (cf. tit. IX, c. 3) ordered that the following be inserted into the catechism as the fifth precept of the Church: To contribute some subsidy for the suitable sustenance of pastors. In Germany also ecclesiastical taxes (*Kirchensteuer*) exist.

[736] *Theol. mor.* tr. 4, n. 64.

[737] *S. theol.* 2, 2, q. 87, a. 1 ad 5.

Chapter III. On the Vices Opposed to the Virtue of Religion

500. Preliminary note. Irreligion, or irreligiousness, which is opposed to religion, is taken either in a broad or in a strict sense. Irreligion in the broad sense includes all sins against religion, whether by omission or by commission. Sufficient has been said above in the preceding chapter about sins against religion by omission, that is, about the omission of acts prescribed by religion, for example, the omission of devotion, prayer, adoration, the sanctification of Sunday, etc. It remains to speak of sins of commission against religion, which indeed are perpetrated either by excess, that is, through diverse superstitions, or by defect, that is, through irreligion strictly so called. Yet when superstition is said to be opposed to religion by excess, this is not to be understood as though God, who is of infinite majesty, could be worshiped too much by a creature, for that is impossible; rather, the excess consists either in the circumstances of worship, namely, if God is worshiped in an unsuitable manner, or in the object of worship, namely, if false gods are worshiped. Irreligion in the strict sense contains all those sins which pertain to contempt or irreverence toward God and sacred things, for example, blasphemy, sacrilege, etc.

The present chapter is divided into ten articles, of which the first six pertain to superstition, but the last four to irreligion strictly so called. There will be treated: 1. superstition in general; 2. idolatry; 3. divination; 4. vain observance; 5. magic and malefice; 6. magnetism, hypnotism, and spiritism; 7. the tempting of God; 8. blasphemy; 9. sacrilege; 10. simony.

Article I. On Superstition in General

501. Notion. Superstition[738] is "a vice rendering divine worship either to one to whom it ought not, or in a manner in which it ought not." Thus St. Thomas.[739] This definition indeed becomes clearer if one attends to the diverse species of superstition.

There are two species of superstition, which, however, again admit several subdivisions.

1. The first species of superstition is the **undue worship of the true Divinity, or God**. In this superstition, therefore, the true God is indeed worshiped, but with a worship and in a manner unsuitable and contrary to the custom and law of the Church. This species of superstition is carried out in two ways, namely, a) through false or pernicious worship; b) through superfluous worship.

a) **False worship of the true God** can be carried out in diverse ways, for example, if someone wishes to worship God with Jewish ceremonies which signify Christ as still to come, such as by eating the paschal lamb, circumcision, etc.; if someone who is not a priest presumes to celebrate Mass or absolve from sins; if someone proposes false miracles or false revelations to confirm the faith; if someone exhibits false relics for the veneration of the faithful. This superstition of false worship is from its genus a grave sin, because it inflicts a grave injury and irreverence upon God, the First Truth; but it admits slightness of matter. Thus, for example, a preacher who knowingly narrates certain exaggerations in a miraculous story, or even one who invents an entire story in order to move the people more strongly toward a good work, sins only venially, both because this does not greatly prejudice true religion, at least if the falsity is not discovered, and because the falsity itself is not employed immediately for worshiping God.[740] Nevertheless, such narratives (which are sometimes called pious lies) are to be avoided altogether, since it is utterly unbecoming that a preacher of truth should lie even in a small matter.

b) **Superfluous worship of the true God** is that which is not suited to the end of religion. Now the end of religion is that man give glory to God, to whom he subjects himself in mind and body. Hence, "if there is

something which, so far as it is in itself, does not pertain to the glory of God, nor to this, that the mind of man be borne toward God, or that the concupiscence of the flesh be moderately restrained; or even if it is outside the institution of God and the Church, or contrary to common custom, ... all this is to be accounted superfluous and superstitious, because, consisting only in externals, it does not pertain to the interior worship of God."[741] Such superfluous worship is, for example, to wish to pray with a fixed number, arrangement, or color of candles; to wish to hear the Mass of a certain priest who is named Peter; and six hundred other modes of vain worship.[742] The superstition of superfluous worship is from its genus a venial sin, because the matter is light and the action is not evil in itself. The good faith and simplicity of the agent sometimes excuse altogether from every sin; on the contrary, because of scandal, contempt of the Church, or the agent's evil intention, this superstition can become a mortal sin. Those modes of worshiping God which are approved by the Church, however, such as novena devotions, tridua, Gregorian Masses, etc., are free from every stain of superstition.

2. The second species of superstition is the **worship of a false divinity**, or divine worship rendered to some creature and especially to the devil. It is subdivided into three species, namely, idolatry, divination, and vain observance, to which magic and malefice are reduced. Each of these must now be treated individually.

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[738] *Aberglaube, δεισιδαιμονία.* Authors do not agree concerning the etymology of the word superstition. Some derive this name from *superstare*, because superstition stands above or outside true worship; others think that this name is taken from the word *superstes*, because superstition is a surviving part of paganism. Cf. Wirthmüller, *Die moralische Tugend der Religion* § 87.

[739] *S. theol.* 2, 2, q. 92, a. 1.

[740] Thus Noldin, *De praeceptis* n. 149.

[741] *S. theol.* 2, 2, q. 93, a. 2.

[742] Cf. Council of Trent, sess. 22, *De observandis et evitandis in celebratione Missae*; cf. also the constitution *Officiorum ac munerum* of Leo XIII, n. 13.

Article II. On Idolatry

502. Notion. Idolatry is latria, or the adoration of an idol. An idol, as it is taken here, is the image of a false divinity. Thus, for example, we speak of an idol of Jupiter, Mercury, the Sun, or the Moon, and of the diverse modes of fetishism, etc. As is evident of itself, divine worship is not attributed to the image itself, but to the person or thing represented through the image. Hence idolatry is nothing other than the adoration of some creature, whether animate or inanimate.[743]

Idolatry is sometimes taken in a metaphorical sense for every mortal sin, because in every mortal sin man renders as it were divine worship to a creature, since he prefers it to God, the Best and Greatest. In this sense St. Paul says: "For many walk, of whom I have told you often (and now tell you weeping), that they are enemies of the cross of Christ; ... whose God is their belly."[744] This metaphorical idolatry is not under discussion here.

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[743] Cf. *S. theol.* 2, 2, q. 94, a. 1.

[744] Phil. 3:18ff.

503. Divisions. 1. Idolatry is either *material* (simulated, external) or *formal* (internal).

The former is done only externally, from fear, command, or other motives, without a man inwardly willing to adore the creature; for example, when a Christian, from horror of torture and death, burns incense before a

pagan idol, but inwardly despises the idol. The latter is done with the true internal intention of adoring a creature, for example, if someone with full deliberation adores the devil.

2. Formal idolatry is divided into *perfect and imperfect.*

The former is the adoration of a creature rendered by one who truly thinks that this creature is God. Such idolatry is always joined with infidelity, and even today exists among many pagans. Perfect and formal idolatry is also committed by those who, from hatred of God or from obstinate infidelity, worship the demon through so-called "black or diabolical Masses" or through other wholly wicked modes. Likewise, all who deny the existence of a personal God and nevertheless perform diverse acts of worshiping a fictitious divinity. The latter idolatry, namely, imperfect idolatry, is committed by one who, clearly knowing that no divinity is present in the idol, nevertheless renders divine worship to it from a depraved affection (for example, from hatred of God or from a desire to obtain something from the demon). This imperfect idolatry in one sense is a graver sin than perfect idolatry, since the latter is joined with ignorance that is more or less invincible, whereas imperfect idolatry proceeds from the mere malice of the will.

504. Moral malice. Every idolatry, whether material or formal, whether perfect or imperfect, is a most grave sin.

For a) it is most strictly prohibited in the first precept of the Decalogue: "Thou shalt not have strange gods before me, ... thou shalt not adore them [idols], nor serve them." Therefore it was always punished most gravely both by God among the Jewish people[745] and by the Church, which was accustomed to impose the severest penance upon those who had fallen into idolatry.[746] b) Idolatry is open rebellion against God. Concerning the gravity of this sin St. Thomas writes:[747] "The gravity of a sin can be considered in two ways: in one way, on the part of the sin itself; and thus the sin of idolatry is most grave. For just as in an earthly commonwealth it seems to be most grave that someone should render royal honor to another than the true king, because, so far as lies in him, he disturbs the whole order of the commonwealth; so in sins which are committed against God, and which are indeed the greatest, it seems most grave that someone should render divine honor to a creature, because, so far as lies in him, he makes another God in the world, diminishing the divine sovereignty. In another way the gravity of a sin can be considered on the part of the sinner himself; as the sin of one who sins knowingly is said to be graver than that of one who sins through ignorance. And according to this, nothing prevents heretics, who knowingly corrupt the faith which they received, from sinning more gravely than idolaters who sin through ignorance. And similarly certain other sins can also be greater because of the greater contempt of the sinner."

Material and simulated idolatry also has always been held to be a grave sin; for a) it injures the virtue of religion by externally rendering to a creature an honor which must be judged divine by other men; b) it is the fullest lie in the worship of religion and is often joined with grave scandal of the people; c) it is contrary to the grave precept of professing the faith. Hence it is never lawful externally and by simulation to adore an idol, even in order to avoid death.[748]

Also reduced to material idolatry, and therefore gravely unlawful, is knowingly exposing for veneration or giving for Communion an unconsecrated host. Hence that pastor acted wrongly who had forgotten to consecrate the larger host and, in order to avoid the astonishment of the people, exposed an unconsecrated larger host in the monstrance, to which, however, he secretly joined a small consecrated host.[749] Likewise another pastor acted wrongly who, while distributing Holy Communion, gave an unconsecrated host to a

bridegroom who was not fasting, lest the bride and the others standing nearby suspect something unfavorable on the part of the bridegroom.

[745] Cf. Ex. 32:8-35.

[746] Thus, for example, the First Council of Nicaea, can. 12, imposed seven years of the severest penance upon those who had fallen into idolatry (Mansi, *Ampliss. coll. Conc.* II, 703).

[747] *S. theol.*, l.c., a. 3.

[748] Hence also the so-called *Libellatici* were gravely punished in the ancient Church.

[749] Cf. *Casus conscientiae* of Prosper Lambertini, afterward Benedict XIV, I, 380 (Liège ed., 1853).

505. Scholion. On penalties against idolaters. Under present ecclesiastical law there is no *latae sententiae* penalty against idolatry. Since, however, it is almost always joined with heresy, at least in those who have been validly baptized, the penalties enacted against heretics are to be applied. Moreover, the sins and penalties of Freemasons and of other similar societies are often joined with the vice of idolatry.

Article III. On Divination

506. Notion. Divination properly so called[750] is the foretelling or foreknowledge of future things in an undue manner, that is, through means not instituted by God. Divination is often taken more broadly for the knowledge or declaration of any things whatsoever, not only future but also occult, which cannot be known in a natural manner and have not been revealed by God. Since knowledge of things of this kind is had neither through the natural powers of man, nor through God, nor through good angels or saints (because God does not permit angels and saints to manifest occult things in an undue manner), it remains that all divination is done through the direct or indirect assistance of a demon. Therefore divination in this broad sense can be defined simply: **a superstition by which a demon is explicitly, or at least implicitly, invoked in order to know occult things through his assistance.**

[750] *Wahrsagerei*, soothsaying.

507. Concerning the knowledge of future and occult things, according to the doctrine of the Angelic Doctor,[751] the following things are to be noted. Future things can be known in two ways, namely, in their causes and in themselves. The causes of future things are related in three ways. Some causes produce their effects always and necessarily, for example, the movement of the earth around the sun necessarily produces the diverse seasons of the year. Some causes, however, produce their effects neither necessarily nor always, but nevertheless in the greater number of cases, for example, from a seed a tree is born. Finally, some causes are not determined to producing one effect, but can produce diverse effects, just as, for example, the human will can produce good and evil acts. Therefore, if someone predicts effects from known causes of the first and second kind, he does not commit divination, because he does not predict in an undue manner, but follows the guidance of right reason. But he who from known free and contingent causes attempts to foretell future effects (unless God reveals them) practices divination, because he acts in an undue manner, usurping to himself what belongs to God alone, who knows all contingent future things.

Demons cannot know contingent future things, nor even things altogether occult, and especially the secrets of hearts;[752] nevertheless, for various reasons, they know far more than men concerning future and other occult things: 1. because the natural intellectual power of angels is much more perfect than the intellect of man. Now this natural intellectual power was not diminished in the demons through sin; 2. because through the

experience of so many centuries they know sufficiently perfectly what is accustomed to happen in certain circumstances, even from contingent causes; 3. because, being most powerful and most cunning spirits, they are able, with God's permission, to instigate even free causes to produce certain effects (although not with complete certainty).

All true divination is done with the assistance of a demon, and indeed a) through his **express invocation**, or, as it is said, with an explicit pact with the demon, namely, when the demon is invoked in set words so that he may be willing to communicate some knowledge, for example, which lot in a lottery is going to have the greatest prize; b) through **implicit invocation**, when someone, in order to obtain some knowledge, uses inept means which he knows have the power to produce the intended effect neither from their own nature nor from the will of God or of the Church. The demon, however, willingly mingles himself with inept means of this kind, because then man, having abandoned the true worship of God, will gradually fall into pernicious errors.

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[751] *S. theol.* 2, 2, q. 95, a. 1.

[752] Cf. *S. theol.* 1, q. 57, aa. 3 and 4.

508. Divisions. Divination is distinguished in two ways, namely, a) divination with express invocation of the devil, and b) divination with implicit invocation of the devil. Each species is subdivided into many parts, which are here enumerated very briefly:

a) There are nine modes of divination with express invocation of the devil:[753]

1. **Praestigium** (an apparition of the devil; *Teufelserscheinung*) is present when the demon himself appears under a sensible sign, as is read in the Gospel concerning the temptation of Christ himself, and in the lives of many saints.
2. **Oneiromancy** (interpretation of dreams; *Traumdeuterei*), or divination by dreams, is present when the invoked devil reveals in sleep the things sought. St. Thomas[754] rightly teaches that there are four causes of dreams, namely, two internal and two external. The first internal cause is animal, namely, a thought or vivid affection had while awake. For it is established by experience that a man often dreams of those things about which he thought insistently before sleep. The second internal cause is corporeal, namely, the internal disposition of the body. Thus, for example, an affection of the heart produces dreams of fear, and an affection of the genital parts produces lustful dreams. The first external cause, and that a corporeal one, is a material impression caused from without during sleep. Thus, for example, one who sleeps in a foul-smelling place suffers wearisome or troublesome dreams. The shining full moon excites certain men to particular dreams (to somnambulism). The other external cause is God or the devil. That God truly sometimes sends dreams is clearly evident from many examples in Sacred Scripture.[755] That the devil also has the power to cause dreams is evident from the fact that he can excite phantasms in man. For the imagination is a corporeal power upon which the devil can exercise his efficacy. If God sends dreams (which seems to happen rarely in our times), He is accustomed at the same time to provide signs not open to doubt that He Himself is the author of those dreams. Such signs are: a) if the thing perceived in sleep is good, worthy of God, and impelling toward virtue; b) if the soul remains tranquil and inclined toward piety, but not disturbed and obstinate in its own designs. In a doubt whether a dream is from God or not, the legitimate ecclesiastical superior is to be consulted. But if it is certain that the dream was sent by God, the directions received in the dream are diligently to be obeyed. In all other cases, however, whether the dreams proceeded from natural causes or from the devil, it is not lawful to trust dreams; for this would be to wish to know occult things in an undue

manner, indeed, in a manner expressly prohibited by God. Already in the Old Testament it was forbidden to observe dreams.[756] Hence he sins gravely who desires to be taught in sleep by a demon, or, what is much worse, employs certain external signs or a certain position of the body in order to undergo the efficacy of the devil in sleep. In practice all are to be deterred from the observation of dreams, even if someone expressly excludes every diabolical intervention. Those who believe dreams they have had often do not sin gravely, both because of their good faith and because matters of the least importance are involved. Thus, for example, one who does not wish to mount a horse because on the preceding night he dreamed that he would fall from the horse can be admonished concerning his empty fear, but is not to be accused of grave sin.[757]

3. **Necromancy** is divination in which the devil is asked to be willing to raise some dead person who is to answer questions. Modern spiritism (concerning which below in n. 524) is not very dissimilar.
4. **Pythonism** is present when a demon, through living men possessed by him, manifests occult things, as is read concerning the pythoness at Endor whom Saul approached.[758]
5. **Geomancy** is divination in which a demon teaches through figures or signs appearing in some terrestrial body,[759] for example, in wood, iron, or a polished stone. To geomancy are reduced a) an oracle, namely, when a demon, having been consulted, responds through idols; b) turning tables, when a demon gives responses by means of turning tables. Turning tables will be treated specially below in n. 521.
6. **Hydromancy** is present if a demon teaches through signs in water. Today the so-called crystallomancy not rarely occurs, in which someone beholds unusual figures in crystal or in water.
7. **Aeromancy** is present if a demon teaches through signs in the air.
8. **Pyromancy** is present if a demon teaches through signs in fire.
9. **Haruspicy** is present if a demon teaches through signs appearing in the entrails of animals immolated upon the altars of demons, as happened among the ancient Romans.

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[753] Cf. *S. theol.* 2, 2, q. 95, a. 3.

[754] Cf. ibid., a. 6.

[755] Gen. 28:13; Judg. 7:13; 1 Kings 3:10; Dan. 2:19; Matt. 1:20 and 2:12.

[756] Deut. 18:10; Jer. 29:8.

[757] Cf. Noldin, *De praeceptis* n. 156.

[758] 1 Kings 28:7ff.

[759] Certainly water, air, fire, etc. are also terrestrial bodies, but divination practiced in these things has special names.

509. b) Seven modes of divination with implicit invocation of the devil are customarily given:

1. **Judicial astrology**,[760] when someone attempts to know future things from consideration of the position and movement of the stars. To this pertain genethliacs, or those who cast horoscopes.[761] This judicial astrology has nothing in common with scientific astrology or astronomy.
2. **Augury**, when someone divines from the voices of birds.
3. **Auspice**, when someone predicts future things from the flight of birds.

4. **Omen**, when someone from a fortuitous occurrence asserts that certain things are going to happen, for example, from encountering a funeral procession or from the presence of thirteen persons at table.
5. **Chiromancy**, if someone divines from the lines of the hand, as is often customarily done in our days by gypsies.
6. **Physiognomy**, if divination is made from the features of the face or of another member of the body.
7. **Sortilege**, if someone presumes to know future things from signs arbitrarily chosen, for example, from cards, from the casting of dice, from figures in molten lead, etc.

[760] *Sterndeuterei* [interpretation of the stars].

[761] *Horoskop- oder Nativitätssteller* [caster of horoscopes or nativities].

510. On the morality of lots. There are three species of lots:[762]

1. **Divisory lots**, which are employed by common consent to discern what is to be allotted to someone, whether it is a possessed thing to be divided, an honor, a dignity, etc. When utility or necessity requires, these lots are entirely lawful and very commonly used. Hence it is lawful to divide an inheritance by lot when another mode of dividing is not so easy; in a time of plague it is lawful to determine by lot which one of the physicians must remain to care for the sick. Even in some civil codes the use of lots for settling controversies is expressly permitted.[763] The use of lots in ecclesiastical elections, however, is forbidden.[764]
2. **Consultory lots**, which are employed to investigate what should be done or omitted in doubtful matters, for example, whether a certain contract of doubtful utility should be made; whether at a fork in the road one should proceed to the right or to the left, etc. Consultory lots are of themselves an unlawful tempting of God, unless they are employed a) from an inspiration of God, as was done in the election of the apostle Matthias; b) from a sufficiently grave cause of necessity or utility, when other ordinary means are lacking.[765] Prayers to God must then be offered beforehand that He may be willing to direct the lots, according to that saying: "Lots are cast into the lap, but they are disposed by the Lord."[766]
3. **Divinatory lots**, which are employed to obtain knowledge of an occult thing, are a grave superstition if they are used seriously without a special mandate of God. For lots of this kind can manifest an occult truth neither from their own nature nor from the institution of God. Therefore the manifestation of the truth is expected through the assistance of a demon, who is consequently invoked at least implicitly. If lots are employed from a special inspiration of God, as was done to discover the crime of Achan,[767] they are entirely lawful, as is evident of itself; but if they are employed from mere jest or some curiosity, without firm faith being placed in the outcome of the lots, they are not indeed gravely sinful, but nevertheless are to be avoided, because they are not a very becoming jest. In canon law sortilege, which is a superstition, has been gravely prohibited.[768]

[762] Cf. *S. theol.* 2, 2, q. 95, a. 8, and Billuart, *De relig.* diss. 7, a. 5, § 5.

[763] Cf. German Civil Code, §§ 659, 752; Austrian Civil Code, §§ 835, 841; Swiss Civil Code, art. 611.

[764] c. 3, X 5, 21; cf. St. Thomas, *Opusc.* (XXV), *De sortibus* c. 5.

[765] Cf. *S. theol.* 2, 2, q. 95, a. 8.

[766] Prov. 16:33.

[767] Josh. 7:12.

[768] Cf. c. 7, C. 26, q. 5; likewise ibid., cc. 8, 9, and 10; cf. also the constitution *Coeli et terrae* of Sixtus V, issued in 1586, in which not only sortilege but also other modes of superstition are gravely prohibited. Cf. Code of Canon Law, c. 2325.

511. Scholion. On ordeals and the use of the divining rod. To sortileges are also reduced the so-called **ordeals**, or vulgar purgation, and the use of the **divining rod**. Ordeals were often employed in the times of the Middle Ages. Already St. Thomas taught that they were unlawful, and several Supreme Pontiffs condemned them, for example, Nicholas I,[769] Innocent III,[770] and Honorius III.[771] Some men nevertheless used them from an erroneous conscience, or perhaps from a special impulse of the Holy Ghost. Ordeals were customarily performed in many ways, but especially through the judgment of red-hot iron or boiling water, concerning which St. Thomas[772] says: "A judgment of this kind is rendered unlawful both because it is ordered to judging occult things, which are reserved to divine judgment, and because a judgment of this kind has not been sanctioned by divine authority." And in truth such judgments equally contain an unlawful tempting of God, from whom a miracle is expected, and a sinful superstition.

A **divining rod**[773] is a rod customarily cut from hazel or willow wood and employed for finding hidden things. Authors commonly teach that the use of such a divining rod is lawful for seeking water or metals, provided that a protestation is made against every diabolical efficacy. The reason is that the rod's inclination toward water or metals can be explained with sufficient probability from magnetic and electrical forces; hence even upright men sometimes use a divining rod for this effect. But if that rod is employed to find lost things of any kind, this is then unlawful, because no natural cause has the power to produce such effects.

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[769] c. 22, C. 2, q. 5.

[770] c. 9, X 3, 50.

[771] c. 3, X 5, 35.

[772] *L.c.*, ad 3.

[773] *Wünschelrute, Zauberrute, die aus Haselnuss oder Weide geschnitten wird; baguette de coudrier* [divining rod, magic rod, which is cut from hazel or willow; hazel rod].

512. Moral malice. 1. Divination which is done with express invocation of a demon is a mortal sin in its whole genus.

The reason is that:

a) through it divine worship is rendered to the devil;

b) in this manner there is a most manifest commerce with the bitter enemy of God;

c) there easily arises a danger of apostasy and of other grave sins, indeed, even of eternal damnation; for just as association with angels is a certain beginning of eternal life, so commerce with the devil is a certain beginning of eternal damnation.

2. Divination through implicit invocation of a demon is indeed a mortal sin from its genus, because it is a certain commerce with the devil; nevertheless, it becomes a venial sin: a) from the ignorance and simplicity of the agent; b) from the jest and levity with which it is performed; c) from the fact that firm faith is not placed in those vain signs.

Therefore the faithful are indeed to be earnestly admonished not to approach diviners practicing chiromancy, sortilege, etc., but they are not so readily to be condemned as having committed a grave sin.[774]

[774] Divination by cards (*Kartenschlagen*) can also be reduced to divinatory sortilege.

513. The specific malice of divination. Theologians indeed commonly teach that all diverse divinations, whether they are done by an explicit or implicit pact with the devil, are not distinguished specifically in the moral genus, because all are reduced to the worship of a false divinity; nevertheless, for two reasons it must be declared in confession whether the divination was done through an explicit pact with the devil or not: 1. because thus the confessor can judge more easily whether the sin committed was grave or not; for divination with an explicit pact with the devil is always a mortal sin, as has been said; 2. because with divination through the express invocation of the devil very many other sins are customarily joined, for example, blasphemy, sacrilege, abuse of sacred things, etc.

Article IV. On Vain Observance

514. Notion. Vain observance[775] is a species of superstition in which, to obtain a certain effect, means are employed which are suited to that end neither from their own nature nor from the ordinance of God or of the Church.

Vain observance differs from divination in this, that the end of divination is knowledge of future or occult things, whereas vain observance is ordered to obtaining other external effects. The difference therefore exists only in the effects; the means employed, namely, the intervention of the devil, are the same.

[775] *Wahnbrauch, sorcellerie* [superstitious observance, sorcery].

515. Division. A threefold vain observance is customarily distinguished by the older authors:

1. **The notory art (*ars notoria*)**, which is a certain method of acquiring knowledge suddenly and without labor through means that are altogether inept.

For example, by inspecting certain figures, pronouncing certain unknown words, and other things of this kind. From these things the difference between divination and the notory art appears; for through divination knowledge of future or occult things is sought, whereas through the notory art the infusion of some science is sought.[776] St. Thomas[777] rightly inculcates the complete inefficacy of this notory art. For God alone can infuse knowledge in a supernatural manner: "It does not belong to demons to enlighten the intellect.... But the acquisition of knowledge and wisdom is made through the enlightenment of the intellect; and therefore no one ever acquired knowledge through demons."

2. **The observance of health** is a method of curing diseases by employing means that are altogether inept.

For example, through so-called sympathy, through amulets, through charms or incantations, etc.[778] This magical medicine has flourished at all times and among all peoples, even cultivated ones, and still flourishes. In modern newspapers such magical physicians not rarely offer their assistance. In practice it is often most difficult to distinguish whether some mode of healing is natural or magical, since truly astonishing effects can be obtained in the human body through so-called suggestion. In a doubt, those criteria are to be employed which are indicated below in n. 517 for discerning every vain observance.

3. **The observance of events** is a method of conjecturing something favorable or unfavorable from the observation of a fortuitous event, and then of regulating one's actions from it.

For example, if someone thinks that something unfavorable is going to happen to him because an old woman met him in the morning, or because he sat at table with thirteen guests, etc. This observance of events is very closely related to the divination which is called an omen; nevertheless, it differs from it because in divination knowledge of future things is sought, whereas in the observance of events direction of one's actions is sought.

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[776] The notory art is practiced in our times by certain sects devoted to false mysticism. In their assemblies even uneducated men sometimes suddenly rise and, as though filled with the Holy Ghost, deliver discourses concerning moral and religious matters.

[777] Cf. *S. theol.* 2, 2, q. 96, a. 1.

[778] Most famous in this matter is the book published by Mary Eddy (d. 1906), *Science and Health with Key to the Scripture.*

516. The moral and specific malice of vain observance is the same as that of divination.

The reason is that in each the virtue of religion is injured in the same formal manner, since an effect is sought through an explicit or implicit invocation of the devil. No moral difference is introduced by whether knowledge of an occult thing or some other external effect is sought. Hence the things said above concerning the moral malice of divination also apply to vain observance. In practice great patience and prudence are needed to deter the faithful from vain observances, since many faithful, and pious ones at that, perceive nothing evil in actions of this kind. Therefore they are prudently to be instructed concerning the vanity of such actions, without, however, its being said at once that they are gravely sinful in themselves.

517. The criteria for recognizing vain observance are chiefly three:

1. The insufficiency of the cause employed to produce the effect. Hence it is manifest superstition if someone thinks that by reciting a brief formula he will recover health from it.
2. The addition of a vain or false circumstance as though necessarily required for obtaining the effect, for example, to cut seven hairs from the neck in order to obtain health.
3. An infallible expectation of the effect from those vain means.

In a doubt whether some effect proceeded from a natural cause or not, it is ordinarily to be attributed to natural powers, because nothing preternatural is to be asserted unless it is established. Moreover, the efficacy of natural causes is very often unknown to us. But if it is established that the effect was not produced by a natural cause, and a doubt arises whether it is from God or from the devil, a miracle is not to be presumed, but rather a diabolical intervention.

Article V. On Magic and Malefice

518. Notions. Magic, taken in a general sense, is the art of working wonders through occult causes. There is distinguished **white or natural magic**,[779] which is the art of working wonders through natural means, and **black**[780] **or superstitious magic**, which is the art of working wonders through the assistance of a demon. Magic which is employed to harm others is called **malefice**. The ancients distinguished a twofold malefice, namely, **amatory malefice**, or a philter, which is the excitation of most vehement love or hatred toward some determined person; and **poisoning malefice**, which through the assistance of a demon inflicts harm upon some person in body or goods. In the old canon law malefice is sometimes called sortilege, because an evil lot

befalls those who are affected by malefice. Likewise, male and female practitioners of magic are called sorcerers and sorceresses.[781]

[779] *Taschenspielerkünste, prestidigitation* [sleight-of-hand tricks, prestidigitation].

[780] *Schwarzkunst, magie noire* [black art, black magic].

[781] Cf. the whole of q. 5, C. 26.

519. Moral malice. 1. White magic is of itself lawful.

For it is practiced through natural powers and through the sagacity and dexterity of men. Per accidens, however, even white magic can become unlawful, because spectators and hearers are excessively excited and easily believe that preternatural powers intervene to produce the marvelous effects.

2. Black magic is a grave sin of superstition, which differs only accidentally from divination and vain observance.

The reason is that in each there is at least an implicit invocation of the devil. Therefore the same things said above concerning the malice of divination and vain observance must be applied.

3. Malefice contains a twofold malice: the one against religion, since it is worship of a demon; the other against charity and justice, because it inflicts unjust harm upon one's neighbor.

That a demon can truly harm a man in both amatory and poisoning malefice is evident of itself, because such effects are produced through corporeal actions which do not exceed the power of a demon; nevertheless, a demon cannot remove human liberty, and therefore acts committed by a man under the influence of the devil remain imputable, unless, however, reason was totally disturbed. In practice it is not readily to be believed that black magic or diabolical malefice is present in a particular case. For the sad history of witches demonstrates how many most unjust atrocities were committed because men were excessively credulous in these matters.[782] The following must be held as a certain rule denied by no one: whenever a reasonable doubt remains whether some effect proceeds from a natural cause or from a demon, it is to be attributed to natural powers. The reason is that a) very many natural powers are still unknown to us. If someone, for example, had suddenly presented in ancient times several modern phenomena of the telephone, phonograph, electricity, etc., he perhaps would have been regarded as a diabolical sorcerer. Almost daily new natural powers are discovered which produce astonishing effects. b) Some men are endowed with the greatest dexterity and sagacity and through natural powers alone produce effects which are altogether inexplicable to the men who behold them. c) The influence of the devil seems now to be greatly constrained by divine omnipotence, and is to be presumed in no case, but must always be clearly proved. These things indeed are to be attended to especially by priests, lest they too quickly attribute some unusual and inexplicable effect to the devil and afterward are deservedly ridiculed by all.

[782] *Hexenwahn* [witch delusion].

Article VI. On Magnetism, Hypnotism, and Spiritism

520. Magnetism is either mineral or animal. The former is a certain physical force, very similar and closely related to electricity, inhering in certain minerals and metals. Although the intimate nature of this magnetism is still hidden from us, nevertheless from day to day it is employed more and more for the utility of

the human race. To treat of this magnetism pertains to the natural sciences, not to moral theology. **Animal magnetism**, which is also called mesmerism after the physician Francis Mesmer (d. 1815), is a certain force, perhaps subsisting in the nerves of man, suited to curing diseases and producing other material effects by external contact alone. Animal magnetism in our days is often practiced by so-called magnetopaths, and, considered in itself, contains nothing unlawful. For it is nothing other than one of the diverse modes of curing diseases; and just as electrotherapy, homeopathy, hydrotherapy, etc. are objectively lawful, so also is mesmerism, which truly, according to experts in the art, sometimes produces good effects. Per accidens, however, mesmerism is not rarely unlawful, because it is practiced by men who lack due knowledge, good morals, and a right end in acting. Concerning the use of magnetism the Holy Office[783] established the following as a general rule: "With every error, sortilege, and explicit or implicit invocation of a demon removed, the use of magnetism, namely, the mere act of employing physical means otherwise lawful, is not morally forbidden, provided that it does not tend toward an unlawful or in any way depraved end. But the application of purely physical principles and means to things and effects truly supernatural, so that they may be explained physically, is nothing but an altogether unlawful and heretical deception." Magnetism is not to be confused with hypnotism, which will be treated below. For in magnetism the use of reason and liberty is never lost; nevertheless, this sometimes happens in hypnotism.

[783] On 28 July 1847.

521. On turning tables. Perhaps "turning tables" can also be explained through the assistance of animal magnetism. Behold their manner of operation: several persons, whether men or women (it happens rather rarely that one person alone can produce the same effects), touch some table with the tips of their fingers, arranged in a determined manner. After some time the table begins to move and especially to be agitated by its feet. If it is then established among those present, for example, that one knock signifies affirmative and two knocks signify negative, the table responds by knocks of its foot according to the responses established. These responses are true provided that one of those touching the table knows what ought to be answered; otherwise, they always speak falsely. Certain authors assert that the table suddenly ceases to turn when a blessed object is placed upon it, or that the table gives responses also concerning things altogether occult; this, however, is rightly denied by others, since men above every suspicion firmly contend from their own experience that the table never gives a true response when no one touching it knows the matter asked, and *a fortiori* that the table never reveals anything altogether unknown.[784] The phenomena narrated, for example, by Gury-Ballerini[785] certainly do not occur in six hundred experiments performed; and if they happen in a rare case, they are often nothing other than effects produced by the greatest dexterity of the magnetizer. Therefore, since it is not yet certainly established what precisely is produced through turning tables, they must be judged with great caution. The following seem to be said:

1. The simple rotation of the table can in some measure be explained from the natural powers of nerves and muscles or of some fluid, whose nature, however, is still hidden from us.
2. The response of the table to questions known to one or several of those touching it need not be attributed to preternatural powers; for just as the nerves of those touching it can probably produce the rotation itself, so nothing seems to prevent the same nerves from also causing, according to the will of those touching it, a determined number of knocks.[786]
3. If the table truly gives responses concerning things truly occult, then this is to be attributed to the devil. For without any doubt a material table can give no response of itself; moreover, those present

cannot give the response, since, as is supposed, the matter is altogether occult; finally, neither God nor a good angel gives responses of this kind to questions that are often frivolous. It remains, therefore, that the devil mingles himself in it.

4. Even with responses of the table concerning things altogether occult excluded, the faithful are to be deterred from experiments with turning tables, because, even if more probably no diabolical intervention is present, nevertheless experiments of this kind, far from producing any utility, are accustomed rather to cause several harms; for they excite unhealthy curiosity, foster superstition, and not rarely injure decency and charity.

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[784] Cf. C. Gutberlet, *Der Kampf um die Seele* (1903), p. 582.

[785] *Comp. theol. mor.* I, n. 273ff.

[786] Thus also Tanquerey, *De virt. relig.* n. 913.

522. Hypnotism. Although certain authors (for example, Marc) would have hypnotism to be nothing other than a higher degree of animal magnetism, it is more correctly distinguished from it in reality. For animal magnetism can be effected by bodily contacts alone; hypnotism, however, is produced in many other ways, for example, by a fixed gaze upon a shining object, by suggestion, and by other mechanical means; indeed, there are men who, by a certain autosuggestion, are able to transfer themselves into hypnotic sleep. To hypnotism is reduced the so-called suggestion in the waking state (*Wachsuggestion*), through which hypnotic sleep is not indeed produced, but a man nevertheless necessarily performs the commands of the hypnotizer or suggester.

The effects produced through hypnotism are many and diverse. Dr. Joire,[787] professor of the Psychological Institute of Paris, enumerates five categories of effects, namely, active suggestion, passive suggestion, somnambulism, catalepsy, and lethargy; but he himself admits that all these categories are not altogether diverse, but are often intermixed. An altogether astonishing effect of hypnotism is somnambulism, in which the hypnotized person is subjected in all things to the will and command of the hypnotizer and, although he seems to be deprived of the external senses, nevertheless sees and hears the hypnotizer, whom he obeys at a nod.

In our days hypnotism is employed for obtaining diverse ends, namely:

1. by physicians to cure various diseases, especially those of the nerves;
2. by artists, for example, by a painter to procure for himself a model,[788] who for a long time retains the same posture immovably, or for a long time expresses the same vivid internal affection by the arrangement of the mouth and countenance;
3. by judges, that they may elicit useful or necessary confessions from the accused or from witnesses;
4. by parents and teachers to assist education and eradicate depraved habits; for those things which have been suggested to a hypnotized person, even when the hypnosis has ceased, he is accustomed for at least some time to carry into execution by the force of a certain inclination implanted in him (posthypnotic states);
5. by curious persons for their own recreation and that of others.

Although certain phenomena of hypnotism are most difficult to explain, nevertheless it is by no means necessary to have recourse to diabolical intervention. The things narrated by certain authors concerning the

speaking of unknown languages and concerning wholly extraordinary sciences and notions possessed by hypnotized persons are mere fables, or at least are not certainly established. A certain physician, most distinguished both for knowledge and for good morals, who himself very often employed hypnotism with good effect and who often saw it employed by others, told me that neither he nor anyone else had ever been able through hypnotism to obtain any effect exceeding the natural powers of the hypnotized person; and that, if such exceeding effects are narrated, they are to be attributed solely to the credulity and simplicity of the hearers and to the exceedingly great dexterity of the hypnotizer.[789] I can assert the same from my own experience.

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[787] *Handbuch des Hypnotismus*, German translation (1908), p. 31ff.

[788] *Modell* [model].

[789] Tanquerey rightly says (*l.c.*, n. 916): "The hypnotic phenomena which are certainly established do not seem to exceed the powers of the natural order."

523. The liceity of hypnotism. Principle. Hypnotism is not unlawful in itself; often, however, it becomes unlawful because of abuse.

Thus holds the more common opinion today.

The first part is proved: The means employed in hypnotism (and its end) are lawful. Therefore hypnotism is not unlawful in itself. The means employed are suggestions, shining objects, etc., which certainly contain nothing unlawful. Likewise, the ends of hypnotism enumerated above (except perhaps the ends indicated above under nn. 3 and 5) are not necessarily evil and repugnant to right reason. Nor should anyone say that it is not lawful to deprive oneself violently of the use of reason, and much less to subject one's will to the judgment of another. For although these things are true if a sufficient cause is not present, nevertheless, when a reasonable cause exists, nothing prevents someone from renouncing for a time the use of reason and will. Thus, for example, when a man gives himself to natural sleep or when a sick person is placed under narcosis, he also renounces the use of reason and will. There is, however, some difficulty concerning the so-called posthypnotic states. For even after the hypnotism is completed, the will of the hypnotized person remains in some manner under the power of the hypnotizer, whose commands (even from a distance) he is accustomed to fulfill without resistance. Nevertheless, it cannot be said that the hypnotized person has entirely lost liberty, since he not only is able to resist but sometimes in fact resists the command of the hypnotizer. Therefore a more or less vehement inclination is impressed through hypnotism, but liberty is not customarily removed entirely in the posthypnotic state.

The second part is explained: Hypnotism is a land still sufficiently unknown and full of dangers. For sometimes bodily health is not merely not cured by it, but rather is ruined; moreover, the hypnotizer can easily abuse that subjection of the will which remains in some manner even after hypnosis in order to perpetrate crimes. Since these things are so, it is not lawful to use hypnotism except from a proportionately grave cause and with all precautions employed so that abuse may not be possible. There are several authors who absolutely forbid the use of hypnotism, such as Ballerini-Palmieri,[790] Bucceroni,[791] and Aertnys;[792] but several others, such as Berardi,[793] Génicot,[794] Lehmkuhl,[795] D'Annibale,[796] Noldin,[797] and Coconnier,[798] hold it lawful under certain conditions. The response of the Holy Office concerning hypnotism, dated 26 July 1899, is to be noted: "As regards experiments already made, they can be permitted, provided that the danger of superstition and scandal is absent, and that in addition the petitioner is prepared to abide by the commands of the Holy See. As regards new experiments, if there is question of facts which certainly exceed the powers of

nature, they are not lawful; but if this is doubted, they are to be tolerated after a protestation that one wills to have no part in preternatural facts, provided that the danger of scandal is absent." From this response it plainly appears that the Holy See does not condemn hypnotism as simply unlawful, but determines only the conditions under which experiments of this kind can be performed lawfully.

Note. The salutary effects of hypnotism are being called more and more into doubt by more recent physicians, at least if it is carried as far as somnambulism. For it is now sufficiently established that the salutary effects obtained through hypnotism are often of brief duration, but that afterward the apparently cured disease returns, and indeed in a more vehement degree.

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[790] *Opus theol.* II, tr. 6, n. 101 (ed. 1890).

[791] *Theol. mor.* I, n. 485.

[792] *Theol. mor.* l. 3, n. 32. Aertnys nevertheless permits hypnotism to be employed by a trustworthy physician for producing natural effects alone.

[793] *Praxis confess.* I, n. 484. Nevertheless, the author's mind is not so clearly established.

[794] *Theol. mor.* I, n. 273.

[795] *Theol. mor.* I, n. 502.

[796] *Summula theol. mor.* II, n. 43.

[797] *De praeceptis* n. 749.

[798] *L'hypnotisme franc*, p. 260ff. Above the others, this author is to be consulted in this matter.

524. Spiritism (which is also sometimes called spiritualism) is taken either in a broad sense, and then also the phenomena of turning and responding tables pertain to spiritism; or in a strict sense, and then it is **unlawful conversation with spirits of another world**. When this conversation takes place by means of hypnotism, then the phenomena of hypnotism and spiritism are present together. Sufficient has already been said above concerning hypnotism. In spiritism strictly so called, spirits of another world are evoked, especially known deceased persons. The spirits evoked sometimes produce the so-called "materialization," that is, they appear in a sensible and visible form, so that their photograph can be taken. In present times spiritism is spreading widely. It is said that a special chair of spiritism has been established at the University of Philadelphia, and several periodicals spread spiritism daily. So-called spiritistic mediums, that is, persons having a special aptitude for conversing with spirits, are customarily employed; by falling into a certain artificial sleep (which is called *trance*), they produce a materialization of spirits. It has been proved several times that the most celebrated spiritistic mediums[799] were base impostors who with great dexterity produced astonishing effects, but by natural powers alone. There are those who call all spiritistic phenomena fabrications and deceptions; and indeed a strong suspicion of deception ought to arise from the fact that all spiritistic sessions are customarily held under uncertain and unclear light. But why do spirits so fear full light?

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[799] For example, Slade, Florence Cook, Rothe, Eusapia Palladino, etc.

525. Morality. Spiritism strictly so called, that is, artificial and vain conversation with spirits of another world, is altogether unlawful.

For the phenomena of spiritism are either true or fictitious. In either case, however, spiritism is unlawful. For in the first case spiritism is nothing other than vain observance joined with divination, namely, with pythonism or necromancy. It is established with moral certainty that those apparitions and responses are not

to be attributed to a natural cause, but to a preternatural being. Now that being most certainly is neither God, nor a good angel, nor a saint, since these do not cooperate with spiritistic vanities and impieties, especially since things contrary to religion and good morals are not rarely uttered. Therefore spiritistic apparitions, if they are true, are in fact diabolical, and consequently cause unlawful commerce with a demon. But if the phenomena are false, as happens in most cases, spiritism still seems to be unlawful, because it is accustomed to provide grave scandal, to lead many into error, to harm true religion, and to bring altogether no utility; nor has it brought any true utility up to the present. Therefore it is never lawful to conduct spiritistic experiments, although every agreement with a demon is excluded and only commerce with a good spirit is intended. To this pertain the responses of the Holy Office dated 1 April 1898 and 27 April 1917.[800]

A fortiori, it is not lawful to serve as a **medium** in spiritistic experiments. When scandal and cooperation are absent and every approval of spiritism is excluded, it is indeed unlawful, but does not seem to be a grave sin, sometimes to watch spiritistic experiments, even from mere curiosity; indeed, attendance seems lawful if it is done with the intention of detecting the frauds of spiritists.[801] For it is established that very many of those experiments are effects produced by the dexterity of men; on the contrary, it is not certainly established that even one phenomenon has been produced by the devil. Therefore, according to the rule given above by the Sacred Congregation, in a doubt whether some effect is from a natural or a preternatural cause, the phenomena of spiritism can be ascribed to natural causes.

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[800] "Titius, with every agreement with an evil spirit excluded, is accustomed to evoke the souls of the dead. He proceeds thus: while he is alone, without first doing anything else, he directs a prayer to the leader of the heavenly host, that through him he may obtain the faculty of communicating with the spirit of such a determined person. He waits a little; then, while he presents his prepared hand for writing, he perceives it to be moved, from which he becomes more certain of the presence of the spirit. He sets forth what he desires to know, and the hand writes responses to these questions. These responses all accord with the Catholic faith and the doctrine of the Church concerning the future life. For the most part they regard the state in which the soul of some deceased person is found, its need of receiving suffrages, its complaints concerning the ingratitude of relatives, etc. Is the manner of acting of Titius lawful? Response: As it is set forth, it is not lawful. The Most Holy Father approved" (*Collect. de Prop. Fide* n. 1994). To the question: "Whether it is lawful ... to be present at any spiritistic communications or manifestations whatsoever ... whether by questioning souls or spirits, or by hearing responses, or merely by looking on, even with a tacit or express protestation that one wills to have no part with evil spirits?" the Holy Office responded on 27 April 1917: "Negative in all things" (*Act. Ap. Sed.* 1917 [IX], 268). The Second Council of Baltimore, n. 41, prudently decreed: "We exhort them in Christ that they favor spiritism in no way, even indirectly, and that they never attend its circles even from curiosity."

[801] Thus also Noldin, *De praeceptis* n. 170, and Vermeersch, *Theol. mor.* II, n. 248.

Article VII. On the Tempting of God

526. Preliminary note. Thus far there has been discussion of sins against religion by excess; now irreligion strictly so called must be treated, which is opposed to religion by defect, insofar as from its own nature it contains something contrary to divine worship, namely, irreverence and contumely. Certainly superstition and its species also inflict irreverence upon God, but not so immediately and directly as irreligion strictly so called, which is directed immediately either against God Himself or against sacred things (at least if one excepts idolatry). Against God are temptation and blasphemy; against sacred things are sacrilege and simony. Each must be treated separately.

527. Notion. The tempting of God is a word or deed by which someone explores whether God has or exercises some perfection, for example, knowledge, power, or mercy.[802] Therefore, to tempt God is nothing other than to make a trial, without sufficient cause, of some divine attribute, or to expect an unusual manifestation of God.

Division. The tempting of God is distinguished as formal (express, explicit) and virtual (interpretative).

The former is present if someone, through those things which he does or says, expressly intends to explore some perfection of God or His will. In this sense we read concerning the Israelites: "They tempted the Lord, saying: Is the Lord among us or not?"[803] And in the Psalms it is said: "They tempted God in their hearts, ... can God furnish a table in the desert?"[804] Such formal temptation is also present if someone, doubting God's power, asks a miracle from Him; or if someone casts himself into a well with the intention of testing whether God wills to save him miraculously.

The latter temptation is present when someone does not indeed directly intend to make a trial of God, but nevertheless does or omits something useful for nothing else than proving either God's power or His goodness; as if someone does not indeed doubt God's power and goodness, but frivolously exposes himself to danger of death, hoping for God's miraculous assistance. The former temptation, namely, formal temptation, is accustomed to proceed from infidelity or at least from doubt concerning some perfection of God; the latter temptation, namely, virtual temptation, arises for the most part from presumption or excessive confidence. To explain the nature of this temptation, the Angelic Doctor writes:[805] "He tempteth God as it were interpretatively who, although he does not intend to make trial of God, nevertheless asks or does something which is useful for nothing else than proving God's power or goodness or knowledge. Thus, when someone makes a horse run in order to escape enemies, this is not to make trial of the horse; but if he makes the horse run without any utility, this seems to be nothing other than to make trial of the horse's speed. Therefore, when someone for some necessity or utility commits himself to divine assistance in his petitions or deeds, this is not to tempt God; for it is said: 'Since we know not what we ought to do, we have only this left, that we direct our eyes to thee.'[806] But when this is done without utility and necessity, this is to tempt God interpretatively."

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[802] Cf. *S. theol.* 2, 2, q. 97, a. 1; St. Alphonsus, *Theol. mor.* l. 3, n. 29.

[803] Ex. 17:7; cf. Heb. 3:9.

[804] Ps. 77:18ff.

[805] *S. theol.* 2, 2, q. 97, a. 1.

[806] 2 Chron. 20:12.

528. Moral malice. Formal temptation of God is a mortal sin in its whole genus; interpretative temptation, however, is a mortal sin from its genus.

Explanation. Formal temptation includes a twofold grave sin, namely, of infidelity and of grave irreligion; for it supposes at least a doubt concerning some perfection of God, and then expects God miraculously to produce a vain and useless effect, which certainly is very irreverent toward His majesty. Hence Christ also indignantly responded to the devil asking a miracle: "Thou shalt not tempt the Lord thy God."[807]

Interpretative temptation also is directly contrary to the virtue of religion and therefore is a mortal sin from its genus. Added to this is that it is often joined with a grave injury to charity toward oneself, as if someone casts himself into a well with danger to his life, hoping for miraculous salvation. For the most part, however, such interpretative temptation is only a light sin, because only light matter and a light danger are involved. Hence, for example, one sins lightly who in a light illness refuses to take medicine and expects health from God. Whether a cleric sins gravely who through negligence approaches the pulpit wholly unprepared, hoping for special assistance from God, is to be weighed not only from the tempting of God committed, but especially

from the scandal which sermons of this kind, not prepared, are accustomed to cause if the hearers perceive the negligence of the sacred orator.

[807] Matt. 4:7.

Article VIII. On Blasphemy

529. Notion. Blasphemy[808] is customarily defined: **speech contumelious toward God.**

It is called *speech* because blasphemy properly and strictly so called is committed by words alone; nevertheless, under the name of blasphemy are also included any other signs whatsoever that are contumelious toward God. Indeed, there are authors who distinguish blasphemy of the heart, of the mouth, and of deed. Blasphemy of the heart consists of thoughts inflicting contumely upon God. Blasphemy of the mouth is speech contumelious toward God. Blasphemy of deed is an external work signifying contumely toward God, for example, to spit toward heaven, to trample a crucifix underfoot, to crush a consecrated host underfoot, etc. But blasphemy in the strict sense is speech contumelious toward God; and therefore, if blasphemy in some diocese is a reserved sin or is punished by other penalties, only blasphemy uttered by mouth or in writing is understood.

St. Thomas treats blasphemy among the sins which are opposed to the due confession of faith, because, just as through the confession of faith something befitting the divine excellence is asserted, so through external blasphemy something repugnant to the divine excellence is asserted with a certain detestation of affection.[809] Nevertheless, every blasphemy is also opposed to the virtue of religion, since religion has for its object the worship and honor of God, whereas blasphemy does the altogether contrary thing, namely, it inflicts contumely upon God.[810] Moreover, it often happens that one sin is opposed to diverse virtues. Modern theologians, and also the Code of Canon Law, c. 2323, treat blasphemy as an offense against religion.

[808] The name blasphemy seems to be taken from the Greek words *βλάπτω* and *φήμη*, which signify injury to reputation. But the reputation of God cannot be injured by detraction and calumny, since God is present everywhere. There remains only contumely, which is uttered against one who is present. But just as contumely uttered against a man who is present gravely injures him, so contumely inflicted upon the omnipresent God through blasphemy is a grave offense against God.

[809] Cf. *S. theol.* 2, 2, q. 13.

[810] Thus also Billuart teaches, *De fide* tr. 5, a. 5.

530. Divisions. Blasphemy is distinguished:

1. **Heretical and non-heretical.**

Heretical blasphemy contains true heresy, whether formal or material; for example: God is a tyrant; or if a Calvinist says: God is the cause of sin. When the blaspheming man truly believes the heresy uttered, he is a formal heretic; but if he only utters this externally without interior assent, he is a material heretic, as if some Catholic from despair were to say: God has altogether forgotten me. Non-heretical blasphemy contains no heresy, but only an imprecation or contumely against God, and is customarily subdivided into simple (opprobrious) and imprecatory blasphemy. The former is simple contumely or mockery. In this manner the Jews blasphemed, saying to Christ: "Vah, thou that destroyest the temple of God and in three days dost rebuild it, save thy own self."[811] The latter is imprecatory blasphemy, by which evil is wished to God, for example: May God perish! If this is done truly and deliberately, it is joined with hatred of God, which is simply the gravest of all sins.

2. **Immediate and mediate blasphemy.**

The former dishonors God Himself directly; the latter dishonors saints or sacred things, not indeed according to themselves, but insofar as they have a close relation to God. Thus, for example, if someone were to say of the Blessed Virgin that she is an unchaste Venus, he would commit mediate blasphemy, provided that in the Blessed Virgin he willed to dishonor God. But if he were to say the same thing intending solely the dishonor of the Blessed Virgin as she is a human being, it would be a sin against hyperdulia, but not properly a sin of blasphemy.[812]

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[811] Matt. 27:40.

[812] Cf. *S. theol.* 2, 2, q. 26, a. 2.

531. Malice. Blasphemy is a mortal sin in its whole genus, and therefore cannot become venial from slightness of matter, but only from imperfection of the act.

The enormous malice of blasphemy can already be suspected from the most grave penalty of death inflicted upon it in the Old Testament: "The man that curseth his God shall bear his sin; and he that blasphemeth the name of the Lord, dying let him die."[813] Even in law, both canon and civil, grave penalties are inflicted upon blasphemers.[814] Indeed, St. Pius V decreed that the tongue of blasphemers could be pierced.[815] The intrinsic reason, however, why blasphemy is so grave a sin is its hostile opposition both to the charity of God, to the virtue of religion, and often to theological faith. Hence whenever truly voluntary and deliberate blasphemy is present, it is always a mortal sin.[816]

Because of imperfection of the act, blasphemous words often are not grave sins. For sufficient advertence and intention are not rarely lacking in blasphemers. From anger, from sudden affections, or from a habit not altogether voluntary, men, especially the uneducated, break forth into blasphemous words without in any way intending to insult God or sacred things. If someone has a bad habit of uttering blasphemous words, he must lay it aside according to his powers; otherwise, acts produced from the habit are imputed to him, although he does not attend to the malice of each. Cf. the things said above in I, n. 90 concerning the influence of habit upon the morality of human acts.

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[813] Lev. 24:15ff.

[814] Code of Canon Law, c. 2323. Cf. German Penal Code § 166 and *Staatslexikon*, s.v. "Religious offenses" (*Religionsverbrechen*).

[815] Constitution *Cum pridem*, issued in 1566.

[816] Cf. *S. theol.* 2, 2, q. 13, aa. 2 and 3, where the Angelic Doctor says: "Since the blasphemer intends to inflict injury upon the divine honor, simply speaking, he sins more gravely than a murderer"; and with St. Augustine he says: "It is worse to blaspheme than to perjure oneself."

532. Practical rules for discerning whether gravely sinful blasphemy is present in a particular case.

It is necessary to attend especially to three things:

1. the intention of the speaker or agent;

2. the natural sense of the words;

3. the common estimation in the place.

When it is established that the speaker or agent truly willed to blaspheme, the matter is clear, since a depraved intention deforms every human act. But if it is not clearly established that the speaker or agent willed to inflict contumely upon God, and indeed it appears rather that he intended something else, then it is necessary to attend to the natural sense of the words and especially to the common estimation prevailing in the place. According to the natural sense of words, it is blasphemy if a) something true is denied of God or something false is imputed to Him; for example, the following expressions are blasphemies: God is not just; God is cruel; God does not care for me; b) some divine attribute is attributed to a creature; for example, if someone says: I can do this as well as God; or if a lover seriously calls his beloved a Goddess. Commonly, however, expressions of this kind are rather exaggerations and are not seriously intended; nevertheless, they are always diligently to be avoided, as is evident of itself; c) if someone utters things contumelious against the Church founded by Christ, against the sacraments, against the worship of God, etc.

But especially to be attended to is the common estimation prevailing in the place; for blasphemous words are often truncated: in one place they are held as blasphemous, but in another they are not. Thus, for example, the Dutch words "God dom" were held in former times as blasphemous, but now this acceptance is already ceasing. Whether the same is to be said of the similar English expression "God damn," I do not dare to affirm; for it seems to be blasphemy. The German expressions "Tausend Sakrament" [a thousand sacraments] and "Tausend Herrgott" [a thousand Lord Gods], as also the French expression "Mille noms de Dieu" [a thousand names of God], according to common estimation are not blasphemies, but vain uses of a sacred thing. For those who employ such expressions by no means intend or understand that there are a thousand sacraments, a thousand Gods, or a thousand names of God.

533. Remedies against blasphemies.

1. If there is question of fully deliberate blasphemies, blasphemers are seriously to be admonished not only how grave a sin blasphemy is, but also how senseless and foolish it is to wish to inflict contumely upon the Most High God. For just as it would be madness to wish to harm the sun or the moon, so it is still more irrational to wish to do something against God. For the Psalmist says most excellently: "Why have the nations raged, and the peoples devised vain things? ... He that dwelleth in heaven shall laugh at them."[817]
2. If there is question of blasphemies which are customarily uttered from sudden anger or from other vehement affections, it is to be inculcated how vain those expressions are and how easily they cause scandal. If all admonitions have been fruitless, certain conventional penalties are a very salutary remedy against habitual blasphemies; for example, an alms is to be given as often as a blasphemy has been uttered, or after each blasphemy a pious ejaculatory prayer is to be said in reparation.

A curse and the vain use of the divine name or of sacred things must be clearly distinguished from blasphemy, although these two are not rarely confused with blasphemy by the simple.

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[817] Ps. 2:1, 4.

534. A curse is to invoke evil upon another. One can invoke evil a) upon God or sacred things and persons, b) upon rational creatures, c) upon irrational creatures, d) upon the devil.

a) To curse God or sacred things and persons is blasphemy, as was explained above.

b) To curse rational creatures ordinarily is opposed only to charity or justice, and therefore St. Thomas treats cursing among the sins opposed to justice.[818] Curses of this kind are often poured forth from sudden anger

without serious intention, and then they are only venial sins; for example, if an angry person exclaims: May the devil seize you! May lightning strike you! May you break your neck! etc. Such curses are especially to be avoided by parents and other superiors, both because scandal is accustomed to arise from them and because sometimes, beyond expectation, they are efficacious. For it happens that the evil which parents invoke upon their children from anger afterward truly occurs. Hence it is said: "The blessing of the father establisheth the houses of the children, but the curse of the mother rooteth up the foundation."[819] Curses seriously uttered against one's neighbor proceed from hatred and are gravely or lightly sinful according to the gravity of the hatred and of the evil wished.

c) To curse irrational creatures, for example, winds, horses, rains, etc., is not blasphemy, because then some relation to God is by no means customarily attended to and intended. Commonly it is nothing other than a light sin of impatience. Indeed, if there is an honorable end, such curses are no sin, as happens in exorcism. Thus David also cursed the mountains of Gilboa, Job and Jeremiah cursed the day of their birth, and indeed Christ Himself cursed the fig tree.[820]

d) To curse the devil as the enemy of God and of the human race is lawful.[821]

Note. Exclamations such as: devil, heaven, lightning (*Donnerwetter!* [thunderstorm!]), etc., are not blasphemies; they are customarily nothing other than sudden eruptions of a vivid affection. In themselves they are not sinful, but per accidens they become unlawful if scandal arises from them, as if priests, parents, or teachers often use them. The faithful are especially to be admonished not to utter frequently the name of the devil, the most bitter enemy of our salvation; but they are also to be openly instructed that exclamations of this kind are not true blasphemies.

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[818] *S. theol.* 2, 2, q. 76.

[819] Ecclus. 3:11.

[820] Cf. *S. theol.*, l.c., a. 2.

[821] Cf. ibid., a. 1 ad 4.

535. The vain use of the name of God is specially forbidden in the second precept of the Decalogue: "Thou shalt not take the name of the Lord thy God in vain,"[822] by which precept we are forbidden vainly, that is, irreverently, to utter not only the name of God, but also the names of saints and of sacred things. Such vain uses of the name of God or of the saints are, for example: My God! Jesus, how shameful this is! Sacrament! Cross! etc. Apart from scandal, vain uses of this kind are a venial sin against the virtue of religion. For the irreverences inflicted upon God in this manner are not so grave that they constitute a grave sin, since neither from their signification nor from the intention of the speakers do they directly assail the honor of God. Nevertheless, all, but especially priests and religious, must diligently avoid such exclamations, since they are useful for nothing, sometimes provide scandal, and are always venially evil.

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[822] Ex. 20:7.

Article IX. On Sacrilege

Since this article is rather long, for the sake of greater clarity it is divided into four paragraphs: 1. sacrilege in general; 2. personal sacrilege; 3. local sacrilege; 4. real sacrilege.

§ 1. On Sacrilege in General

536. Etymological notion. Sacrilege, according to the force of the name, signifies *to take a sacred thing*. The verb *to take* is understood as to take to oneself, or unduly to arrogate and seize, so that sacrilege signifies: unduly to arrogate a sacred thing to oneself. Therefore in the German language sacrilege is rightly called *Gottesraub* [robbery of God].

537. Definition. Sacrilege is defined by St. Thomas[823] as: **the violation of a sacred thing (formally as it is sacred).**

Explanation. In a broad sense, every sin against the virtue of religion is indeed sacrilege, but in the strict sense sacrilege is not present unless a truly sacred thing is injured or treated unworthily. Under the name of a sacred thing, however, are also comprehended a sacred person and a sacred place; and these three are called sacred if by a public rite and by the authority of God or of the Church they have been dedicated to divine worship. Thus holds the common opinion. The reason is that not everyone can at will remove from the number of profane things whatever things he chooses and impress upon them the character of sanctity; rather, for this the authority of the Church is required. There are, however, some authors, for example, Cajetan,[824] who think that any vow or private resolution devoting a thing to divine worship suffices to render it sacred, and consequently that the violation of any private vow, for example, of fasting, almsgiving, etc., is sacrilege. In practice this controversy is of little utility; for he who has violated a private vow must declare this violation in confession, but it matters little whether this violation is called sacrilege or by another name.

The violation committed in sacrilege is either physical or moral, and grave. For not every light unworthy treatment of a sacred thing is customarily called sacrilege; otherwise even conversations in church, light external irreverence against the sacraments, etc. would have to be called sacrileges, which nevertheless has not been received in usage. Moreover, it is to be noted that not every even grave violation of a sacred thing is sacrilege, but only that violation which injures the thing formally as it is sacred. Therefore it is necessary to attend to that for which the thing has been sanctified and whether action is taken precisely against it. Thus, for example, the person of a priest has been sanctified and is a sacred thing, but not his honor, reputation, or material goods. Therefore, he who injures the person of a priest by striking him, dragging him before a civil tribunal, compelling him to military service, or committing fornication with him commits sacrilege; but he who steals the private goods of a priest or defames him does not commit sacrilege, although he perhaps sins more gravely.[825]

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[823] *S. theol.* 2, 2, q. 99.

[824] Cf. above, n. 403.

[825] Cf. Billuart, *De relig.* diss. 10, a. unicus.

538. Division. A threefold sacrilege is distinguished: personal, local, and real, according as there is a threefold genus of sacred things: sacred persons, sacred places, sacred objects.

Lessius[826] and others add sacrilege of sacred time, for example, to perform servile works on Sundays and feast days, to sin gravely on the day of Communion, or to become drunk on Good Friday. More correctly, however, this sacrilege of sacred time is not adopted as a distinct species; for although the circumstance of sacred time increases the malice of the sin, nevertheless it does not seem to constitute a new and distinct species of sacrilege, because acts of this kind are not accustomed to violate time insofar as and formally as it is sacred. It is otherwise if someone were to act precisely in order to violate sacred time, for example, if someone from hatred of religion becomes drunk on Good Friday.

Theologians dispute whether the three enumerated species of sacrilege are lowest species, or whether, on the contrary, within each species there are still lower species; for example, whether gravely to strike a priest is not only a different sin, but also a sacrilege specifically distinct from acting lustfully with him. All indeed teach that the acts themselves are diverse sins, and therefore in the case the striking and the lust must be declared distinctly; but St. Thomas[827] seems to teach that these acts are not specifically diverse as sacrileges, saying: "Nothing prevents two things from being of one species according to something, and diverse according to another.... It is possible for two sins to differ in species according to the material acts, but to agree in species according to the formal notion of sacrilege; for example, if someone has violated a nun by striking her or by lying with her." St. Alphonsus[828] calls this opinion the more probable. Hence in confession it must indeed be explained whether personal, local, or real sacrilege was committed, but other circumstances need not necessarily be declared, provided that the material acts are sufficiently explained. Therefore, if someone in a lengthy confession has already declared the individual sinful acts according to their other specific malices, but has forgotten to declare the circumstance of sacrilege, he is bound to nothing else than to add: in addition I committed so many grave personal, or local, or real sacrileges.[829]

[826] Perhaps Lessius differs from the common opinion more in words than in reality, because he teaches that a violation of sacred time is reduced to the imperfect notion of sacrilege (*De iust. et iure* l. 2, c. 45, n. 18).

[827] *S. theol.* 2, 2, q. 99, a. 3 ad 2.

[828] *Theol. mor.* l. 3, n. 34.

[829] Cf. Lehmkuhl, *Theol. mor.* I, n. 521.

539. The moral and specific malice of sacrilege. Sacrilege is from its genus a grave sin against the virtue of religion.

The reason is that persons, objects, and places sacred to God merit a special reverence, which sacrilege violates. A violation of this kind of itself inflicts grave irreverence upon God; for just as the honor of a master is injured if his servant is dishonored formally as his servant, or if his house or things are disfigured, so *a fortiori* God is dishonored if persons, places, or objects dedicated to Him are treated unworthily. Therefore in Sacred Scripture those who treated sacred things unworthily are gravely punished, for example, the sons of Aaron,[830] the sons of Heli,[831] King Baltassar,[832] and those selling in the temple.[833]

Sacrilege admits slightness of matter, but it is not customary to call very small injuries to sacred things sacrileges, as, for example, if someone converses irreverently in a church (cf. above).

Personal, local, and real sacrileges differ from one another in species, as was already said above with the common opinion. Other things being equal, personal sacrilege is worse; next comes local sacrilege, and last real sacrilege. On this matter the Angelic Doctor writes most excellently:[834] "According to the diverse notion of the sanctity of sacred things to which irreverence is shown, it is necessary that the species of sacrilege be distinguished. For a sacrilege is the graver, the greater the sanctity possessed by the sacred thing against which the sin is committed.... The sanctity of a place is ordered to the sanctity of man, who in the sacred place renders worship to God. For it is said: 'God chose not the people for the sake of the place, but the place for the sake of the people.'[835] And therefore the sacrilege by which one sins against a sacred person is a graver sin than that by which one sins against a sacred place."

[830] Lev. 10:1.

[831] 1 Kings 2:17; 4:11.

[832] Dan. 5:2ff.

[833] John 2:14.

[834] *S. theol.* 2, 2, q. 99, a. 3.

[835] 2 Macc. 5:19.

§ 2. On Personal Sacrilege

540. Notion. Personal sacrilege is the violation of a sacred person. Now a person becomes sacred and is separated from profane persons in two ways, namely, a) through the clerical state; b) through the religious state.

Modes. Personal sacrilege can be committed in four ways:

1. by laying violent hands upon clerics or religious persons of either sex. More briefly it can be said: Sacrilege is committed through violation of the privilege of the canon.
2. by unlawfully dragging the same persons before a secular tribunal. More briefly: Sacrilege is committed through violation of the privilege of the forum.
3. by unduly exacting from the same persons tributes, taxes, or military service. More briefly: Sacrilege is committed through violation of the privilege of immunity.
4. by committing acts of lust with a person bound by a public vow of chastity. Therefore not only does the sacred person himself commit sacrilege, but also perhaps his lay accomplice.

541. As regards 1. Canonists treat more broadly of the privilege of the canon (so called because it is contained in canon law, c. 29, C. 17, q. 4, and Code of Canon Law, c. 119).[836] The following are to be noted briefly:

a) Sacrilege is committed through all sinful real acts of violence (but not verbal ones) which are inflicted upon the person, or even upon things so adhering to the person that the violence redounds upon the very person of the cleric or religious. Such acts of violence are, for example, to strike, spit upon, soil with mud and other filth, tear out hair, rend clothing, etc.

b) For sacrilege it is required that these acts of violence have been done with grave sin. For if such acts of violence were done in a lawful manner, for example, because of legitimate defense, just correction, jest, or ignorance, neither sacrilege nor an ecclesiastical censure is present.

c) The privilege of the canon is enjoyed by a) all clerics, that is, those who have received the clerical tonsure; b) all religious persons of either sex who live in approved orders, congregations, or pious societies.[837] Attend, however, that clerics and religious in some cases lose the privilege of the canon and the other clerical privileges.[838] Concerning the penalties enacted in c. 2343 against violators of the privilege of the canon, see below in the treatise on censures.

[836] Cf. our *Manual of Canon Law*, q. 63.

[837] Code of Canon Law, cc. 614 and 680.

[838] Cf. our *Manual of Canon Law*, q. 64.

542. As regards 2. The privilege of the forum is the exemption of ecclesiastical persons from the jurisdiction of the secular forum. This privilege is no longer customarily recognized by civil tribunals today, but nevertheless it exists. Therefore the Code of Canon Law, c. 120, §§ 2 and 3, decrees: "Cardinals, Legates of the

Apostolic See, Bishops, even titular ones, Abbots or Prelates *nullius*, major Superiors of religious institutes of pontifical right, and major Officials of the Roman Curia concerning affairs pertaining to their office cannot be summoned before a lay judge without permission of the Apostolic See; the others enjoying the privilege of the forum, without permission of the Ordinary of the place[839] in which the case is conducted. Nevertheless, the Ordinary, especially when the plaintiff is a layman, should not deny this permission without a just and grave cause, particularly when he has vainly devoted his efforts to composing the controversy between the parties. If nevertheless they are summoned by one who has obtained no prior permission, they can, by reason of necessity and to avoid greater evils, appear, but the Superior from whom permission was not obtained must be informed." Violators of the privilege of the forum are punished by diverse penalties, concerning which there will be discussion below in III, n. 510. In some regions the privilege of the forum has been abolished by force of a concordat or of a legitimate custom. There, therefore, these penalties are not incurred.

[839] Cf. *Acta Apostolicae Sedis* III, 556.

543. As regards 3. The privilege of immunity is threefold: local, real, and personal. **Local immunity** is a right granted to some sacred place, by force of which all actions that injure the reverence due to that place are forbidden there. Violation of this immunity pertains to local sacrilege, concerning which below. **Real immunity** is the right by which the goods of churches and monasteries are free from lay jurisdiction and from tributes and civil actions. Violation of this immunity pertains to real sacrilege, concerning which likewise below. **Personal immunity** is exemption from civil duties and especially from military service.[840] Several governments in our days do not recognize this immunity of clerics. The Roman Curia issued wise ordinances for clerics and regulars who are compelled to perform military service.[841]

[840] Code of Canon Law, c. 121.

[841] Cf. Holy Office, 1 September 1904; Sacred Congregation of Religious, 29 December 1909; Pontifical Commission, 15 July 1919.

544. As regards 4. Violation of a solemn vow of chastity (the same applies to the vow solemnized in the reception of the subdiaconate) is certainly sacrilege. Thus all teach. The reason is that through such a vow a man is consecrated as a sacred person and altogether separated from profane persons. Sacrilegious lust is committed if any grave external sin against the sixth or ninth precept of the Decalogue is perpetrated by a sacred person or with such a person.[842] The truer and more common opinion teaches that even internal sins committed by a sacred person, for example, morose delectations and desires, are true sacrileges.[843]

More probably, violation of a simple but public vow of chastity made in approved congregations or in religious orders strictly so called (during the three years before solemn profession) is also true sacrilege. The reason is that persons bound by this vow are deputed to divine worship by the public authority of the Church; and, moreover, are separated from profane persons just as are the solemnly professed. Some authors teach the contrary, for example, Haine,[844] who cites Sporer. Palmieri-Ballerini asserts that violation of a simple vow of chastity is a sin of perfidy and not of sacrilege.[845]

Violation of a **private** vow of chastity does not seem to be sacrilege in the proper sense, since through such a vow a man by no means becomes a sacred person. Hence spouses who by mutual consent made a vow of chastity and nevertheless used marriage do indeed sin against religion, but do not commit sacrilege properly so called. Thus holds the far more common opinion.[846]

It is asked whether a solemnly professed religious priest who sins gravely against chastity commits two sacrileges, since he has two vows: the one from religion and the other from having received the subdiaconate.

St. Alphonsus[847] rightly calls the negative opinion the truer; because, although such a priest is bound to chastity by a twofold precept, nevertheless these two precepts are diverse only materially, since they proceed from the same motive, namely, divine worship. Therefore, although such a religious priest by violating chastity sins more gravely, nevertheless he does not commit two distinct sacrileges; and consequently in confession he is not bound to say that he is a religious priest, but it suffices to confess either one: either the solemn vow made or the sacred order received.

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[842] Therefore a sacred person commits sacrilege if he sins gravely by obscene words, or if he advises a lay person to commit a sin of lust with another lay person.

[843] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 454. Cf. also the things said above in I, n. 397 concerning morose delectation.

[844] *Elem. Theol. mor.* I, *De pecc.* q. 30.

[845] *Opus theol.*, *De praec. Decal.* tr. 6, n. 140.

[846] Cf. Laymann, *Theol. mor.* l. 4, tr. 10, c. 7, n. 5, and Billuart, *De relig.* diss. 10, a. unicus.

[847] *L.c.*, n. 455.

§ 3. On Local Sacrilege

545. Notions. Local sacrilege is the violation of a sacred place or of local immunity. A sacred place in the strict sense is said to be one which by the authority of the Church is deputed to divine worship or to the burial of the faithful through the consecration or blessing which the approved liturgical books prescribe for this.[848] Such sacred places are churches, public oratories, and blessed cemeteries. Since semipublic and private oratories need not necessarily be blessed,[849] they are not to be numbered among sacred places in the strict sense.

Religious places and **pious places** must be distinguished from sacred places. Religious places are those in which works of piety and mercy are exercised habitually and by office, and which have been erected with the authority or express permission of the bishop. Such religious places are monasteries, hospitals erected by the authority of the Church, seminaries of clerics, the bishop's palace, etc. To these religious places, which are sometimes called sacred in a broader sense, the right of asylum and the privilege of immunity are customarily competent. Pious places are those which without the intervention of the Church have been deputed to the exercise of pious works, for example, private oratories, civil orphanages, civil cemeteries, etc.

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[848] Code of Canon Law, c. 1154. Some authors, such as Laymann and Billuart (*l.c.*), do not require sacred places to be blessed, but this opinion does not seem true.

[849] Code of Canon Law, c. 1196.

546. The modes by which local sacrilege is committed are the following:

1. **Pollution of a sacred place**, which only the following four acts cause, provided that they are certain, notorious, and performed in the church:[850]

a) **Unjust homicide**, even without the shedding of blood, for example, by strangulation.

Every killing (even suicide) perpetrated with full deliberation in a church, unless it is done for just defense with the moderation of blameless defense, is sacrilege. But in order that a killing be said to have been perpetrated *in a church*, it is required and suffices that the proximate cause of death, for example, a wound or poison, be received in the church, although death occurs outside the church.[851]

b) **The unjust and copious shedding of human blood.**

Therefore, if someone, for example, because of a light slap received in church sheds blood from his nostrils, neither pollution nor local sacrilege is present, since this does not arise except from a grave and unjust wounding.

c) **Several impious or sordid actions which either from their own nature or from a special prohibition of the Church are opposed to the sanctity of a sacred place.**

The Second Council of Lyons (1274) enumerates such actions: secular trials, both civil and criminal, commercial dealings, fairs, profane theatrical performances, public assemblies of profane societies, banquets, etc.[852]

On the occasion of funerals or festivities, the banners of societies manifestly opposed to the Catholic religion or whose statutes have been condemned must not be admitted into a church. If banners bearing manifestly impious or perverse emblems are carried in a funeral procession, the clergy are to withdraw from it.[853] Dramatic performances by cinematographs and other projections are prohibited in churches.[854]

The stabling of horses, human filth, and dances greatly injure the sanctity of a sacred place. Privately eating something in sacred places, however, does not exceed a venial sin; indeed, when a reasonable cause is present (for example, if workmen labor in a church and cannot easily leave), it is no sin. Selling candles or devotional articles in a cemetery or in the atrium of a church is tolerated in some regions. Actions of this kind can more readily be permitted in a cemetery than in a church. But if cemeteries are not blessed, but civil, as often happens today, then they are no longer sacred places.

d) **The burial of an infidel or an excommunicated person**, but only after a declaratory or condemnatory sentence.

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[850] Code of Canon Law, c. 1172, § 1.

[851] c. 4, X 3, 4, and Many, *De locis sacris* n. 31.

[852] c. 2, in VI 3, 23.

[853] Cf. Holy Office, 4 April 1887 and 24 November 1897, and Sacred Congregation of Rites, 26 March 1924.

[854] Sacred Consistorial Congregation, 10 December 1912 (*Act. Ap. Sed.* IV [1912], 724).

547. Note. 1. All the enumerated actions pollute a sacred place and require its reconciliation, provided, however, that they were certain, notorious, and performed in the church itself. When notoriety is lacking, pollution is not indeed caused, but sacrilege more probably remains.

2. A church is no longer polluted through a gravely sinful emission of human seed, as was decreed in the old law; but such a sin nevertheless seems to constitute true sacrilege, since the Code of Canon Law has changed nothing in this matter. Therefore, for example, if someone, even in a secret manner, procured sinful pollution for himself in a church, he must declare in confession the circumstance of the sacred place.[855] Whether other grave external sins of lust committed in a sacred place (touches, looks, lascivious conversations), apart from danger of pollution, are true sacrileges in the strict sense is controverted. St. Alphonsus[856] calls the affirmative opinion the more probable; and it is much better that the circumstance of the sacred place be declared in these sins, both because grave scandal has often arisen from them and because otherwise the confessor cannot judge well concerning the state of the penitent. Some authors hold as probable that acts of this kind are not sacrileges strictly so called,

and therefore that the circumstance of the sacred place need not necessarily be declared.[857] Sins of lust perpetrated **merely internally** in a sacred place are not sacrileges in the strict sense. What older authors say concerning lawful conjugal intercourse in a sacred place can scarcely occur in our times.

[855] Vermeersch teaches the contrary, *Theol. mor.* II, n. 268, and IV, n. 100.

[856] *Theol. mor.* l. 3, n. 459.

[857] Thus Noldin, *De praeceptis* n. 178; Tanquerey, *De virt. relig.* n. 933; and several older authors cited by St. Alphonsus, *l.c.*

548. 2. Grave theft committed in a sacred place.

For thus it is established in the Decree of Gratian:[858] "Sacrilege is committed by taking away the sacred from a sacred place, or the non-sacred from a sacred place, or the sacred from a non-sacred place." The **sacred is taken away from a sacred place**, for example, if someone steals a consecrated chalice from a church. Those most wicked men **take away the non-sacred from a sacred place** who approach a church full of people in order to commit thefts upon the faithful staying there.[859] Several authors, however, for example, Lugo,[860] Tamburinus,[861] Lessius,[862] and Noldin,[863] think that a theft committed in a sacred place is a grave sacrilege only when the thing taken away is joined to the sacred place by some special bond, and therefore either belongs to the sacred place or at least has been entrusted to its custody. The opposite opinion, which St. Alphonsus[864] calls more probable and which is more conformable to the text of canon law[865] cited above, teaches that every grave theft committed in a sacred place is a true sacrilege. Hence, if someone has stolen another's purse (which contains a large sum of money) in a church, he probably must declare the circumstance of the sacred place in confession.

If someone steals the sacred from a non-sacred place, for example, a consecrated chalice in a lay house, he does not commit local sacrilege, but real sacrilege.

[858] c. 21, C. 17, q. 4.

[859] *Taschendieb* [pickpocket].

[860] *De sacr. poenit.* disp. 16, n. 470.

[861] *Method. conf.* l. 2, c. 8, n. 5.

[862] *De iust. et iure* l. 2, c. 45, n. 14.

[863] *De praeceptis* n. 178.

[864] *Theol. mor.* l. 3, n. 39; cf. also Billuart, *De relig.* diss. 10, a. unic.

[865] The text cited is not, indeed, from John VIII, as Gratian seems to suppose, but from Ivo of Chartres; cf. Berardi, *Gratiani Canones genuini*, etc., III, 344 (Turin ed., 1752).

549. 3. Violation of local immunity.

Local immunity is a privilege granted to some place, by force of which several profane actions are prohibited in it (cf. above, n. 546) and the **right of asylum** is granted. The privilege of immunity belongs not only to sacred places, but also to religious places.[866] Cf. above. The right of asylum was already received in the customs and laws of ancient peoples, and especially among the Hebrews.[867] At that time this right was very useful, since criminal justice was sometimes excessively severe. In the Middle Ages several crimes were designated which could not claim the right of asylum for themselves, for example, blasphemy, perjury, usury, etc. The right of asylum is in itself very fitting, especially as regards sacred places. For in this way a public

profession is made of the reverence due to those places, and earthly justice, as it were, reverently bows itself before divine justice, which judges all the guilty in equity. In our times the right of ecclesiastical asylum is scarcely recognized anywhere by civil governments. Almost the sole exception is the Vatican palace, which still has the privilege of extraterritoriality. The law of asylum is to be observed at least as regards its substance even in our days, insofar as this is possible;[868] and therefore care is to be taken according to one's ability that a criminal man not be seized by violence in a church during divine offices, or that he not be seized without the consent of the Ordinary or at least of the rector of the church. Certain civil governments also observe this practice.

Wonderful to say! Although the right of ecclesiastical asylum is recognized almost nowhere, the right of civil asylum still exists under a diverse form. Thus, for example, consular houses situated in foreign cities possess the right of asylum, at least for political crimes; if someone flees to a warship[869] of another nation, he cannot be seized unless the consent of the government to which the warship belongs has first been obtained.[870]

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[866] Cf. c. 21, C. 17, q. 14.

[867] Cf. Ex. 21:13; Deut. 19:2ff.

[868] Cf. Holy Office, 22 December 1880; Code of Canon Law, c. 1179.

[869] *Kriegsschiff* [warship].

[870] Cf. *Staatslexikon*, s.v. *Asylrecht* [right of asylum].

550. Note. The actions indicated in the two preceding numbers do not cause sacrilege unless they were perpetrated strictly in a sacred place, that is, within the boundaries of the sacred place; or, if there is question of churches, in the space which is enclosed by the walls, floor, and ceiling of the church. Therefore sacrilege is not present if, for example, the shedding of blood was done in the sacristy, or in the portico, or in an underground crypt, or in the tower, or above the ceiling, etc. The actions indicated in the third number, or the violation of immunity, constitute sacrilege even if they were done not strictly within the space of the sacred place, but also in adjoining places. For the rest, sacrilege because of the violation of immunity rarely occurs today, as has been said.

§ 4. On Real Sacrilege

551. Notion. Real sacrilege is the violation or unworthy treatment of a sacred thing.

Modes. Real sacrilege is committed in two ways: 1. by treating sacred things unworthily; 2. by usurping sacred goods. Some add: also by unlawfully buying or selling sacred things; but this is rather simony, concerning which treatment will be given below in n. 555ff.

All sacred things can be reduced to three categories, namely: 1. sacraments and sacramentals; 2. sacred vessels and ecclesiastical ornaments; 3. ecclesiastical goods.

552. 1. The unworthy treatment of the sacraments is the principal real sacrilege.

Among all unworthy treatments of the sacraments, the worst sacrilege is the reception and consecration of the Eucharist in the state of mortal sin, because the sacrament of the Eucharist surpasses all the others in dignity.[871] Other irreverences against the Eucharist are also reduced to the malice of sacrilege, for example, if the sacred species are cast away, or even are not renewed at the due time when there is danger of their corruption; if the lamp before the altar in which the Eucharist is reserved does not burn for a long time (an entire day); if unbecoming vessels, torn or unworthy vestments, or soiled linens are employed for the sacrifice

of the Mass; if the Eucharist is administered by a minister who is in the state of mortal sin. All these matters will be treated specifically in the tract on the Eucharist. The unworthy reception, confecting, and administration of the other sacraments is also sacrilege. Probably the unworthy reception, confecting, and administration of diverse sacraments are not specifically diverse sacrileges. Some authors, however, except the unworthy treatment of the Eucharist, which they hold to be a sacrilege specifically distinct from sacrileges committed by the unworthy treatment of the other sacraments, at least if the sin of blasphemy is added in the injurious treatment of the Eucharist.[872] In practice it is altogether to be counseled that the penitent declare distinctly against which sacrament he committed sacrilege. The unworthy treatment of **sacramentals** is likewise reduced to sacrilege; rarely, however, does it constitute a grave sin if formal contempt is absent. Certainly it would be a sin if someone were to cast holy water into a latrine. But it is lawful from a reasonable cause to employ things that are simply blessed for decent profane uses. Thus, for example, when another light is lacking, it is lawful to employ a blessed candle in order to have light for study; likewise it is lawful to employ blessed salt for seasoning foods, and holy water for tempering wine.[873]

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[871] Cf. *S. theol.* 2, 2, q. 99, a. 3; 3, q. 73, a. 1 ad 2.

[872] Cf. Lehmkuhl, *Theol. mor.* I, n. 522.

[873] Cf. Noldin, *De praeceptis* n. 179.

553. 2. To employ consecrated sacred vessels, for example, a consecrated chalice, and blessed ecclesiastical ornaments, for example, a chasuble, for profane uses without the greatest necessity is a grave sacrilege.

Nevertheless, according to the present discipline it is lawful to employ vessels of this kind and other blessed things for profane use if their form has first been entirely destroyed, for example, if a chalice has been reduced to common material by the melting of the metal. Nevertheless this profane use is to be avoided according to one's ability. Thus, for example, it is unbecoming to employ sacred linens, even when torn and cut up, for making a shirt. In practice it is much better and more becoming to employ again, for fashioning other sacred things, the parts which belonged to sacred things, or to burn them.[874] The practice of certain priests who sell old blessed or even consecrated ecclesiastical ornaments to Jews and other dealers in old goods is also evil and reprehensible. For experience establishes that an altogether insufficient price is often obtained for things sold in this way, and moreover that they are sometimes afterward treated irreverently. For the rest, it is not apparent (if there is question of grave matter) how alienators of this kind, acting without the previous permission of the competent authority, escape the excommunication imposed against those who alienate ecclesiastical goods.[875] Ecclesiastical vessels and ornaments which are not blessed (with a constitutive blessing), such as candlesticks, seats, benches, curtains, etc., can for a reasonable cause be employed for a profane end, provided that such an end carries nothing dishonorable with it. Likewise, the wood and stones of a demolished church seem able to be employed for profane uses, because universal custom has mitigated the older, more severe canons in this matter.[876]

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[874] Cf. *S. theol.* 3, q. 83, a. 3 ad 3; c. 39 de consecr. D. 1; St. Alphonsus, *Theol. mor.* l. 3, n. 41.

[875] Cf. concerning this censure below in the tract on censures.

[876] Cf. c. 38 de consecr. D. 1; D'Annibale, *Summula theol. mor.* III, n. 16.

554. 3. The usurpation of sacred things and ecclesiastical goods is commonly called sacrilege in canon law.[877]

Those goods (whether movable or immovable) are considered **ecclesiastical goods** which belong to ecclesiastical institutes, for example, to churches, clerical seminaries, monasteries, etc., and the administration of which by law belongs to the Church; or, as St. Alphonsus[878] says after St. Thomas: "those which pertain to the adornment of the church and of the ministers; then those which are deputed to the sustenance of the ministers." But the **private** goods of clerics and of other ecclesiastical persons are not ecclesiastical goods. The defrauding of ecclesiastical tithes is held by some authors to be true sacrilege; by others, however, it is called a sin of irreligion.[879] The penalties imposed against usurpers of ecclesiastical goods will be treated in the tract on censures (cf. III, 512 and 518).

There are still several actions which possess to a greater or lesser degree the malice of sacrilege, for example, the abuse of the words of Sacred Scripture for jests,[880] the irreverent treatment of relics, especially the theft of relics, the irreverent treatment of sacred images, etc. The gravity of the malice in these cases is to be weighed from the gravity of the irreverence voluntarily and knowingly inflicted.

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[877] Cf. the allocution of Pius IX, *Quibus luctuosissimis*, 5 September 1851. The word *usurpation* is taken here also for theft, detention, or defrauding; but not in that sense in which it is employed in the tract on censures, III, n. 525.

[878] *L.c.* n. 42.

[879] Cf. St. Alphonsus, *l.c.*, and the authors cited there.

[880] Noldin (*l.c.*) aptly observes: "Care must be taken that a jocular sense not be attached to the words of Sacred Scripture which occur in the Mass and Divine Office, lest occasion be given for distractions that will arise during prayer."

Article X. On Simony

For the sake of clarity, we divide this article into four paragraphs: 1. on the nature, division, and malice of simony; 2. on simony of divine law; 3. on simony of ecclesiastical law; 4. on the penalties of simoniacs.

§ 1. On the Nature, Division, and Malice of Simony

555. Etymological notion. Simony is named from the crime of Simon Magus.[881] Although already in the Old Testament some were defiled by this vice, such as Gehazi, who sought a reward from Naaman after he had been cleansed by the prayers of the prophet Eliseus, and Balaam, who endeavored to sell sacred things to King Balak, nevertheless in the New Testament Simon Magus was the first of all to commit simony and to receive the due punishment.

Definition. Simony is defined by St. Thomas:[882] **"the deliberate will to buy or sell something spiritual or annexed to the spiritual."**[883]

The definition is explained. It is said, first: **deliberate will**, because for the essential malice of simony it is not required that a pact made by mutual consent also be completed in fact, but the interior, deliberate, and determined will of either party to buy or sell spiritual things suffices. Therefore a simoniacal stain can be present if someone merely intends interiorly to enter into a true bargain.

It is said, second: **to buy or sell**. By these words is indicated not only a contract of purchase and sale, but any onerous contract whatever, for example, of letting, hiring, alienation, etc.[884] Therefore a gratuitous contract does not induce simony unless this has been established in some case by ecclesiastical law.

For a fuller explanation of the nature of simony, there is sometimes added: **for a temporal price**. For in this consists the essence and malice of simony (at least of divine law): that a temporal price is held as an equivalent compensation for a spiritual thing. The temporal price which is offered in a simoniacal pact was already

distinguished by St. Gregory the Great[885] as threefold: a gift from the hand, from the tongue, and from service. A **gift from the hand** is money and every other thing which can be appraised in money, such as the remission of a debt, a lease, etc. A **gift from the tongue** is favor, praise, recommendations, intercessions, defenses, and generally any patronage whatever which is exercised with another by agreement for obtaining some spiritual thing as remuneration. A **gift from service** is temporal service rendered for acquiring a spiritual thing; this can be done in many ways, for example, by serving, assisting, instructing, teaching, etc. A cleric would furnish such a gift from service if he were to give instruction to the son of a patron under the pact that he himself be presented to a vacant parish. The Angelic Doctor notes[886] that it is no less simoniacal to give or receive a gift from the tongue or from service as the price for a spiritual thing than a gift from the hand. And Urban II[887] says: "Whoever grants or acquires ecclesiastical things, not for that for which they were instituted but for his own gains, by a gift of the tongue, or of undue service, or of money, is a simoniac."

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[881] Cf. Acts 8:18ff.

[882] *S. theol.* 2, 2, q. 100, a. 1. A. Leins, *Die Simonie*, Freiburg im Breisgau, 1902, p. 40, undeservedly attacks this definition as insufficient. On the contrary, this definition is also employed by the Code of Canon Law, c. 727, for simony of divine law.

[883] Simony is reduced to real sacrilege because it is an unworthy treatment of a sacred thing. It is customarily treated separately, however, both because of its breadth and because of its gravity.

[884] *S. theol.* 3, q. 83, a. 3 ad 5; Code of Canon Law, c. 728.

[885] c. 114, C. 1, q. 1.

[886] *S. theol.*, *l.c.*, a. 5.

[887] c. 1, C. 1, q. 3.

556. It is said, third: **something spiritual or annexed to the spiritual**, in order to designate the matter of simony. In this matter, a spiritual thing is understood to be everything which either of itself or by the institution of the Church or of God is ordained to the supernatural salvation of the soul, for example, sanctifying grace, gratuitously given grace, the sacraments, sacramentals, the power of orders and jurisdiction, dispensation, absolution, etc. Something is said to be annexed to a spiritual thing in three ways: antecedently, concomitantly, and consequently.

A temporal thing is annexed **antecedently** to a spiritual thing when the temporal thing preexists and the spiritual thing afterward accrues to it, for example, a chalice, sacred vessels, a rosary, an estate to which the right of patronage adheres, etc. All these things preexist as temporal things, and afterward something spiritual accrues to them, namely, consecration, blessing, or the right of patronage.

A temporal thing is annexed **concomitantly** to a spiritual thing if both are joined at the same time and in an almost parallel manner. But if this conjunction is essential and indissoluble, the temporal thing is called joined to the spiritual thing concomitantly **intrinsically**; otherwise, concomitantly **extrinsically**. For example, the labor in saying Mass is a temporal thing concomitantly and intrinsically annexed to the Mass. But if the Mass is to be sung or said in a distant place, then such labor is a temporal thing annexed to the Mass concomitantly indeed, but extrinsically.

A temporal thing is called annexed **consequently** if it presupposes a spiritual thing as the cause upon which it depends; for example, parochial revenues are something temporal, but they presuppose something spiritual as their cause, namely, the parochial office itself; for according to the common adage, "A benefice is given on account of the office."

557. Corollary. From what has thus far been said concerning the nature of simony, it follows that the essence of simony consists in an onerous contract which causes an **exchange of a spiritual (supernatural) thing for a temporal thing**. Therefore it is not simony to give a spiritual thing for a spiritual thing, or a thing annexed to the spiritual for a thing annexed to the spiritual; for example, it is not simony if a priest says Mass for another who has said a rosary, or if someone applies an indulgence in order to obtain a sacred relic, or if someone gives a consecrated chalice for a blessed ciborium. Nevertheless, exchanges of this kind are also sometimes gravely prohibited by a special statute of positive law, as will be said below.

558. Divisions. 1. Simony of divine law and of ecclesiastical law.

The former is present when the thing given for a price is by its very nature spiritual or annexed to a spiritual thing. Hence it is also called simony of natural law. Such simony is, for example, the payment of money for obtaining sacred orders. Simony of ecclesiastical law is present, not indeed when a spiritual thing is sold for a temporal thing, but when exchanges of ecclesiastical things are made which the Church has gravely prohibited because of the danger of irreverence toward spiritual things,[888] for example, when one benefice is given for another. These prohibitions are most just, since they exclude grave abuses which otherwise would easily occur and guard against the grave danger of simony of divine law. Some authors think that simony of ecclesiastical law is not simony except in a broader sense, and therefore give a special definition of it, namely: simony of ecclesiastical law is a contract concerning something spiritual or annexed to the spiritual which is gravely prohibited by the Church in view of religion.[889]

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[888] Code of Canon Law, c. 727, § 2.

[889] Reiffenstuel (*Ius can.* l. 5, tit. 3, n. 26ff.) maintains that the same definition belongs to simony of ecclesiastical law as to simony of divine law. Billuart (*De relig.* diss. 11, a. 21) also treats this question excellently.

559. 2. Mental, conventional, real, and confidential simony.

Mental simony is present when a simoniacal pact is purely mental, that is, when something temporal is offered with the intention that the other be morally obliged to give something spiritual; or, conversely, something spiritual is given with the intention of obliging the other to give something temporal. The intention of exchanging, however, is not manifested outwardly. For example, a cleric commits mental simony who serves a bishop or patron for no salary or a small salary with the intention, not indeed manifested but conjecturable from the circumstances, that in recompense for the service rendered a parish be conferred upon him by that person. A bishop commits the same simony who confers a parish upon some cleric with the intention that the cleric bestow money upon him or his blood relatives. Canonists subtly distinguish this mental simony, which **actually gives** either a temporal or a spiritual thing with a simoniacal intention, from purely internal or intentional simony, which has not yet actually given, but has merely **proposed to give**, a temporal or a spiritual thing. This distinction is of no importance for moral theology, because before the strict divine Judge, who is the searcher of hearts, both kinds of simony are equally culpable.[890] Neither kind of mental simony, however, since it is an internal act, is reached by ecclesiastical penalties.

Conventional simony is an agreement or pact truly entered into on both sides, but not yet put into execution, to exchange a temporal thing for a spiritual thing or for a thing essentially annexed to the spiritual. But if that pact has been fulfilled by neither contracting party through the handing over of the thing, it is called **purely conventional simony**; if, however, it has already been put into execution by either party, it is called **semi-real or mixed simony**, because it has something of conventional and something of real simony.

Real simony is a simoniacal pact already put into execution by both contracting parties, either totally or at least in part; for example, someone pays money in order to obtain a canonry, and the other confers this benefice, or at least sends the document of institution.[891]

Confidential simony has place only in ecclesiastical benefices,[892] and is the procurement, conferral, or acceptance of an ecclesiastical benefice with a certain confidential reservation. This reservation can be fourfold:

a) **by access**, namely, if someone in any manner hands over an ecclesiastical benefice (properly so called; therefore not regular prelacies, unless, because of temporal goods annexed to them, they are true benefices) under the condition that the benefice be resigned or access to it be opened, either to himself or to another person who is still incapable, for example, because of defect of age, after capacity has been acquired. For example, a bishop hands over a canonry to Peter under the condition that after some time free access to that benefice be opened to Caius, the bishop's nephew, namely, when Caius has acquired sufficient learning. As regards this simony, it makes no difference whether the benefice was handed over by means of presentation, conferral, election, collative institution, etc.

b) **by entrance**, namely, if someone cedes to another a benefice conferred upon himself before taking possession of it, under the pact that, after the benefice has been relinquished in any manner whatever, he who ceded it may himself enter into possession of it. For example, a parochial benefice has been conferred upon Peter, but before taking possession of it he renounces it to Paul, adding, however, this condition: that if Paul is promoted to another parish, Peter may immediately enter into the parochial benefice renounced.

c) **by regress**, namely, if someone resigns to another a benefice already possessed, under the condition that afterward regress to it be open to himself or to a third person.

d) **by reservation of a portion or pension**, if someone in any manner procures a benefice for another, but under the condition that a portion of the revenues of the benefice be ceded to himself or to a third person. For example, the patron of a parish church presents Peter as pastor under the condition that Peter, after obtaining the benefice, pay one hundred francs annually from the revenues of the benefice. Concerning when it is lawful to reserve a pension for oneself from benefices, see the canonists.[893]

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[890] Cf. Innocent III, c. 34, X 5, 3.

[891] Some authors, such as Cajetan (*Opusc. de simonia* q. 2), Dominic Soto (*De iure et iust.* l. 9, q. 8, a. 1), the Salmanticenses (*Curs. theol. mor.* tr. 19, c. 1, n. 18), and Concina (*De extr. unct. et ord.* l. 1, diss. 3, c. 3), think that real simony is already committed by the handing over of the spiritual thing, although the stipulated price has not yet been paid. But one must not depart from the most common opinion explained above (cf. Reiffenstuel, *Ius can.* l. 5, tit. 3, n. 20).

[892] Confidential simony differs from the other species thus far enumerated only by reason of its matter. For it concerns solely the matter of benefices. In reality, however, it can be either conventional or real; often it is not of divine but of ecclesiastical law (cf. Suárez, *De relig.* l. 4, c. 45, n. 20). It is called confidential because no judicial action was given (because of the unlawful pact), but it obtained its whole force from the good faith of him who received the benefice.

[893] Cf. our *Man. iur. can.* q. 429. Concerning confidential simony, see the Constitution of Pius IV *Romanum Pontificem* and the Constitution of Pius V *Intolerabilis*. Cf. also D'Annibale, *Summula theol. mor.* III, n. 112ff.

560. Moral and specific malice. a) Simony of divine law is a mortal sin against religion in its whole genus; b) simony of ecclesiastical law alone is a mortal sin from its genus.

a) The first part of this proposition is admitted by almost all authors[894] and is also easily proved. For that simony is against the virtue of religion is evident of itself, since it is an unworthy treatment of sacred things[895]

and is reduced to real sacrilege. That simony of divine law is a mortal sin in its whole genus, so that it does not admit slightness of matter, is deduced from the fact that it imports the greatest injury inflicted upon sacred things, and consequently upon God Himself. Is it not an enormous contempt of sacred things conducive to eternal salvation if someone equates them with a temporal price? But this contempt is present whether there is question of a great or a small spiritual thing, for the reason and disorder are always the same. Hence St. Peter also reproached Simon Magus most vehemently for this, saying: "Keep thy money to thyself, to perish with thee, because thou hast thought that the gift of God may be purchased with money."[896] The most grave malice of simony can also be surmised from the grave penalties which the Church imposes upon simoniacs.[897] Furthermore, its malice appears from the calamitous effects which it has always produced; for which reason it is called "a pest surpassing all other diseases,"[898] "a cancerous wound,"[899] and "leprosy."[900]

b) The second part of the proposition is commonly admitted by authors, provided there is question of simony of ecclesiastical law alone. For not rarely simony of ecclesiastical law is joined with simony of divine law, and then it certainly is a mortal sin in its whole genus, as has been proved; but by itself it is nothing other than the transgression of an ecclesiastical precept. Now the transgression of an ecclesiastical precept gravely binding in itself admits slightness of matter. Therefore simony of ecclesiastical law alone is indeed a mortal sin if there is question of grave matter; otherwise it is a venial sin. Ecclesiastical law, however, has gravely prohibited simony of this kind because of the urgent danger of simony of divine law joined with it.

Authors commonly teach that simony of divine law and of ecclesiastical law are sins of the same species, since simony of ecclesiastical law is also true simony injuring the virtue of religion. For although in ecclesiastical simony the purchase of a spiritual thing for a temporal price is not always present, nevertheless the proximate danger of simony of divine law is always present. But he who culpably commits himself to the proximate danger of sinning and he who actually commits the same sin perpetrate a sin of the same species.

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[894] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 50.

[895] Cf. St. Thomas, *S. theol.* 2, 2, q. 100, a. 1.

[896] Acts 8:20.

[897] Cf. below, n. 565.

[898] c. 6, X 3, 5.

[899] c. 7, C. 1, q. 1.

[900] *Ib.* c. 14.

§ 2. On Simony of Divine Law

561. Principle 1. Simony of divine law, by its formal nature, essentially requires that a temporal thing be given or accepted for a spiritual thing as a price, either formally or at least virtually.[901]

A temporal price is offered or accepted **formally** for a spiritual thing when someone directly and immediately intends an exchange and equal valuation between the spiritual and temporal thing. A temporal price is offered or accepted **virtually** when someone by means of the temporal thing proximately and immediately intends to obtain the spiritual thing, and no other true and honorable motive intervenes. That true simony is present in either case is evident from propositions 45 and 46 condemned by Innocent XI:[902] "To give a temporal thing for a spiritual thing is not simony when the temporal thing is not given as a price, but only as a motive for conferring or effecting the spiritual thing, or also when the temporal thing is only a gratuitous compensation for the spiritual thing, or conversely." "And this also has place even if the temporal thing is the principal

motive for giving the spiritual thing; indeed, even if it is the end of the spiritual thing itself, so that the temporal thing is esteemed more highly than the spiritual thing."

The first of these condemned propositions seems to require explanation from the second. For if a temporal thing is given for a spiritual thing altogether gratuitously, an onerous contract, which pertains to the essence of simony, is no longer present, as was said above from St. Thomas. Hence Billuart rightly says:[903] "To give a temporal thing as the proximate and immediate motive for obtaining a spiritual thing, without the intervention of another true and honorable motive on account of which the temporal thing is given or from which the spiritual thing is expected, is true simony." For then the temporal thing is in reality at least virtually the price of the spiritual thing. But if the temporal thing is only a remote motive for obtaining the spiritual thing, and other immediate honorable motives are present, then simony is not committed, because then the temporal thing is neither formally nor virtually the price of the spiritual thing. From this principle rightly understood follow several practical applications to be indicated below.

[901] Cf. Billuart, *De relig.* diss. 11, a. 3.

[902] Denzinger, n. 1195ff.

[903] *De relig.* diss. 11, a. 3.

562. Principle 2. a) It is simony of divine law to buy or sell temporal things annexed to a spiritual thing consequently or concomitantly and intrinsically; b) but not antecedently or concomitantly and extrinsically.

Thus teaches the most common opinion.[904] The reason for the first part is that temporal things annexed to a spiritual thing consequently or concomitantly and intrinsically are regarded as, so to speak, spiritualized, since they are inseparably and essentially joined with the spiritual thing. Therefore it is said in the Decree of Gratian:[905] "Whoever sells one of these without which the other does not come forth leaves neither unsold." I say, however, that to buy or sell temporal things of this kind is simony; for it is lawful to accept something temporal for those things as an alms or stipend for the support of the laborer; for example, it is lawful to give a Mass stipend for the support of the priest.[906]

The reason for the second part of the principle is that temporal things of this kind are truly capable of appraisal by a temporal price and can be separated from spiritual things. Hence, for example, it is lawful to accept something even as a true price for a Mass to be said **with special labor**, namely, at a late hour or in a distant place. Nor is it simony to accept a price for a consecrated chalice, a blessed rosary, and other blessed things, provided that the price of the temporal thing is not increased because of the blessing or consecration added; because the temporal thing is joined antecedently to the blessing.[907] Nevertheless, by positive law the Church has prohibited blessed things from being sold, in order to prevent possible abuses.[908]

[904] Cf. Billuart, *l.c.*, a. 6, and *S. theol.* 2, 2, q. 100, a. 4.

[905] c. 7, C. 1, q. 3.

[906] Cf. Elbel, *Theol. mor.* P. 2, n. 598.

[907] Code of Canon Law, c. 730.

[908] Cf. *Decr. auth. S. C. Indulg.* nn. 78 and 82.

563. Very many practical applications are deduced from the two principles stated:

You will gather for practice 1. Duly to discharge ecclesiastical offices from the principal motive of acquiring money is indeed sinful, but not simoniacal.

Considered in passing, this proposition seems to be the same as proposition 46 condemned by Innocent XI, just cited, but in reality it differs greatly from it, and its truth is easily understood. For the whole deformity of simony consists in this: that a sacred thing is appraised by an earthly and vile price; not in this: that a sacred thing is ordained to profit.[909] Hence it is indeed a sin to ordain a sacred thing to the acquisition of profit as the principal end of the agent, but it is not simony. Thus a canon who goes to choir in order to receive the daily distributions, when otherwise he would not go, indeed acts badly but is not a simoniac;[910] a priest who says Mass for the sake of the stipend, when otherwise he would not say it, does not commit simony. The reason is that ministers of the Church have a right to obtain suitable support by means of sacred offices. Therefore they can discharge their offices in order to have support. The money to be acquired in these cases is therefore a lawful motive. Certainly it is a disorder that money be held as the **principal motive**, but a simoniacal stain does not yet arise from this. St. Alphonsus[911] calls the proposed opinion more probable and rightly argues thus: "Is he who gives a stipend principally on account of the Mass, which is certainly a spiritual thing, called a simoniac? Thus conversely, neither does he commit simony who says Mass principally on account of the stipend. For it is not unlawful to ordain a spiritual thing, even principally, to an honorable temporal end."

2. A priest who exacts a Mass stipend above the diocesan rate indeed sins against justice and ecclesiastical law, but probably does not commit simony of divine law, since he does not sell a spiritual thing, but exacts a means of his support.

3. It is not simony if someone gives money to the poor with this principal intention: that they pray for him. The reason is the same, for he does not intend to buy prayer, but to allure the minds of the poor to pray for him; or, in other words: the end of the work is honorable and is not thus deformed by the end of the agent.[912]

4. It is not simony to give something temporal under a condition (but not under a pact strictly so called) that the other furnish a spiritual thing, yet for the benefit of that very person; for example, to give gifts to a young man that he frequent the sacraments, or to give a dowry to a girl that she enter a monastery. The reason is the same; for the spiritual thing is not bought, but another motive is present, and that an honorable one. Hence the Angelic Doctor says: "It is lawful to move someone ... to devotion toward a monastery by temporal benefits, so that by this he may be inclined to enter the monastery; although it is not lawful by a pact to give something ... for entrance into a monastery."[913]

5. It is not simony to give a temporal thing for a spiritual thing, and conversely a spiritual thing for a temporal thing, **from mere gratitude, friendship, or benevolence**, so that no pact intervenes and only a gratuitous donation is present. Thus holds the more common and more probable opinion,[914] which is confirmed from many texts of canon law.[915] Thus, for example, Innocent III says of one who gave something as a gift in order to obtain a canonry:[916] "If he should offer it purely and without any pact or condition, humbly asking that he be admitted as a canon, ... a reception of this kind can take place without scruple of simoniacal depravity." The reason is that gifts of this kind are not the formal or virtual price of the spiritual thing. In practice, however, gifts of this kind are often **disguised simony**. For under the cloak of feigned gratitude or benevolence, true simony (at least mental) is not rarely concealed, since the spiritual thing is furnished from a moral, although not strict, obligation arising from the previous acceptance of the temporal thing.

In order to discern better whether some gift truly retains the character of a gift or rather assumes the nature of a price, Alexander III established this rule:[917] "In receiving or giving gifts, three things are especially to be attended to: namely, the quality of the person giving and receiving, the quantity of the gift, and the time of the

donation. The quality of the persons: from whom and to whom, namely, whether it was given by a poor man to a rich man, or conversely, or by a rich man to a wealthy man. Then the valuation of the gift and the time of the donation: whether a thing of great or lesser price was given, and whether it was conferred in pressing necessity or at another time." Therefore, in general, if the gifts offered are of great importance relative to the giver and no other evident honorable motive for the donation appears, the presumption stands for simony; otherwise, if the gifts are of lesser value. For then simony is not present unless even this is expressly prohibited, as in the competition prescribed by the Council of Trent for obtaining a parochial benefice.[918]

6. It is not simony if someone having a certain right (whether *in re* or *ad rem*) to something spiritual, for example, an office or benefice, frees himself by a temporal price from a strictly unjust vexation. The reason is that then the spiritual thing is not bought, but liberation from unjust vexation. It is required, however, that on the part of the buyer there be a strict right to the spiritual thing, and on the part of the other manifest injustice. If either is lacking, such a pact is simoniacal. Concerning this St. Thomas says:[919] "Before a right in a bishopric, or any dignity or prebend, is acquired by someone through election, provision, or conferral, it would be simoniacal to redeem with money the obstacles of opponents; for thus by money he would prepare for himself a way to obtain the spiritual thing. But after the right has already been acquired by someone, it is lawful by money to remove unjust impediments." Hence it is simony if someone gives his competitor some temporal thing under the pact that he desist from competition, and thus he himself obtains an ecclesiastical office or benefice. For by buying the cessation of competition, he indirectly buys the spiritual thing; which is simoniacal. Moreover, such a buyer does not suffer unjust vexation through the competition of the other.

7. It is simony to buy or sell the right to receive the revenues of a benefice. The reason is that such a right is a temporal good consequently annexed to a spiritual thing, namely, to an ecclesiastical office.[920]

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[909] Cf. Billuart, *l.c.*, who excellently and victoriously defends this opinion against Concina and others.

[910] Against this opinion the Angelic Doctor cannot be alleged when he says: "If [a canon] receives distributions of this kind as the end of his work principally intended, he commits simony and thus sins mortally" (*Quodl.* 8, a. 11). For, as St. Alphonsus, Billuart, the Salmanticenses, and others rightly say, such a canon certainly commits simony if he intends the distributions as the end of the work, but not if only as the end of the agent. For if the distributions are considered as the end of the work, then they are intended as a virtual price, which is simony; but if as the end of the agent alone, they are sought as support, which is not simony.

[911] *Theol. mor.* l. 3, n. 55.

[912] Cf. 4, dist. 25, q. 3, a. 2, solut. 2 ad 2.

[913] *S. theol.* 2, 2, q. 100, a. 3 ad 4; cf. also St. Alphonsus, *Theol. mor.* l. 3, n. 59.

[914] Thus Billuart, *De relig.* diss. 11, a. 3.

[915] c. 4, C. 1, q. 2; *ib.* c. 103; c. 18, X 5, 3.

[916] c. 34, X 5, 3.

[917] c. 18, X 5, 3.

[918] Cf. below, n. 564, 1.

[919] *S. theol.*, *l.c.*, a. 2 ad 5.

[920] *S. theol.*, *l.c.*, a. 4.

§ 3. On Simony of Ecclesiastical Law

564. We touch upon very few things concerning this matter, which pertains more to canon law than to moral theology. Simony of ecclesiastical law is committed chiefly in the following ways:

1. To give or accept something, even the least thing voluntarily offered, on the occasion of an examination for obtaining a parochial benefice in the so-called parochial competition.

For the Council of Trent establishes:[921] "Let [the examiners] take care that they accept absolutely nothing on the occasion of this examination, either before or after; otherwise both they and the others giving incur the vice of simony, from which they cannot be absolved unless they relinquish the benefices which they previously possessed in any manner whatever."[922] This simony of ecclesiastical law is perhaps the most severe among all, both by reason of the penalty inflicted and by reason of the prohibition of even the least gift. In other cases, slightness of the gift offered (for example, a moderate quantity of food or drink offered, a few fruits, etc.) is also accustomed to excuse from simony of divine law, since small gifts of this kind are not considered a price for a spiritual thing;[923] but in this case even the least gift is held as a simoniacal price.

2. To exact something for testimonial letters of those aspiring to the religious state.

Thus from the Code of Canon Law, c. 545. As regards sacred ordination, the Council of Trent[924] eradicated the most ancient abuse of the so-called *pastellum*, or the furnishing of a small meal at the reception of orders.[925] Nevertheless, it is permitted that bishops receive a candle from those ordained. Likewise the so-called Innocentian Tax[926] permitted notaries in the episcopal Curia to receive the tenth part of one gold scudo (53 centimes) for dimissorial letters or for letters attesting an order received. For the labor necessary to examine whether one to be ordained to the subdiaconate has a sufficient title and the other requisites, one gold scudo (5.35 francs) is granted.[927]

3. To sell or buy temporal offices canonically instituted for the administration of ecclesiastical goods, for example, the office of steward or procurator. Moreover, deductions from the revenues of benefices, compensations, and payments to be made by a cleric in the act of provision of a benefice which accrue to the collator, patron, or others are condemned as simoniacal.[928] For otherwise great abuses could easily arise to the detriment of the Church.[929] As regards administrators of ecclesiastical goods, under the present practice the statutes of the diverse concordats are especially to be attended to.

4. To sell an ecclesiastical burial place.

If there is question of a simple grave in the common part of a cemetery, nothing can be accepted as a price. Hence Innocent III establishes: "A depravity of custom to be abolished has grown inveterate at Montpellier, as is said, whereby those who die are not permitted to have a burial place dug before a certain price is paid to the church for the ground in which they are to be buried. We command that, since you are the diocesan bishop of the place, you forbid the clerics to presume to exact anything whatever for this cause."[930] I said: **as a price**, because in many places there exists a legitimate custom of exacting something under another title, for example, for the maintenance of the cemetery, the support of the ministers, etc.

But if there is question of a **determined place** in which someone wishes to construct a tomb for himself and his own, the common opinion, confirmed by almost universal practice, teaches that it is not simony if such a place is bought or sold at a determined price. For then neither the burial place nor sacred ground is bought, but only the right that another may not be buried in the same place; which certainly can be appraised by a price. Concerning this matter, the Code of Canon Law, c. 1209, § 1, establishes: "Both in parochial cemeteries, with the written permission of the Ordinary of the place or of his delegate, and in the cemetery proper to

some moral person, with the written permission of the superior, the faithful can construct particular tombs for themselves and their own; which, with the consent of the same Ordinary or superior, they can also alienate." So-called civil cemeteries are profane places, and consequently it is lawful to buy a burial place there.

5. For the administration of the sacraments, the minister is to exact or request nothing for any cause or occasion whatsoever, either directly or indirectly, apart from offerings according to legitimately established diocesan rates.[931]

6. It is forbidden to sell sacred relics.[932]

7. Every species of business or trade concerning Mass alms is prohibited.[933]

8. To sell rosaries, medals, or other things that have been blessed and enriched with indulgences, which by the very fact of sale lose all their indulgences.[934] Therefore things of this kind are first to be bought or sold, and afterward blessed.

9. To accept or give something for admission itself to the novitiate or to religious profession.[935]

For the religious state is something spiritual; hence it is in no way lawful to buy or sell it.[936] Nevertheless, the following are now lawful: a) During the time of novitiate it is lawful to accept or even exact something for the support of novices, at least if it was thus stipulated or if constitutions duly approved so establish.[937] The reason is that novices do not yet properly belong to the order, which they can leave on any day and from which they can also be dismissed on any day. But an undue burden would be imposed upon religious institutes if they could exact no compensation for expenses of support incurred during the time of probation. b) All monasteries of women can and must exact a determined dowry from those entering.[938]

10. To sell the right of patronage itself.[939]

It is lawful, however, to sell a thing, for example, a castle, with which the right of patronage is joined, provided that the price of the thing is not increased because of the right of patronage attached. Concerning the exchange of the right of patronage, see the canonists.[940]

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[921] Session 24, c. 18, *De reform.*

[922] Since this penalty was not renewed in the Code of Canon Law, it is considered abolished.

[923] Cf. Pirhing, *Ius can.* l. 5, tit. 3, n. 133.

[924] Session 21, c. 1, *De reform.*

[925] Cf. Benedict XIV, *De syn. dioec.* l. 5, c. 6, n. 1.

[926] Thus is named the decree of the Sacred Congregation of the Council dated 8 October 1678, issued by order of Innocent XI.

[927] Cf. Gasparri, *De s. ordinatione* II, n. 1121.

[928] Code of Canon Law, c. 1411.

[929] c. 38, X 5, 3.

[930] c. 13, X 3, 28.

[931] Code of Canon Law, c. 736.

[932] *Ib.* c. 1289.

[933] *Ib.* c. 827; cf. c. 2324.

[934] Sacred Congregation of Indulgences, 10 July 1896; Code of Canon Law, c. 924, § 2. Cf. concerning this whole matter Beringer, *Die Ablässe* (1915), p. 430ff.

[935] Council of Trent, session 25, c. 16, *De regularibus.*

[936] *S. theol.* 2, 2, q. 100, a. 3 ad 4.

[937] Code of Canon Law, c. 570.

[938] Cf. *Normae* n. 91ff. and Sacred Congregation of Religious, 30 July 1909; Code of Canon Law, c. 547.

[939] Code of Canon Law, c. 1470, § 1, n. 6.

[940] Cf. our *Man. iur. can.* q. 433.

§ 4. On the Penalties of Simoniacs

565. Omitting antiquated and abolished statutes, according to the present discipline the following matters seem to be noted:

1. No ecclesiastical penalty is incurred from mental simony, since, as an internal act, it is not judged by the Church.

2. The first penalty of real and conventional simony is the nullity of the simoniacal pact.[941]

For simony is either of divine law, and then the simoniacal pact is null and void because a spiritual thing has been sold which is unsalable by the will of God; or it is simony of ecclesiastical law, and then the thing sold is unsalable by the will of the Church. Therefore, in every case of simony, both the spiritual thing and the temporal price must be restored, unless impossibility, remission, or the express or presumed permission of the Church excuses. Concerning this the Angelic Doctor teaches:[942] "No one can lawfully retain that which he has acquired against the will of the owner. ... But the Lord, whose dispensers and ministers the prelates of churches are, ordained that spiritual things be given freely, according to that saying: Freely have you received, freely give.[943] And therefore he who obtains any spiritual things whatever through the intervention of a gift cannot lawfully retain them."

"Before any sentence of a judge, a thing simoniacally given and accepted, if it is capable of restitution and the reverence due to the spiritual thing does not stand in the way, must be restored."[944] Therefore the opinion of many authors teaching that restitution of the spiritual thing is not to be made except after the sentence of a judge must now be abandoned. Spiritual things not capable of restitution are, for example, sacred orders simoniacally received, the consecration of a church or of altars, etc.

A spiritual thing could not be returned because of the reverence due to it if, for example, someone had bought relics of saints from a Jewish dealer in old goods.

Not only the **spiritual thing**, but also the **price** accepted for it must be restored, and that before the sentence of a judge. For the law does not distinguish between a thing simoniacally given and accepted.

Since a simoniacal contract lacks all force, a spiritual thing simoniacally accepted must be returned to the legitimate owner, if that is possible according to what has been said above; likewise the simoniacal price must be returned to the legitimate owner. The revenues received from an ecclesiastical benefice or office obtained simoniacally must likewise be restored; nevertheless, an ecclesiastical judge or Ordinary can remit in whole or in part such revenues received in good faith.[945]

3. Before any sentence of a judge, a benefice, office, or dignity must be relinquished if it was obtained simoniacally and therefore invalidly.[946] Hence, for example, if someone were to agree with an

elector: You elect me as superior of this house, and then afterward I shall give you such and such temporal favors; and by this agreement he were actually elected as superior, the election would be simoniacal and null, and the one elected would have to relinquish the office. Similarly, if someone by furnishing a gift (from the hand, tongue, or service) were to obtain presentation from a patron, this presentation would be void, as also perhaps a subsequent institution.[947]

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[941] Code of Canon Law, c. 729.

[942] *S. theol.* 2, 2, q. 100, a. 6.

[943] Matt. 10:8.

[944] Thus the Code of Canon Law, c. 729.

[945] Code of Canon Law, c. 729.

[946] *Ib.*

[947] *Ib.* c. 1465, § 2.

566. 4. Those who perpetrate the delict of simony in any offices, benefices, or dignities whatsoever: a) incur an excommunication *latae sententiae* simply reserved to the Apostolic See; b) by the fact itself remain perpetually deprived of the right of electing, presenting, or nominating, if they possess any such right; c) if they are clerics, they are moreover to be suspended.[948]

5. All, even those raised to episcopal dignity, who knowingly promoted others or were promoted through simony to orders, or who administered or received other sacraments, are suspected of heresy; clerics, moreover, incur a suspension reserved to the Apostolic See.[949]

6. Those making gain from indulgences are punished by the fact itself with an excommunication simply reserved to the Holy See.[950]

Those who offend against the statutes concerning Mass stipends or ecclesiastical rates incur penalties *ferendae sententiae.*[951]

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[948] *Ib.* c. 2392.

[949] *Ib.* c. 2371.

[950] *Ib.* c. 2327.

[951] *Ib.* cc. 2324 and 2408.

567. Practical admonition. Almost nothing is accustomed to cause so much scandal to the faithful as the clergy's accursed hunger for gold. Therefore let all clerics, since even at the very threshold of the clerical state they professed, "The Lord is the portion of my inheritance and of my cup," avoid even the appearance of avarice and cupidity. Especially let any receipt of money be far removed from the sacrament of penance. Excellent in this matter is the statute of the Third Council of Baltimore, art. 289: "Let confessors not apply pecuniary penances to themselves, nor ask or accept anything from penitents as a reward for their ministry. Let them refuse even things spontaneously offered under any name whatever; nor let them permit even a Mass alms itself to be offered in this tribunal."

But if in some place there prevails a custom of offering and exacting something for the administration of the sacraments of baptism and matrimony, nevertheless let the priest not refuse the administration of these sacraments if perhaps someone refuses to make offerings of this kind. Moreover, let pastors admonish the

faithful that offerings made at burials and rates imposed in certain matrimonial dispensations serve for the suitable and by no means superfluous support of the ministers of the Church; furthermore, that the rates for matrimonial dispensations were introduced as, so to speak, salutary penances to deter the faithful from seeking dispensations of this kind, which are regarded as wounds of ecclesiastical law.

Question II. On the Virtues of Piety, Observance, and Obedience, or on the Fourth Precept of the Decalogue

568. Order of matters to be treated. After discussion of the noblest potential part of the virtue of justice, namely, the virtue of religion and the vices opposed to it, it remains (following the footsteps of the Angelic Doctor) to treat the remaining potential parts of justice, namely, piety, observance, obedience, gratitude, vindication, truth, affability, liberality, and epikeia. Sufficient has already been said above, n. 165ff., concerning truth or truthfulness, when there was discussion of lying. Therefore the other virtues remain to be explained, concerning which treatment will be given in two parts, namely: 1. on piety, observance, and obedience; 2. on gratitude, vindication, affability, liberality, and epikeia. The reason for this subdivision is that the first three virtues include nearly those things which are established in the fourth precept of the Decalogue, and thus, after the explanation of the first three precepts of the Decalogue made in the preceding tract, the explanation of the fourth precept fittingly follows.

It is expedient to treat separately these virtues (piety, observance, and obedience) in general and the same virtues insofar as they must be observed by children, parents, subjects, superiors, etc. For thus an occasion is also furnished for discussing the duties of certain states, since there is no special tract on the states of men in this Manual.

Chapter I. On Piety, Observance, and Obedience in General

Article I. On Piety

569. Distinctions and definition.

Piety is taken in a threefold sense:

a) **for religion or divine worship**, insofar as worship is offered to God as Father. But if this is done by the prompting of the Holy Spirit, there is the gift of piety, which is numbered among the seven gifts of the Holy Spirit. The Angelic Doctor aptly observes:[952] "To offer worship to God as Creator, which religion does, is more excellent than to offer homage to a carnal father, which piety, as a virtue, does; but to offer worship to God as Father is still more excellent than to offer worship to God as Creator and Lord. Hence religion is more excellent than the virtue of piety, but piety, insofar as it is a gift, is more excellent than religion." In this sense can be taken that saying of St. Paul: "Piety is profitable to all things, having promise of the life that now is and of that which is to come."[953]

b) **for benignity or mercy**, in which sense God Himself and the saints are called pious, for example: "For God is pious and merciful."[954] And in the Antiphon St. Dominic is invoked: "Pious Father Dominic, ... stand before the supreme Judge for thy company of the poor." St. Augustine says:[955] "In common usage the name of piety is also frequently employed in works of mercy, ... from which custom it has come about that God Himself is also called pious."

c) **for a special moral virtue by which we honor parents and fatherland as the principle of our existence.** In this last sense piety is a potential part of justice and can be defined: "a moral virtue by which dutiful service and diligent homage are rendered to blood relatives and to those well disposed toward their fatherland."[956] Or also: "Piety is a certain manifestation of the charity which someone has toward parents and fatherland."[957] Here there will be discussion of this piety alone.[958] For its fuller explanation the following matters are to be noted:

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[952] *S. theol.* 2, 2, q. 121, a. 1 ad 2.

[953] 1 Tim. 4:8.

[954] Ecclus. 2:13.

[955] *De civ. Dei* l. 10, c. 1; cf. *S. theol.* 2, 2, q. 101, a. 1 ad 2.

[956] Thus Cicero, *De invent. Rhet.* l. 2, c. 53.

[957] *S. theol., l.c.*, a. 3 ad 1.

[958] *Elternliebe, Kindesliebe, Verwandtenliebe, Vaterlandsliebe* [love of parents, love of children, love of relatives, love of fatherland], or in one word: *Pietätspflichten* [duties of piety].

570. The object of piety.

a) **The material object** of piety is constituted by two acts, which in the definition given are called dutiful service and homage, or, as St. Thomas says, service and reverence.[959]

b) **The formal object or motive** attains the material object under the aspect of a debt, because parents and fatherland are the secondary **principle of our origin**. For to God, as our supreme and first principle, the worship of religion is due; but to parents and fatherland, as our secondary principle, the homage of piety is due. This debt, especially in relation to parents, cannot be rendered according to equality, at least ordinarily, because children ordinarily cannot repay all the benefits which they have received from parents. In extraordinary cases, however, children can render this debt even according to equality, indeed above equality; for example, if a son rescues his father from a most dreadful death, or converts him from heresy to the true faith, etc. Because piety ordinarily cannot render strict equality as justice does, although it renders a debt, it is therefore a potential part of justice, as was said above, n. 73. It is very expedient that all the benefits received from parents be vividly placed before children and that it be inculcated in them that they cannot repay according to equality all the benefits received.

c) **The persons to whom the object is directed** are parents, fatherland, and all blood relatives. It must be noted, however, that the acts of piety, namely, service and reverence, are directed **principally to parents as the proximate principle of our origin**, and only secondarily to others. Hence St. Thomas says:[960] "In the homage of parents is included the homage of all blood relatives, because blood relatives are so called from the fact that they have proceeded from the same parents."

Therefore the foundation of piety is the most intimate union existing among those who are joined by blood or fatherland. Parents also, exercising piety toward their children, must perform the same acts of service and reverence: service, insofar as they provide them a good education, establishment in a state of life, suitable support, and a sufficient inheritance; reverence, insofar as they treat them not as servants but as legitimate children, dwelling with them and living amicably.[961]

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[959] *S. theol., l.c.*, a. 2.

[960] *Ib.*, a. 1.

[961] Cf. Cajetan, *Comm. in* 2, 2, q. 101, a. 1.

571. The following corollaries are deduced from what has been said:

1. Piety is a special virtue distinct from every other virtue, and notably from charity toward one's neighbor and legal justice; for it has a special object which it attains from a special motive. Piety toward parents and blood relatives differs from love of one's neighbor because piety is founded upon the intimate union of the proximate common stock, but love of one's neighbor upon the union of the human race. Piety toward the fatherland (or true patriotism) differs from legal justice because "piety extends to the fatherland insofar as it is a certain principle of our being; but legal justice regards the good of the fatherland insofar as it is the common good."[962] But since the fatherland which begot us always remains a certain principle of our origin, a man, even one who lives as an exile from his fatherland, must preserve piety toward his fatherland; whereas one who is no longer a subject of the fatherland is not bound to preserve legal justice toward it.

2. If piety is a special virtue, sins against it are also special sins to be declared distinctly from others in confession. Hence unjustly striking one's father is a sin of a species diverse from striking an unrelated man. It must be noted, however, that, according to the more probable opinion, a grave violation of piety is present only when parents or children are gravely injured **in their person** or in a personal good, for example, in life, bodily integrity, honor, reputation, etc. On the contrary, if the injury concerns property alone, and notably occurs through theft, it is not a violation of piety; indeed, such a sin, other things being equal, is lighter than if it were committed against strangers. The reason is that, according to the Angelic Doctor,[963] justice strictly so called does not exist between parents and children, since they constitute a certain community of goods; but justice requires that it be toward another. Hence also the thefts of children under paternal power are not so easily mortal sins, nor does the obligation of restitution arise so quickly, as was said above, n. 83. A violation of piety among blood relatives of a more remote degree, for example, through hatred, striking, etc., is indeed a circumstance aggravating the substance of the sin, but it does not introduce a new moral species. Hence a penitent who hates a cousin need not necessarily declare the circumstance of blood relationship in confession.[964]

3. Piety toward the fatherland is violated by excess by those who practice excessive nationalism in words and deeds, with injury to other nations; **by defect**, however, by those men who boast that they are cosmopolitans and whose adage is that old saying of the pagans: "Where it is well, there is one's fatherland."

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[962] *S. theol.* 2, 2, q. 101, a. 3 ad 3.

[963] *Ib.*, q. 57, a. 4, and q. 58, a. 7. St. Thomas, following the footsteps of Aristotle, calls this justice domestic justice.

[964] Cf. Lugo, *De poenitentia* diss. 16, n. 308.

Article II. On Observance

572. Definition. Observance[965] is "a virtue by which homage and honor are offered to persons constituted in some dignity." Thus St. Thomas,[966] after St. Augustine[967] and Cicero,[968] who say: "Observance is the virtue by which men excelling in some dignity are judged worthy of a certain homage and honor."

The name observance seems to have been imposed upon this virtue because to observe is attentively to behold or notice something; hence the veneration by which we honor those who are in some dignity is called observance, because we attentively observe such persons when they need our service.[969] That which observance chiefly regards in a person excelling in some dignity is **governance**. For just as piety offers

homage to parents because they are the authors of **our life**, so observance honors superiors because **they govern us**. Nevertheless, as St. Thomas aptly observes,[970] by this virtue we honor not only our superiors, but also all those who are endowed with learning, virtue, and other excellences, so that although they do not actually govern us, nevertheless, should the occasion arise, they would be fit to govern us. Hence also that subscription commonly used in letters, "your most observant," is very significant and honorable toward the recipient of the letters.

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[965] *Hochachtung, Ehrerbietung* [high esteem, reverence].

[966] *S. theol.* 2, 2, q. 102, a. 1.

[967] *Liber octoginta trium quaest.* q. 31.

[968] *De invent. Rhet.* l. 2, c. 53.

[969] Cf. Billuart, *De virt. iustitiae annexis* diss. 1, a. 3.

[970] *L.c.* ad 2.

573. Distinctions. A threefold observance is customarily distinguished, according as the dignity on account of which observance is offered is threefold: a) **civil observance**, if the dignity is civil, as in kings, teachers, masters, etc.; b) **religious observance**, if the dignity is ecclesiastical, as in the Pope, a bishop, a priest, etc.; c) **supernatural observance**, if the dignity is founded upon the heroic virtues of the saints. In this last sense observance is customarily called *dulia* in the strict acceptation. Sometimes, however, *dulia* is taken in a broader acceptation for honor also rendered to men still living.

574. The principal obligations which observance causes are honor with reverence and obedience; and these obligations are frequently inculcated in Sacred Scripture.[971] It is evident of itself that not only piety but also observance is due to parents; for they are at once the authors of our life and our governors. Cajetan subtly observes[972] that piety is due to the fatherland, since it is, as it were, the principle of our origin; but to the prince governing the fatherland observance alone is due, since he is not the principle of our origin, but only the governor of the citizens.

Observance is a special virtue because it has a special object distinct from the object both of piety and of the other virtues. For piety offers the homage due to someone as the principle of our origin; observance, however, furnishes the homage due to someone as the principle of our governance. Observance is violated in a manner similar to piety; nevertheless, sins against observance are (other things being equal) lighter than sins against piety, since piety introduces a closer obligation. For piety renders due homage to persons more closely joined to us, to whom consequently we are more obligated and whose injury is a graver sin.[973]

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[971] Cf. Ecclus. 7:31; Rom. 13:1-7; 1 Pet. 1:17ff.

[972] *Comm. in* 2, 2, q. 102, a. 1.

[973] *S. theol.* 2, 2, q. 102, a. 3.

Article III. On Obedience

575. Definition. Obedience is a moral virtue which renders the will of a man prompt to fulfill the will of another, namely, of one commanding. Thus St. Thomas.[974]

Obedience seems to be the same as *to hearken*, or to be one who listens to a word, and consequently by force of the word denotes a certain inclination of the will toward the words of another, especially of a superior.

Distinction. A twofold obedience must be distinguished: one **material**, the other **formal**. Material obedience is nothing other than the execution of any commanded virtuous act; for example, if someone elicits an act of faith without intending thereby to fulfill any command. This material obedience is a circumstance of any commanded virtuous act, and consequently is not a special virtue, just as material disobedience is not a special sin but is found in every sinful act,[975] since this is a transgression of the eternal law. Formal obedience is the execution of a work **insofar as it is commanded by a superior**. Therefore the proper motive of this obedience is the command of the superior.

Theologians dispute whether formal obedience demands a **true command** of the superior (although tacit and interpretive), or whether a manifestation of will short of a command suffices. For example, Peter knows the will of his father, who desires that some work be performed by him. Does Peter exercise an act of true obedience if he fulfills this work without his father having commanded it? Cajetan,[976] Lehmkuhl,[977] and others stand for the affirmative opinion; Lessius[978] and Billuart[979] for the negative. This controversy is of little importance. For that act, whether it is said to be elicited by the virtue of obedience strictly so called or not, is certainly virtuous and pertains to the spirit, so to speak, of the virtue of obedience. Certainly if Peter does not fulfill his father's will, known indeed but not joined with a manifest command, he does not commit a sin of disobedience; but the Angelic Doctor rightly says:[980] "The will of a superior, in whatever manner it becomes known, is a certain tacit command, and obedience appears the more prompt, the more it anticipates the express command by obeying, once the will of the superior has been understood."

Hence ascetical authors are also accustomed to distinguish three grades of obedience: 1. to fulfill the commanded work at the determined time and in the determined manner; 2. not only to fulfill the external work, but also interiorly to submit one's own will entirely, and thus to will the same and not to will the same as the superior commanding; 3. to comply with the will of the superior, in whatever manner it is known, not only by execution of the work and submission of the will, but also by submission of judgment in simplicity of heart. This is that blind obedience which is undeservedly reproached by some. For all right obedience must be most clear-sighted and therefore keenly discern whether the thing commanded is pleasing to God and lawful in itself, since God must always be obeyed more than man.

But the most perfect obedience is blind in this sense: that it does not judge concerning the natural reason, motive, or value of the thing commanded, but leaves all these things to the prudent discretion of the superior. In this sense St. Gregory the Great says:[981] "For true obedience neither examines the intention of prelates nor discriminates among commands.... For whoever has learned to obey perfectly does not know how to judge." We must render this perfect submission of judgment to God and the Church, especially when she employs her infallible magisterium; and therefore the so-called respectful silence does not suffice.[982]

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[974] *S. theol.* 2, 2, q. 104, a. 2 ad 3. B. Raus, C.Ss.R., has discussed *De sacrae oboedientiae virtute et voto* very learnedly, Lyon, 1923.

[975] *S. theol.* 2, 2, q. 104, a. 2 ad 1.

[976] *Comm. in* 2, 2, q. 104, a. 2.

[977] *Theol. mor.* I, n. 924.

[978] *De iust.* l. 2, c. 46, n. 22.

[979] *De relig.* diss. 2, a. 1.

[980] *S. theol.* 2, 2, q. 104, a. 2.

[981] *In 1 Reg.* l. 2, c. 4, n. 11 (Migne, *Patr. lat.* 79, 131).

[982] Cf. Clement XI, Bull *Vineam Domini*, 1713.

576. The object of obedience is a command of a superior, whether explicit, tacit, or interpretive.[983] But since this object has a special aspect of good, obedience is also a special virtue, the exercise of which can indeed be commanded by diverse other virtues. For obedience proceeds from reverence, which offers homage and honor to a superior; therefore, if it proceeds from the reverence due to God, it pertains to religion and especially to devotion; if it proceeds from reverence for prelates, it is contained in a certain manner under observance.[984]

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[983] *S. theol., l.c.*

[984] *Ib.*, a. 3 ad 1.

577. Excellence of obedience. That obedience is a very excellent virtue is evident both from Sacred Scripture, from the praises of the holy Fathers, and from reason. In Sacred Scripture it is said: "Obedience is better than victims."[985] Explaining these words, St. Gregory the Great says:[986] "Obedience is rightly preferred to victims, because through victims the flesh of another is slain, but through obedience one's own will is slain." St. Thomas says:[987] "Man can give nothing greater to God than that, for His sake, he subject his own will to the will of another."

Because of this excellence of its own, obedience is also accustomed to command the other virtues, causing, for example, now a fast, now an act of religion, now an act of love, etc. If obedience is compared **objectively** with the other virtues, then it is certainly inferior not only to the theological virtues, but also to the virtue of religion, whose object approaches much more closely to God. But if obedience is considered on the part of that which it despises in order to adhere to God, then it excels the other moral virtues. For while the other virtues despise material or bodily goods for the love of God, for example, riches and carnal pleasures, obedience binds and sacrifices one's own will in the service of God, which certainly excels material and bodily goods.[988]

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[985] 1 Kings 15:22.

[986] *Moral.* l. ult., c. 14 (Migne, *Patr. lat.* 76, 765).

[987] *S. theol.* 2, 2, q. 186, a. 5 ad 5.

[988] *Ib.*, q. 104, a. 3.

578. Extent of obedience. Since obedience is limited by the authority of the superior, its extent is as great as the authority of the superior. Now the authority of God is unlimited and infinite, and His will is most holy. Hence God must be obeyed in all things, and a case in which it is lawful to resist a certainly known command of God is impossible.[989]

But the authority of a human superior is limited by not only divine but also human law. Hence a subject cannot obey a superior commanding something which is contrary to natural or positive divine law. For such obedience would be indiscreet, since God must be obeyed more than men.[990] If a human superior indeed exceeds his competence but commands nothing unlawful, the subject **can**, but is not **bound**, to obey. But if a doubt arises concerning the liceity of an act commanded by a superior, then this doubt is to be examined according to one's ability. But if the doubt persists, the subject is bound to obey, because the presumption stands for the superior, who is not considered to have commanded something unlawful unless this is certainly established. Authors do not agree whether a human superior can command merely internal acts. This controversy was discussed above, I, n. 183, in the tract on laws. Whether parents can command their children concerning the choice of some state will be discussed in the following chapter.

[989] *Ib.*, a. 4.

[990] *S. theol.* 2, 2, q. 104, a. 5.

579. Opposed vices. To obedience is opposed: 1. **by excess, servility or indiscreet obedience**, which complies even in unlawful things; 2. **by defect, disobedience**, which is either material, and then is not a special sin because it is found in the violation of every virtue; or formal, which arises from formal contempt either of the command or of the one commanding. Someone transgresses a command from formal contempt when his will refuses to be subjected to an ordinance and transgresses it precisely from this motive. For if someone transgresses a command because of anger, concupiscence, or another disordered passion, he sins neither from contempt nor from formal disobedience.

Formal contempt of a (particular) **command** is called imperfect, but contempt of **the one commanding** is called perfect formal contempt and is a sin much graver than formal contempt of a command.[991] Indeed, it is a mortal sin in its whole genus because it is a grave injury to despise a superior and precisely from this contempt to transgress his command, although it concerns matter light in itself.[992] The same holds if someone does not despise a particular command but already refuses **in whole**, that is, in all commands, to be subject to the superior. Formal contempt of a particular command indeed constitutes formal disobedience and therefore is a mortal sin from its genus, but admits slightness of matter.

For all formal disobedience is opposed to the charity both of God and of one's neighbor, since the charity of God demands that we comply with His commandments. Hence Christ said: "He that hath my commandments and keepeth them; he it is that loveth me."[993] But in the divine precepts is contained the requirement that human superiors also be obeyed. And "therefore also disobedience, whereby someone is disobedient to the commands of superiors, is a mortal sin, as contrary to divine love, according to that saying: *He that resisteth the power resisteth the ordinance of God.*[994] It is opposed moreover to the love of one's neighbor, insofar as it withdraws from a superior who is one's neighbor the obedience which is due to him."[995]

Disobedience admits slightness of matter and consequently can be a venial sin. In general it can be said: A sin of disobedience is the graver, the higher the one commanding and the graver the command violated.

[991] *Ib.*, q. 105, a. 2.

[992] Cf. Billuart, *De relig.* diss. 2, *De oboed.*, a. 4.

[993] John 14:21.

[994] Rom. 13:2.

[995] *S. theol.* 2, 2, q. 105, a. 1.

Chapter II. On the Same Virtues as They Must Be Observed by Children, Parents, Etc

In this chapter there will be treated the obligations of children, parents, spouses, masters, servants, teachers, pupils, rulers, and subjects.

Article I. On the Obligations of Children Toward Parents

580. Children are bound to show their parents love, reverence, and obedience. This obligation arises from a threefold prerogative of parents: for parents gave existence to their children, upon whom piety or love is thereby enjoined; parents are constituted in dignity, and therefore observance or reverence is owed to them; and finally parents are the governors of education, and therefore children must obey them. This threefold

obligation is grave from its genus, so that a child violating either the love, or the reverence, or the obedience owed to parents sins mortally; very often, however, on account of slightness of matter or imperfection of the act, he sins only venially.

a) As regards love. The love owed to parents must be affective and effective.

Affective love requires that children sincerely desire for their parents all truly useful goods, and consequently pray for them to God, the Greatest and Best. Children sin against affective love if they hold their parents in hatred, whether the hatred is one of abomination or of detestation; if they rejoice in their adversities and are saddened at their prosperity; if they wish death upon them; if they do not pray for them over a long period; or if from depraved egoism they desire the paternal inheritance. Hence the following proposition (14) was condemned by Innocent XI: "It is lawful with an absolute desire to wish for the death of one's father, not indeed as an evil of the father, but as a good of the one desiring it, because a rich inheritance is thereby going to come to him."[996]

Effective love demands that children show their parents external signs of love by speaking to them charitably, living peaceably with them, or, if they are absent, visiting them frequently; that they assist them in necessities by providing, for example, food, clothing, and housing, and this obligation binds the children *in solidum*; and that, insofar as this is morally possible, they offer them consolation and assistance when they are suffering from old age, illness, or some other adversity. Children must especially assist their parents in spiritual necessities, and therefore procure that parents near death receive the sacraments and that the deceased have suffrages. Children therefore sin if they unduly afflict their parents externally; if they subject them to injuries, insulting words, curses, or blows. The injurious striking of parents is almost always a mortal sin, because it includes an enormous irreverence. Indeed, in some dioceses the injurious striking of parents is a reserved sin. A curse seriously pronounced against parents is also a mortal sin. Hence God Himself established: "He that curseth father or mother, dying let him die."[997] Children likewise sin gravely if they do not assist parents who are in grave necessity. Hence children cannot enter religious life if their parents gravely need their assistance; indeed, if a son had already made religious profession and could not otherwise assist parents in extreme or quasi-extreme necessity, he would be bound to leave religious life. This matter is treated more fully elsewhere.[998]

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[996] Denzinger, n. 1164.

[997] Ex. 21:17; Matt. 15:4.

[998] In our *Manual of Canon Law*, q. 205; cf. also *S. theol.* 2, 2, q. 101, a. 4 ad 4, and *Cod. iur. can.* c. 542.

581. It is asked: Is a son bound to pay from his own goods the debts of a father incapable of paying them?

First, an obligation of justice must be distinguished from an obligation of piety. From justice a son is bound to pay his father's debts if he received paternal goods which still remain. For the debts incumbent upon the father must always be subtracted from paternal goods, whether received by a gift *inter vivos* or by testament. But a son is not bound to repay the expenses which his father made for his education, since he has the right to receive the education owed to him at his father's expense. From piety a son is sometimes bound to pay his father's debts even if this cannot be done from goods received from his father, namely, if otherwise his father's honor would be gravely injured. Nevertheless, this obligation is not usually grave, and therefore from piety alone a son is not bound to pay his father's debts with grave inconvenience to himself. It was said above, n. 402, how a son is bound to fulfill his father's real vows.

b) As regards reverence.

582. The fourth precept of the Decalogue is expressed in these words: "Honor thy father and thy mother."[999] But to honor, as the Roman Catechism says,[1000] "is to think honorably of someone and to esteem most highly all that belongs to him." Hence children must inwardly acknowledge the dignity of their parents and outwardly profess it by words, signs, and deeds.

Children therefore sin: 1. **by words**, if they address their parents with harsh, injurious, insulting, or cursing words, or speak of them in this manner; for example, if a son calls his father a stupid ass or a decrepit old man; 2. **by signs**, if they mock or despise them by gestures; 3. **by deeds**, if they strike them, cast them out of the house, or even raise a hand against them; 4. **by omission**, if they do not show the customary signs of reverence according to the usage of the country; for example, if they do not greet them, do not rise in their presence, or refuse to acknowledge them before others, unless, however, great harm to the child in goods of fortune or in honor would follow from the acknowledgment. For in that case the parents would not be reasonably unwilling if, in those circumstances, they did not exact acknowledgment from their children.[1001] Nevertheless, the case in which true harm arises to a child from acknowledging his parents even before others and treating them honorably is exceedingly rare.

c) As regards obedience.

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[999] Ex. 20:12.

[1000] Part 3, c. 5, q. 3.

[1001] Cf. St. Alphonsus, *Theol. mor.* l. 5, n. 334.

583. Children are obliged to execute the commands of their parents in all lawful things pertaining to their care. Hence St. Paul[1002] admonishes: "Children, obey your parents in the Lord, for this is just." "Children, obey your parents in all things, for this is well pleasing to the Lord." This obligation of obedience is grave of itself, namely, if the parents gravely and seriously command in grave matter. Hence St. Paul calls those disobedient to parents worthy of death.[1003] But for a mortal sin to arise from such disobedience, it is required: a) that the parents seriously command, and not merely admonish or exhort; b) that grave matter be present. What matter is truly grave can scarcely be determined by a general rule. Yet in general it can be said that matter is grave when its omission causes grave harm either to the child or to the family. Hence, for example, a son sins gravely if he does not obey a father who severely prohibits continual drunkenness, fornications, very bad company in taverns, etc.

Note. The obedience owed to parents, even in lawful things, has two limitations:

[1002] Eph. 6:1; Col. 3:20.

[1003] Cf. Rom. 1:32.

584. 1. As regards its duration. Children must render obedience to their parents for as long as they live under paternal power. But as soon as they have attained majority or have been emancipated, they are now *sui iuris* and are no longer bound to obey.

A son is ordinarily considered of age, or a major, upon completing his twenty-first year; but he can be emancipated before that time according to the diverse modern civil laws, as was said above, n. 26ff., in the tract on justice. If a son who is of age or emancipated freely remains in his father's house, he is not exempted from the obligation of obeying. A minor son cannot lawfully, against the wishes of his parents, seek his

livelihood or live outside his father's house, unless this has been granted to him by legitimate authority. On the contrary, a son who is of age or emancipated can lawfully live outside his father's house, and then he is no longer bound to obey his parents. Nevertheless, a good son always endeavors, according to his ability, to comply with the will of his parents. Although the obligation of obedience sometimes ceases, the obligation of love and reverence toward parents never ceases and is equally incumbent upon children who are of age and those who are minors.

585. 2. As regards the choice of a state of life, children are free by natural law itself and are not bound to obey their parents.

The reason is that in those things which pertain to the preservation of the individual and of the species all men are equal,[1004] and it is a great injustice to force one's neighbor into some state of life upon which his earthly and heavenly salvation not rarely depends. Two kinds of states of life are customarily distinguished: **primary states**, of which there are three, namely, the religious, clerical, and matrimonial states; and **secondary states**, which are offices rather than immutable states of life, for example, the state of a shoemaker, an advocate, a physician, etc. All theologians teach that a child is free in the choice of a primary state of life, and that parents sin if they force a child to embrace such a state. Hence St. Alphonsus[1005] rightly says: "Parents sin gravely who force their children, even indirectly, and against their will to choose a state of life, whether clerical or conjugal; or, conversely, if they unjustly withdraw them, even without force or fraud, from the religious, clerical, or conjugal state, without just cause." On account of the grave necessity of parents, children are sometimes prohibited from entering the religious state, as was said above. But if the necessity is only light, or if a son is wholly incapable of relieving the necessity of his parents, he can freely enter religious life.

It is often not even expedient that a son who wishes to embrace the clerical or religious state ask the counsel of his parents, if they appear to lack sufficient knowledge of these matters and, especially, an unimpaired and untroubled power of judgment. But before a son, after serious deliberation, actually embraces the religious or clerical state, he ought to ask his parents' consent, which, if unduly denied, can be passed over. For then God calling must be obeyed more than parents resisting, since Christ says: "He that loveth father or mother more than me, is not worthy of me."[1006] But if it is a question of contracting marriage with a particular person, then children are bound to seek the counsel and ordinarily also the assent of their parents, because both prudence and piety and reverence, at least commonly, so require. For children, blinded by a mad love, often wish to contract a marriage which will certainly tend toward their own ruin and the disgrace of the family. But if the parents unreasonably refuse to assent to the marriage to be contracted, the child is no longer bound to obey; indeed, the parents themselves easily sin gravely by unduly impeding or even delaying their child's marriage, since they are often the cause of many sins of incontinence and hatred, or even of despair.

As regards the choice of a **secondary state** of life, or of a profession, as they say, for example, the medical art, the shoemaker's art, etc., children must obey their parents to some extent. Hence children sin who, against the will of their parents, wish to embrace a profession full of dangers or unsuited to their condition; but, on the other hand, parents also sin who for insufficient motives force a child to practice some art which brings him weariness or to which his abilities are less suited.

[1004] *S. theol.* 2, 2, q. 104, a. 5.

[1005] *L.c.*, n. 335.

[1006] Matt. 10:37.

586. Scholion. On the obligation of an illegitimate child. A child born outside a legitimate bed, unless afterward legitimated, has neither the same rights nor the same obligations as a legitimate child. Modern civil laws are accustomed accurately to determine the rights and obligations both of the illegitimate child and of his parents. He must render love, reverence, and obedience to one or the other parent, namely, to the one who provides for his education. But he owes nothing to the other parent, who cares nothing for his education, because that parent inflicts upon him, in addition to the injury of an undue generation, also the injury of an education denied or neglected. For by natural law both parents of an illegitimate child are bound to provide for the education of the offspring begotten. What modern laws establish concerning the manner and expenses of the education of illegitimate offspring is sufficiently just and appears to bind in conscience, at least after the sentence of a judge. If, however, the father induced the woman to carnal intercourse by force or grave fraud, then he himself is the unjust damager and consequently is bound to repair all the damages which arose from his unjust action. Therefore he must not only bear the expenses of the education of the illegitimate offspring, but also indemnify the mother. Cf. what was said above, n. 147ff., concerning reparation for an injury arising from defloration or adultery.

Article II. On the Obligations of Parents Toward Children

587. Parents are bound to show their children: 1. love; 2. bodily and spiritual education. As regards love and bodily education, nature itself dictates this, since even brute animals love and nourish their offspring. But because man has a rational soul, and especially because he has been elevated to the supernatural order, human parents must furthermore educate their children spiritually.[1007] The obligation of love never ceases, but the obligation of education ceases when its end ceases, namely, when the child has so matured that he is able to provide for himself in bodily and spiritual matters.

1. Love and its obligation and violation. Parents must love their children with a true and sincere love, both affective and effective, so that they not only put aside all hatred and every malevolence, but also wish their children well, do good to them, and assist them in necessities. For a father a son is, as it were, another self, since he has been begotten from his substance; and therefore a father must love his son as himself.[1008]

Parents therefore sin:

a) who pursue their children with hatred, malevolence, or some other depraved affection;

b) who call them by insulting names or pour forth curses against them. Indeed, insulting words and curses of this sort are often uttered not seriously but from an impulse of anger, and then they are not such grave sins unless grave scandal arises from them; nevertheless, such words must be carefully avoided, since they do not remain without an evil effect. Hence it is said in Sacred Scripture: "The curse of the mother rooteth up the foundations [of the houses of her children]."[1009]

c) who disclose the secret offenses of their children without just cause. Parents can sometimes disclose the offenses of their children to one another, provided that this serves the good of the family or of the children;

d) who unduly beat or otherwise punish their children, for example, by casting them out of the house;

e) who, while expending all affection upon one child, conduct themselves coldly or indifferently toward the others. For the worst effects customarily follow from such a manner of acting, for example, quarrels, strife, divisions, hatreds among the children, etc.;

f) who love them with a disordered affection, so that they grant or permit them everything and do not restrain them from vices and depraved habits. Such disordered love[1010] is in truth a cruel indolence, causing the gravest

injuries both to the parents and to the children themselves, as daily experience establishes.

[1007] The Code of Canon Law, c. 1113, says concerning this matter: "Parents are bound by a most grave obligation, according to their ability, to care for the education of their offspring, both religious and moral and physical and civil, and also to provide for their temporal good."

[1008] Cf. *S. theol.* 1, 2, q. 100, a. 5 ad 4.

[1009] Ecclus. 3:11.

[1010] *Affenliebe, amour aveugle* [blind parental love, blind love].

588. 2. Bodily education and its obligation and violation. Bodily education creates two obligations: a) the preservation of life; b) the procuring of a suitable state of life.

a) By reason of preserving life, parents are gravely bound to exercise diligent care of their offspring from conception itself, so that its health may be preserved. Hence the following sin:

α) pregnant mothers who harm the fetus by dancing, disordered acts of lust, violent passions of anger or grief, etc.;

β) fathers who treat pregnant wives harshly, strike them, excite them to violent passions, or burden them with excessive labors;

γ) mothers who, without grave cause, do not nurse their offspring.[1011] For then notable bodily harm, and sometimes even spiritual harm, is accustomed to arise for the offspring. Bodily harm is accustomed to arise because no other food is as suitable for an infant as its own mother's milk. Spiritual harm can also occur if a strange nurse is given to the infant, because according to several physicians[1012] the moral qualities of the nurse in some measure influence the infant himself. And since those nurses are often mothers who have given birth from fornication, their moral qualities are sometimes bad. Moral harm also sometimes arises for the mother herself, who fails in her duty. For mothers, especially wealthy ones, are accustomed to withdraw themselves from this duty of nursing so that they may more easily attend worldly gatherings, dances, theaters, and other amusements. All of these things are of little use for their souls. There are, however, cases in which a mother is not bound to nurse her own offspring, provided a proportionately grave cause and an honorable end are present; for example, if she is too weak, if sufficient milk is lacking, or if otherwise she would have to omit work by which she must obtain her livelihood;

δ) parents who, without urgent necessity, expose their children in a foundling hospital[1013] or in a public place. The reason is both that thus to desert children is against nature, and that offspring thus exposed will have no slight disgrace and harm throughout life from having been brought up in a foundling hospital and from having unknown parents. Above, n. 148, in the tract on justice, it was discussed whether wealthy parents are bound to repair the damages which arose for the foundling hospital from the education of exposed offspring;

ε) parents who do not provide their children with sufficient food, clothing, housing, and care during illness. Parents are bound to furnish all these things to their children until the time when they can provide necessities for themselves; indeed, even throughout their whole life if the children are in grave necessity.[1014] But if the children are unable to obtain their livelihood through their own perversity, the parents are bound indeed to furnish those things which are altogether necessary for life, but not other things. Hence, for example, if a son has dissipated the entire inheritance already received, the father is nevertheless bound to feed him and to pay debts perhaps contracted for buying food; but he is by no means bound to pay other debts or to provide a prodigal son with anything beyond what is strictly necessary for life.

b) By reason of procuring a suitable state of life, parents are bound to take care that their children learn either some art or letters, insofar as this is possible in view of the means of the parents and the abilities of the children. Furthermore, parents must employ at least moderate diligence to leave a suitable inheritance to their children. For St. Paul says: "For neither ought the children to lay up for the parents, but the parents for the children."[1015]

Hence parents sin who through sloth, negligence, drinking, games, etc., dissipate the family property so that the children's inheritance is notably diminished. Likewise parents sin who, without legitimate cause, deny a suitable dowry to a daughter for contracting marriage or entering religious life; but if they justly dissent from the marriage to be contracted, then they are not bound to provide a dowry, but only necessary support if the married daughter is in grave necessity.

[1011] Cf. W. Grosam, *Die Stillpflicht der Mutter, in moral- und pastoraltheologischer Beleuchtung*. Düsseldorf, 1924.

[1012] Cf. Capellmann-Bergmann, *Pastoralmedizin* (1902), p. 94: *Das Ammenwesen*; I. Antonelli, *Medicina pastoralis* I (1906), n. 498: *De nutricibus venalibus.*

[1013] *Findelhaus, enfants trouvés, foundling hospital.*

[1014] Cf. *S. theol.* 2, 2, q. 101, a. 2 ad 2: "The father has the character of a principle.... Therefore it belongs to the father of himself to assist his son; and on account of this he must assist him not only for a time, but throughout his whole life."

[1015] 2 Cor. 12:14.

589. 3. The obligation of spiritual education and its violation. The obligation incumbent upon parents to procure the diligent spiritual education of their offspring is most grave. For offspring begotten, inasmuch as they possess a rational soul destined for eternal beatitude, must above all be educated as regards the soul, so that they may be imbued with the knowledge and virtues necessary for attaining the supernatural end. Therefore St. Paul admonishes parents that they should endeavor to educate their children "in the discipline and correction of the Lord."[1016] Parents are therefore bound promptly to regenerate the child born by the laver of baptism and to free it from original sin. Hence a notable delay of baptism is a grave sin, as will be said below in the tract on baptism. Parents must then take care, as soon as possible, that children who have scarcely attained the use of reason be instructed in matters of morals and religion, that they pour forth pious prayers daily, and that they exercise virtues suitable to their age.

Parents must give their children a good example in all things. For examples are stronger than words. Hence St. Jerome writes to Laeta concerning the education of her daughter:[1017] "Let her have you as her teacher; let her untutored infancy look with wonder upon you; let her see nothing in you and in her father which, if she does it, is a sin. Remember, you parents... that you can teach more by examples than by voice." And the Council of Trent says generally: "The integrity of those who preside is the salvation of their subjects."[1018] Therefore parents sin gravely who blaspheme before their children, speak shameful things, do immodest things, or, what is worse, induce their children to sin.

Furthermore, parents must employ sufficient vigilance or even, when necessity requires, due correction, lest their children contract vices or grow filthy in sins. Hence this grave admonition is directed to them: "Withhold not discipline from a child; for if thou strike him with the rod, he shall not die. Thou shalt beat him with the rod, and deliver his soul from hell."[1019] This correction must always be done with love and discretion, and not with harshness or disordered passion. Hence the Apostle admonishes: "Fathers, provoke not your children to indignation, lest they be discouraged."[1020]

Parents therefore sin who do not restrain the excesses of their children by suitable chastisement. The most sorrowful example of neglected chastisement is Heli, who was therefore gravely punished. Likewise parents sin who carelessly leave their children in a proximate occasion of sin, for example, by permitting boys and girls to sleep in the same bed, or sons and daughters to prolong dangerous courtships, etc. On the other hand, parents also sin who commit notable excesses in punishing their children.

In our times the spiritual education owed to children chiefly requires that parents send their children to good schools in which sound doctrine is handed down and good morals flourish among pupils and teachers. Above, I, n. 528, enough was said concerning the dangers which arise from bad schools. It is useful to add here the Instruction of the Holy Office of March 21, 1866, to the bishops of Switzerland concerning mixed schools:[1021] "Whether it is lawful for parents to entrust their children to be educated in schools of this kind? In general, it is not lawful; but in particular cases this is to be left to the judgment and conscience of the Ordinary. It shall, however, be his duty diligently to take care that suitable remedies be applied, not only by himself and by parish priests but also by individual parents, by which the danger of perversion may be removed from the pupils; and at the same time to strive before magistrates and governors that violence not be done to the conscience of Catholics by employing books which are hostile to the Catholic religion; and finally, assiduously and urgently to admonish and exhort all, and especially those who have the means, to send their children to other regions where they may be educated in a Catholic manner."

St. John Chrysostom[1022] sharply inveighs with satire against those who entrust their children to bad teachers for instruction: "We have greater care for asses and horses than for children. For if a muleteer must be placed over our mules and asses, we take no little care lest we place over them one who is insane, drunken, a thief, or unskilled in that work. But if a tutor must be found for us to cultivate the mind of our children, we receive whoever happens to be offered, nor do we consider that no art is found more sublime than this art."

In some dioceses, for example, those of England, parents who send their children to non-Catholic schools without the most urgent reason cannot receive sacramental absolution without the previous permission of the bishop. In practice it is strongly to be recommended that, after receiving the instruction of the bishop, the parish priests and confessors of each region proceed in a uniform manner in this matter by denying absolution to those parents who do not sincerely promise that they will, according to their ability, guard against the dangers which arise for their children from attendance at the schools.

[1016] Eph. 6:4.

[1017] In Migne, *Patr. lat.* 22, 867ff. This letter, which treats excellently of education in the families of the ancient Christians, is most worthy of being read.

[1018] Session 6, c. 1, *de reform.*

[1019] Prov. 23:13ff.

[1020] Col. 3:21.

[1021] *Collect. de Prop. Fide* I, n. 1286. Similar things are contained in the Code of Canon Law, c. 1374.

[1022] Homily 20 on Matthew. A proverb says something similar: *Das ist fürwahr ein großer Sünder, der für seine Kälber mehr sorgt als für seine Kinder* [He is truly a great sinner who cares more for his calves than for his children].

590. Scholion. On the obligations of piety among other relatives. From the virtue of piety there arise similar, though unequal, obligations also among other relatives in the nearer degrees, namely, toward a grandfather, grandmother, grandson, granddaughter, brother, and sister. But the obligations toward more remote relatives are the same as those dictated by common charity toward one's neighbor.

Article III. On the Obligations of Spouses

We treat briefly of the obligations of spouses, because in other places, namely, in the tract on justice, where the goods of wives were discussed, n. 15ff., and in the tract on matrimony, where the conjugal due will be treated, III, n. 704ff., the mutual rights and obligations of spouses are explained. There can be distinguished, however, mutual obligations which are equal between both spouses, and obligations which are peculiar to one or the other spouse.

591. 1. Mutual obligations. Spouses equally owe to one another: a) mutual affective and effective love; b) the conjugal due; c) common life.

a) Spouses are bound to show one another sincere mutual love. For since they are, as it were, one flesh, they must also be, as it were, one heart. Therefore St. Paul commands husbands to love their wives as Christ loved the Church;[1023] and wives to love their husbands.[1024] This love must be not only affective but also effective. Effective love demands that spouses assist one another according to their ability, especially in necessities; that each bear the burdens of the other; and that they avoid disordered egoism, insulting words, harshness, and especially jealousy, which is accustomed to be the sepulcher of conjugal love.

b) Spouses are bound mutually to render the conjugal due. Therefore St. Paul says: "Let the husband render the debt to his wife; and the wife also in like manner to the husband."[1025] Above all, spouses must preserve conjugal fidelity, so that they do not perpetrate even mental adultery. The conjugal due will be discussed in the tract on matrimony III, n. 704ff.

c) Spouses are bound to live together, so that they have a common dwelling, table, and bed. Hence Christ again inculcated the precept of the Old Testament: "For this cause shall a man leave father and mother, and shall cleave to his wife, and they two shall be in one flesh."[1026] When it is lawful to make either perfect or imperfect divorce will be said below in the tract on matrimony III, n. 688ff.

[1023] Eph. 5:25.

[1024] Titus 2:4; cf. also Col. 3:18 and 1 Tim. 2:15.

[1025] 1 Cor. 7:3.

[1026] Matt. 19:5.

592. 2. The obligations and rights of the husband. Since the husband is the head of the family, there belongs to him the power of governing: a) the wife; b) the children; c) the family property.

Hence he must take care that the wife faithfully fulfills all her duties; but he is also bound to provide her with sufficient food, clothing, and housing, even if the wife brought no dowry goods. In the case of divorce as to bed and habitation, the husband is bound to provide suitable support for the wife, unless the divorce was made on account of the grave fault of the wife. Therefore a husband sins if he treats his wife harshly and roughly; or if he compels her to labors which dishonor her condition and dignity. For the wife is the companion, and not the handmaid, of the husband. A husband can, and indeed must, correct a wife who is at fault; this correction ordinarily ought to consist in words uttered without anger and hatred. Graver corrections consisting in deeds or blows are commonly evil or at least to be dissuaded, inasmuch as they are more harmful than useful. A husband can sin gravely if he pursues his wife with abusive words, for example, by calling her an adulteress, harlot, witch, etc.; likewise he sins gravely if he greatly afflicts his wife by his drunken excesses and other disordered passions.

By reason of paternal power over the children, the direction of their education is incumbent upon the husband according to what was said above concerning the education of children.

The husband must diligently administer the family goods entrusted to him. As regards the administration of the wife's goods, the civil laws or legitimate agreements must be observed, as was said above, n. 16ff., in the tract on justice.

593. 3. The obligations and rights of the wife. The wife must revere the husband and render him due obedience.

Therefore the Apostle admonishes: "Wives, be subject to your husbands, as it behoveth in the Lord."[1027] The reason for this subjection is drawn from the condition of the family itself, whose head and ruler is the husband. The wife must furthermore exercise diligent care in the education of the little children and in domestic affairs, as her condition requires. Hence a wife sins if she neglects domestic affairs by indulging too much in idleness and amusements; likewise she sins if she indulges too much in luxury and thus exasperates her husband. The rights of the wife are drawn from the obligations of the husband just explained; but especially the wife can demand that she be treated by her husband in all things as his companion.

[1027] Col. 3:18.

594. Scholion. On the emancipation of women. Although this matter does not pertain to the virtue of piety, nevertheless, since there was discussion above concerning the relations between man and woman, it is useful here to touch briefly upon some things necessary for the moral theologian to know concerning the emancipation of women, which today so agitates minds and the commonwealth. By the name *emancipation of women* is understood an equality of rights in every respect between men and women, so that access even to all political offices, and especially to political suffrage, is open to women. Some, however, do not aspire to so radical an emancipation of women, but wish only to vindicate greater rights for women in the domestic and economic order. The Catholic Church has not hitherto condemned a moderate emancipation of women. The following norms appear to be observed:

1. Man and woman are equal as regards the substance of human nature, as regards the soul, and as regards the attainment of grace and glory; therefore St. Paul says: "[In Christ] there is neither male nor female."[1028] For this reason the Catholic Church has never ceased to teach that woman is not the handmaid, but the companion, of man.

2. Although a woman is ordinarily weaker than a man as regards the powers of body and intellect, nevertheless there exist not a few women capable of accomplishing the same works, at least the easier ones, which men perform. Therefore nothing of itself prevents these works and offices from being entrusted to capable women. Hence, for example, nothing prevents the office of physician, advocate, teacher, etc., from being entrusted to suitable women. Already in the Old Testament Deborah was a judge.

3. The principal natural end for which God created woman is that she be a help to man.[1029] Therefore God first created Adam and afterward Eve, whom He made from the rib of Adam; He did not first make Eve, nor did He derive Adam from the substance of Eve. These things appear to be manifest signs that woman ought to be subject to man. To this is added that in both the Old and the New Testament God excluded women from the priestly office, which again demonstrates sufficiently clearly that God does not will to grant woman equality with man in every respect in all offices. Therefore the radical emancipation of women and complete equalization between man and woman appears to be contrary to the intention of the Creator.

4. The principal office of woman is to procure the good of the domestic family. But the family is the foundation of the whole of human society. Now it is established by daily experience that the good of the family is scarcely possible without the effective assistance of woman. Therefore such an emancipation of women as tears them too much from the bosom of the family, or renders family life very difficult for husbands and children, is morally evil and harmful also to the social good.

5. On the part of Christian doctrine, nothing prevents, at least of itself, the right of suffrage even in political matters from being granted to capable women, for this is prohibited nowhere; but it is another question whether any benefit arises for the commonwealth and the Church from the right to vote being granted to women. This question does not appear capable of being solved *a priori*, but will have a diverse answer according to the diverse regimes of different regions.[1030]

[1028] Gal. 3:28.

[1029] Gen. 2:18.

[1030] A. Rösler treats this matter well in *Die Frauenfrage* (Freiburg, 1907); Gnauck-Kühne in *Staatslexikon*, s.v. "Frauenfrage"; H. Lange and G. Bäumer, *Handbuch der Frauenbewegung* (1901).

Article IV. On the Obligations of Masters and Servants

In most regions the rights and duties of masters and servants are determined by the civil laws. These laws can generally be considered just, and consequently masters or servants who direct their manner of acting according to them are not to be disturbed. A closer relation exists between household masters and servants living under the same roof than between masters and workers living separately. For servants are accustomed truly to belong to the family of the household master, for which reason they are also called domestics. But workers or laborers merely hire their work to a master for a determined price, without living in the same house with the master. Nevertheless, for the sake of brevity, there are explained here together, on the one hand, the obligations of masters and household masters, and, on the other hand, the obligations of servants and workers.

595. Obligations of masters and household masters. Masters are bound: 1. to treat their servants and workers kindly; 2. to instruct and correct them; 3. to pay them a just wage.

1. To treat them kindly, that is, by addressing them decently and humanely, providing good and sufficient food, not burdening them with excessive labors, and suitably caring for the sick.[1031] These things are established both from natural law and from Sacred Scripture: "If thou have a faithful servant, let him be to thee as thy own soul: treat him as a brother."[1032] "And you, masters, do the same things to them [namely, to servants], forbearing threatenings: knowing that the Lord both of them and you is in heaven; and there is no respect of persons with him."[1033] Hence masters sin who address servants with harsh and insulting words; who burden them with excessive labor; or who expose their health to dangers. In caring for sick servants, those things are to be observed which the civil laws establish concerning this matter.[1034]

2. To instruct and correct them, or, in other words, a master is bound to have due spiritual care for his servants. For a master is the head and superior of his servant, whom he is therefore bound to direct in those things which regard religious and moral life. This duty is most grave. Hence St. Paul says severely: "But if any man have not care of his own, and especially of those of his house, he hath denied the faith, and is worse than an infidel."[1035]

For this reason masters sin:

a) if they do not grant servants and workers time to fulfill religious obligations, for example, to hear Sunday Mass, receive the sacraments, or hear a sermon or catechesis;

b) if they do not prudently and charitably correct irreligious, blasphemous, or foul-speaking servants, those giving scandal to others, etc., and endeavor to bring them back to better fruit. But if all admonitions have been vain, such impious servants must be cast out of the house;

c) if they permit their servants a proximate occasion of sin, for example, by not prohibiting dangerous familiarities;

d) if they themselves give a bad example, or if they directly solicit their servants to sins. Masters should be wholly mindful of a truth confirmed by long experience: an impious and irreligious servant who neglects his duties toward God the Lord also neglects his duties toward a temporal lord.

3. To pay a just wage. What a just wage is was said above, n. 310, in the tract on justice. Defrauding another of a due wage is numbered among the sins crying to heaven.[1036] Notwithstanding the civil laws existing today in all civilized regions, harsh and unjust oppressions of servants and workers are sometimes committed by inhuman household masters and masters, by exacting labors not contained in the agreement, unduly delaying payment of wages, dismissing workers for frivolous causes, etc. All these things more or less violate justice or at least charity.

[1031] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 342; *Homo apost.* tr. 7, 7; Gury, *Cas. consc.* I, n. 382.

[1032] Ecclus. 33:31.

[1033] Eph. 6:9.

[1034] Cf. the insurance schemes for workers existing in diverse regions and prescribed by governments (Herder's *Konversationslexikon*, s.v. "Arbeiterversicherung").

[1035] 1 Tim. 5:8.

[1036] "Behold the hire of the laborers, ... which by fraud hath been kept back by you, crieth: and the cry of them hath entered into the ears of the Lord of Sabaoth" (Jas. 5:4; cf. Deut. 24:14ff.).

596. Obligations of servants and workers. Servants and workers are bound to render to household masters and masters: 1. reverence; 2. obedience and faithful service.

1. Reverence. For this follows from the virtue of observance which subjects must exercise. Therefore St. Paul says: "Let servants count their masters worthy of all honor."[1037] Hence servants and workers sin who mock or despise their masters; who address them with insulting words; who speak ill of them; who behave toward them impudently and insolently, etc.

2. Obedience and faithful service must be rendered by servants and workers in all those things which pertain to service or to the works owed. For this follows from the authority which masters have from God after a contract of labor has been entered into. Hence St. Paul admonishes: "Servants, be obedient to them that are your lords according to the flesh, with fear and trembling, in the simplicity of your heart, as to Christ."[1038] And St. Peter commands: "Servants, be subject to your masters with all fear, not only to the good and gentle, but also to the froward."[1039]

Accordingly, servants and workers sin more or less according to the gravity of the matter if they murmur against just commands, answer insolently, do not work vigorously and waste time in idleness; if through their negligence damage is caused to domestic goods; if they reveal family secrets, etc. It is disputed among authors

whether servants are bound to restitution if, through their fault, the master's goods are carried away by theft or are gravely damaged by others. It appears that an answer must be given with a distinction. When things of this kind have been specially committed to the custody of servants, then, if through their grave fault they perish or are carried away by theft, the servants are bound to restitution. For they are then themselves unjust cooperators and have violated the contract entered into.

But if the special care of the goods is not incumbent upon a servant, he is indeed bound from charity and equity to avert damages from the master's goods, but not from strict justice, and consequently he is not bound to restitution for damage inflicted by others and not prevented by him.[1040] The reason is that by force of the contract entered into, and therefore from justice, such servants are bound to nothing other than performing the stipulated works. Concerning this matter, however, the authors are by no means in agreement. A few authors, such as Billuart,[1041] think that a servant is always bound to restitution for damage not prevented, or at least not disclosed, by whomever it may have been inflicted upon the household master. Others, with St. Alphonsus,[1042] think that a servant who does not prevent damage to the household master according to his ability is indeed bound to restitution if that damage was caused by outsiders, but not if the damage was done by members of the household. The reason of these authors is that servants are bound from charity alone to protect their master's goods against members of the household, while on the contrary, by reason of their service, they tacitly obligate themselves to watch over the master's indemnity against outsiders.

I plainly do not see why servants, by reason of service alone, are bound less with respect to fellow servants and members of the household than with respect to outsiders; indeed, the more easily, frequently, and for a longer time damage can be inflicted, the greater is the obligation incumbent upon them to avert it. Moreover, members of the household more frequently cause damage to the household master than outsiders. Therefore it appears to follow logically that servants who do not prevent or report the thefts of fellow servants and other members of the household are more bound to restitution than if they conceal the same thefts when committed by outsiders. This, however, is most commonly rejected. Consequently, neither is a servant bound to restitution who, for example, does not prevent according to his ability the theft of something belonging to the household master which has not been specially committed to his care, unless, however, such restitution is imposed upon him by civil law.

How workers are bound to abstain from an unjust cessation of work or strike was said above, n. 307, in the tract on justice.

[1037] 1 Tim. 6:1.

[1038] Eph. 6:5.

[1039] 1 Pet. 2:18.

[1040] Cf. above, n. 110. Thus also Noldin, *De praeceptis*, n. 302.

[1041] *De iust.* diss. 8, a. 13, § 7.

[1042] *Theol. mor.* l. 3, n. 342.

Article V. On the Obligations of Teachers and Pupils

597. 1. Teachers take the place of parents as regards spiritual education, and consequently have obligations similar to those of parents in spiritual education; namely, they must diligently instruct pupils in knowledge and good morals and, if it is necessary, also correct them. These obligations arise not only from the virtue of piety, but also from justice, both by reason of the office undertaken and by reason of the

remuneration accepted. Hence teachers gravely fail in their office who disseminate depraved doctrines or give a bad example; who induce pupils to sin; or who are very indolent in imparting instruction or in administering necessary corrections.

598. 2. Pupils are bound to render teachers reverence, love, and obedience in all those things which pertain to studies and good morals. Accordingly, pupils sin if they detract from their teachers, deride or mock them, afflict them with calumnies and useless annoyances, or provoke others to irreverence and insolence. Likewise pupils sin if, against the will of the teacher, they waste time in idleness or play, if they do not attend during the lesson, or if they do not obey the commands pertaining to the discipline of the school. In practice, however, sins committed by pupils against teachers are quite rarely mortal, both because gravity of matter is absent and because sufficient deliberation is lacking.

Article VI. On the Obligations of Rulers and Subjects

Preliminary note. Here we speak only of civil rulers and superiors and civil subjects, for in canon law the obligations of ecclesiastical superiors are customarily treated. The obligations of the faithful toward ecclesiastical superiors are love, reverence, and obedience in spiritual matters. Furthermore, the faithful must provide assistance for the suitable support of the ministers of the Church, as was said above, n. 499, concerning tithes and offerings.

Civil rulers are here called not only emperors, kings, dukes, etc., but all those upon whom the government of the commonwealth is incumbent. Therefore in this sense even a Chamber of Deputies is a civil ruler.

599. a) Obligations of civil governors. All who are placed over some civil community are bound under grave sin to procure the temporal common good, yet in such a manner that the spiritual good is not thereby endangered. This is evident of itself. Hence they are bound according to their ability to avert all temporal evils, such as wars, seditions, famines, contagious diseases of both men and animals, etc. Furthermore, they must foster the true religion, and not only not impede the true Church in her actions, but rather protect her against all invasions of enemies. Besides, they must vigorously exercise both distributive and vindicative justice: distributive justice, namely, insofar as they distribute offices and burdens equitably; and vindicative justice with respect to evildoers, insofar as they inflict just punishments for crimes committed, without any respect of persons.

Leo XIII treated excellently of the obligations of rulers in the Encyclical *Immortale Dei* of November 1, 1885, saying: "In every form of commonwealth rulers altogether ought to look to the supreme Governor of the world and propose Him to themselves as the exemplar and law in administering the state.... Authority, therefore, must be just, and not that of a master, but in a manner paternal, because the power of God over men is most just and is joined with paternal goodness; but it must be exercised for the advantage of the citizens, because those who preside over others preside for this sole reason, that they may safeguard the advantage of the state.... But if those who preside fall into unjust domination, if they sin by importunity or pride, if they consult badly for the people, let them know that they must someday render an account to God, and this the more severely, the more sacred the office in which they have been engaged or the higher the degree of dignity they have obtained. The mighty shall be mightily tormented."

What has been said concerning the obligations of rulers also holds concerning the obligations of deputies, since according to the constitution of almost all kingdoms legislative power has been entrusted to deputies. Hence it is evident of itself how gravely deputies sin who do not, according to their ability, oppose iniquitous laws; who through negligence do not attend assemblies and thus inflict harm upon the commonwealth. To

them the words of Sacred Scripture can be applied: "[The Most High] will examine your works, and search out your thoughts: because being ministers of his kingdom, you have not judged rightly.... Horribly and speedily will he appear to you: for a most severe judgment shall be for them that bear rule.... For God will not except any man's person; neither will he stand in awe of any man's greatness: for he made the little and the great, and he hath equally care of all. But a greater punishment is ready for the more mighty."[1043]

Above, n. 105, in the tract on justice, it was said how deputies are bound to restitution or are held by excommunication on account of unjust laws enacted against ecclesiastical goods. In practice the matter is often very intricate and scarcely soluble. For it can be proved only with difficulty how much the vote of one deputy influenced the enactment of an iniquitous law. Hence for greater security it is expedient that a confessor, on behalf of such a penitent deputy, have recourse to the Sacred Penitentiary or to the bishop, who is accustomed to have special faculties concerning the absolution of cases of this kind. Cf. the diverse Instructions given for the bishops of France and Italy.[1044]

[1043] Wis. 6:4-9; cf. also Leo XIII, Encyclical *Diuturnum* of June 29, 1881.

[1044] Cf. Sacred Penitentiary, August 5, 1907.

600. b) Obligations of subjects. Subjects are bound to show civil rulers: 1. reverence, obedience, and fidelity; 2. to elect good deputies; 3. to pay just taxes; 4. sometimes to perform military service. Enough was already said above in the tract on civil laws concerning the payment of taxes and the performance of military service, I, n. 291ff.

As regards 1. Reverence must be shown to rulers because their power of governing was conferred not by the people but by God. Therefore it is already said in the Old Testament: "By me kings reign, ... and by me princes rule, and the mighty decree justice."[1045] And St. Paul says: "Let every soul be subject to higher powers: for there is no power but from God."[1046] Subjects sin against the reverence owed to rulers who inflict an insult upon the person or image of the ruler;[1047] who mock the ruler by writings, words, or pictures;[1048] who deny him the due signs of reverence shown by all, etc.

[1045] Prov. 8:15.

[1046] Rom. 13:1.

[1047] Commonly *Majestätsbeleidigung* [insulting majesty].

[1048] Commonly *Karikaturen* [caricatures].

601. Obedience must be rendered to civil rulers in all lawful things legitimately commanded. Hence St. Peter says: "Be ye subject therefore to every human creature for God's sake: whether it be to the king as excelling; or to governors as sent by him for the punishment of evildoers, and for the praise of the good: for so is the will of God."[1049] To establish a true direct obligation in conscience it is required that the ruler truly and justly command. For civil laws are sometimes merely penal or invalidating laws which produce no direct obligation in conscience; at other times civil laws are manifestly unjust and contrary to divine and natural law. Then God certainly must be obeyed more than men. "Nor is there any reason why those who conduct themselves thus should be accused of having cast off obedience; for if the will of rulers conflicts with the will and laws of God, they exceed the measure of their power and pervert justice; nor then can their authority have force, which is nothing where there is no justice."[1050]

Nevertheless, although iniquitous laws must not be obeyed, **it is never lawful to rebel against a legitimate ruler**. Hence Pius IX condemned in the *Syllabus* proposition 63: "It is lawful to refuse obedience to legitimate

rulers, and even to rebel."[1051] The reason is that such open and offensive rebellion would redound against God Himself, through whom kings reign. Hence we see that in the first centuries, during the dire persecutions of the Church, the Theban Legion, although it could easily have resisted the impious emperor by force, nevertheless preferred to die for religion rather than to oppose public authority through sedition and disturbances. Therefore so-called **passive resistance** must be opposed to a tyrannical ruler, just as to iniquitous laws; it consists in this, that obedience is constantly denied and the divine precepts are violated in no way. But if the tyrant then urges the observance of laws injuring the right of God and of religion under grave penalties, martyrdom must be endured rather than the law of God violated. But if it is a question of laws which are indeed unjust but can be observed without sin, then it is lawful, and sometimes even necessary, to comply in order to avoid greater evils. It is evident of itself that subjects can defend themselves by lawful means against iniquitous laws, for example, by showing the iniquity of the laws in public newspapers, electing good deputies, organizing public meetings, etc.

[1049] 1 Pet. 2:13ff.

[1050] The cited Encyclical *Diuturnum*; cf. also the Encyclical *Immortale Dei* of the same Leo XIII, November 1, 1885.

[1051] Denzinger, n. 1763.

602. The fidelity owed to rulers requires that subjects do nothing unjust to withdraw themselves from the jurisdiction of superiors, nor attempt anything to cast the ruler down from his legitimate throne. Today kings and rulers are accustomed at the beginning of their government to take an oath upon the constitution, that is, that they will faithfully observe those things which are established in the constitution of the kingdom. But if a ruler has gravely violated this sworn constitution and broken the faith given, subjects are no longer bound to observe fidelity, according to Rule 75 of Law: "In vain does anyone demand that faith be kept with him by one with whom he refuses to keep the faith pledged by himself." Nevertheless, even in this case neither rebellion nor so-called tyrannicide is lawful.[1052] Moreover, this case will be exceedingly rare in civilized regions.

As regards 2.

[1052] Cf. Leo XIII, Encyclical *Quod apostolici*, December 28, 1879. Concerning the celebrated question whether it is lawful to kill a tyrant by private authority, the following points should be noted briefly. A twofold tyrant is customarily distinguished: one is a tyrant **of government**, who abuses a legitimately obtained government by oppressing the people; the other is a tyrant **of usurpation**, who has illegitimately usurped the government. A tyrant of government cannot lawfully be killed by private authority; the contrary doctrine was condemned at the Council of Constance (Denzinger, n. 690). But a tyrant of usurpation can lawfully be killed by private authority by the right both of defense and of vindication, provided the following conditions are present: 1. that the sounder part of the commonwealth consent; 2. that the tyranny itself cannot be removed by recourse to a higher superior. Cf. Billuart, *De iust.* diss. 10, a. 2; Cathrein, *Moralphil.* 5, II, 692ff.

603. Today in almost all civilized regions **deputies** are elected by the people, who by their decisive, and not merely consultative, votes take part in conducting public affairs, whether in the kingdom, the province, or the municipality. Hence the good of the whole commonwealth depends in great part upon the votes of the deputies. Therefore it is clearer than light how important it is that good deputies be elected, who are endowed with fortitude of soul, a Christian spirit, skill in conducting affairs, knowledge of political matters, and sufficient eloquence. Accordingly, it is also clearly evident how gravely they fail in their duty and in legal justice who do not rightly use the right of electing deputies and thus permit bad deputies to be elected.

Light causes, for example, some loss of time or the mockery of others, by no means excuse from this obligation of electing good deputies; nor does the probable uselessness of one's vote excuse. For although a good candidate will not be elected because of the multitude of contrary votes, nevertheless it is very expedient at

least by the fact of voting to show what the will of good citizens is. Would that all good citizens had always fulfilled the duty of electing good deputies! Certainly there would not now be as many iniquitous laws as there actually are today. Hence, unless truly grave harm arises for the elector, for example, in goods of fortune because of an imminent danger of losing his office, etc., there exists no sufficient cause excusing from casting a vote. In practice it can be determined only with difficulty whether someone has sinned gravely from neglecting the obligation of electing good deputies, since the gravity of the sin thus committed depends upon the gravity of the harm certainly committed or certainly not avoided. The gravity of this harm is often not certainly established.

So that upright citizens may take part more effectively and diligently in the elections of good deputies, priests should exhort them prudently and at the same time urgently; permanent associations should be formed for this end; learned laymen endowed with eloquence and zeal, but not priests, since grave inconveniences could arise therefrom, should deliver addresses to the people in which they instruct electors concerning the manner and duty of electing and discuss the qualities of the candidates. At the time of the election, all good citizens should be invited to vote, and the more sluggish should even be morally compelled.

604. On the election of an unworthy deputy. Although it is much more advisable always to elect the worthier deputy, because in this manner greater provision is made for the common good, nevertheless of itself it suffices to elect one who is worthy and suitable, leaving aside the worthier. The reason is that nowhere is it prescribed that the worthier be elected, but it is required only that one who is worthy be elected. Of itself it is a grave sin to elect a deputy certainly unworthy, since such an election is unlawful cooperation in a grave evil of society. For electors mediately participate in all the evils which are caused by bad deputies. Nevertheless, since such participation is not formal but material, it is sometimes lawful to elect an unworthy deputy.

That this participation is of itself material and not formal is evident from the fact that the election of a deputy is of itself an indifferent action and that the elected deputy by his own fault abuses the right committed to him through election. But for it to be lawful in practice to elect an unworthy deputy, not only an honorable end but also a most grave cause is required. First, indeed, an honorable end is required; therefore one sins gravely who gives his vote to a bad deputy with the end that he may afterward be able to cooperate in bad laws against religion. Next, a grave, indeed a most grave, cause is required; such causes are grave inconveniences to be averted either from the elector himself, from others, or from the commonwealth. Thus, for example, a worker could elect a bad deputy if otherwise he would lose his employment and would be unable to find another employment;[1053] it is lawful to elect a bad candidate in order to prevent the election of a worse one. This can occur not rarely in so-called second elections.[1054] For then there is no choice except between two candidates. Usually in this case it is necessary to declare publicly, in order to avoid scandal, that this election is made only to exclude the more unworthy candidate. Sometimes it is also lawful to elect a few bad deputies who have been placed on a list containing many good deputies, if otherwise the whole list will not be elected, with great detriment to religion or the commonwealth.[1055]

[1053] Thus also Noldin, *De praeceptis*, n. 325. Almost all modern theologians concede that the election of a bad deputy is not something intrinsically evil and consequently can sometimes be lawful accidentally in order to avert greater evils.

[1054] Commonly *Stichwahl, ballottage, second ballot.*

[1055] Vermeersch treats this matter more fully, *Quaest. de iust.* q. 3, c. 1, *De iure suffragii.* Cf. also *Staatslexikon*, s.v. "Wahlrecht."

Question III. On the Other Virtues Annexed to Justice, Namely, Gratitude, Vindication, Affability, Liberality, and Epikeia

Preliminary note. Thus far there has been discussion of piety, observance, and obedience, which virtues, although they do not introduce so strict a due as justice, nevertheless still regard a true due which is customarily called **legal**, for the exercise of those virtues is exacted by positive laws. Thus, for example, positive laws, even civil laws, exact that piety, observance, and obedience be shown to parents.

Now those virtues must be treated which import only a **due of fittingness** or **moral due**, that is, a due which indeed cannot be strictly exacted, but which arises from a certain moral goodness and equity. These virtues, namely, gratitude, vindication, affability, liberality, and epikeia, are indeed rarely violated to such an extent that mortal sin arises, but nevertheless they are of great importance not only for the spiritual life, but also for peaceful and pleasant human intercourse. Therefore a confessor will read with great fruit those things which the Angelic Doctor discusses concerning them in *S. theol.* 2, 2, q. 106ff. Striving for brevity, we hand down very few things concerning them.

Article I. On Gratitude

605. Notion. Gratitude is a virtue which inclines a man to acknowledge benefits received, in mind and in speech, and at least in some measure to repay them; or, as St. Augustine says:[1056] "Gratitude is the virtue in which are contained the remembrance of the friendship and benefits of another, and the will to recompense the other."

Explanation. Gratitude arises only from a benefit received. A **benefit** is an undebted and useful service, gratuitously done for someone from an affection of benevolence. It is said: a benefit is an undebted and useful service, for those things which are owed or which are useless cannot be called a benefit. Therefore "he who assists someone in sinning does not confer a benefit but rather an injury, and consequently thanksgiving is not owed to him."[1057] Next, for a benefit properly so called it is required that it be done gratuitously and from benevolence, for "a favor is that which is given gratuitously";[1058] and what is furnished not from benevolence but from some other good or bad motive cannot claim for itself the name of a benefit properly so called. Especially, that which is done from pure egoism is not a benefit. Sometimes, however, *benefit* is taken in a broader sense for every good work furnished, even though it is owed from commutative justice. Hence, for example, a master gives thanks to workers for good services furnished, although the workers were obliged to those services by the contract entered into.

It must be noted with the Angelic Doctor[1059] that gratitude is a special virtue only when it arises from benefits conferred by another man **who is not a superior**. For gratitude owed to God for the innumerable benefits conferred is reduced to the virtue of religion; gratitude owed to parents, who are the principle of our generation and discipline, pertains to piety; but gratitude owed to superiors, who are the principles of governance and common goods, is reduced to the virtue of observance.

Gratitude consists more in **affection**, namely, in a grateful mind, than in effect, that is, in the real recompense of the benefit received. From this it is evident that the virtue of gratitude is possible for all, even for the poor, because all can cultivate an affection of gratitude for benefits received, although not all are able to repay the benefits received.

[1056] *De diversis quaest.* 83, q. 31 (Migne, *Patr. lat.* 40, 21).

[1057] *S. theol.* 2, 2, q. 107, a. 1 ad 1.

[1058] *Ib.*, q. 106, a. 2 (Leonine ed.).

[1059] *S. theol.* 2, 2, q. 106, a. 1.

606. Duties of gratitude. Of gratitude properly so called, which regards benefits conferred by another private person, there are chiefly three duties or three grades: 1. to remember and acknowledge benefits received; 2. to express in words the benefit received, for example, by praising the benefactor, expressing thanks to him, etc.; 3. to repay by deeds the benefit received, insofar as one's means permit.[1060]

[1060] *Ib.*, q. 107, a. 2.

607. Necessity and beauty of gratitude. Gratitude is as necessary as it is a most beautiful virtue. For it fosters charity insofar as it unites the hearts of men; it nourishes social life insofar as one lightens the burdens of another and men assist one another; it nourishes humility insofar as he who shows gratitude shows himself subject to the benefactor. For these reasons, in the education of children it must be strongly insisted that they always acknowledge benefits received and not omit to render the thanks owed. It is also very expedient that every man frequently and fervently give thanks to God for the benefits conferred. Hence it is said most truly in the Preface: "It is truly meet and just, right and salutary, that we should always and everywhere give thanks to thee, O holy Lord, Father almighty, eternal God, through Christ our Lord."

The qualities of gratitude are the following:

608. Gratitude must be: 1. prompt, that is, manifested soon after a benefit is received;[1061]

2. internal and not only external, that is, proceeding from a sincere internal affection and not merely expressed in cold words;

3. humble, that is, with a true acknowledgment of the benefit received as something useful to us; for if someone esteems the benefit received as of little account, he cannot be imbued with true gratitude;

4. free from cupidity, that is, gratitude must not be expressed chiefly for the end that someone may receive greater benefits from the benefactor, as happens among arrogant beggars.

[1061] The Angelic Doctor aptly observes (*l.c.*, q. 106, a. 4) that recompense for a benefit must be made immediately as regards **affection**, insofar as a man immediately acknowledges the benefit received and is prepared according to his ability to repay the benefit; but this recompense must not immediately be given in fact, because he who wishes to pay too quickly thereby shows that he wishes to cancel gift with gift and that he does not wish to be bound to the other.

609. Opposed vice. To gratitude is opposed **ingratitude**, which is accustomed to produce many evils in moral and social life. For by ingratitude charity toward God and men grows cold, social life is weakened, egoism is fostered, etc. Ingratitude is either material or formal.

Formal ingratitude is contempt either of the benefactor or of the benefit; it can be a mortal sin if this contempt gravely offends the benefactor and thus notably injures charity. As grades of this ingratitude are enumerated: a) to return evil for good, concerning which ingratitude Christ complains through the prophet Jeremiah: "Shall evil be rendered for good, because they have dug a pit for my soul?"[1062] b) to speak ill of a benefit; in this manner the Israelites were ungrateful when they murmured in the desert concerning their deliverance from Egypt; c) to account a benefit as though it were an evil deed, as the damned do.[1063]

Material ingratitude is the omission of due gratitude, but without contempt; ordinarily it is only a venial sin, because it proceeds from a certain negligence and is not accustomed so gravely to offend the benefactor. As grades of this ingratitude are enumerated: a) to repay nothing for a benefit received; b) to conceal a benefit

and not give thanks, as certain badly educated children do, who immediately go away after receiving a benefit without any sign of gratitude; c) to refuse to acknowledge a benefit received.

Besides St. Thomas, St. Bonaventure,[1064] Bl. Albert the Great,[1065] and, among modern authors, Sebastian von Oer[1066] have written well concerning gratitude.

[1062] Jer. 18:20.

[1063] Cf. *S. theol.* 2, 2, q. 107, a. 2 (Leonine ed.).

[1064] *Pharetra* l. 3, c. 21, *De ingratitudine*, and l. 4, c. 31, *De gratitudine.*

[1065] *Paradisus animae*, c. 25.

[1066] *Unsere Tugenden* (Freiburg, 1912), 261ff.

Article II. On Vindication

610. Notion. Vindication strictly taken is the avenging of an injury through some penal evil inflicted upon the sinner; or, more briefly, the return of penal evil for culpable evil. St. Augustine,[1067] following Cicero, defines the virtue of vindication as "the virtue through which violence or injury, and altogether everything that will be harmful, is repelled by defending or avenging." Just as gratitude returns to one's neighbor a good work received, so vindication compensates for an evil inflicted by one's neighbor. Vindication has two acts: one principal, namely, to avenge injuries committed; the other secondary, to prevent intended injuries.

Vindication is a special virtue. For where there is in man some natural inclination which can easily be deflected from the right way, a special virtue is necessary. Now man has a natural inclination to avenge injuries suffered and to defend himself against future injuries. This inclination can easily deviate either by excess or by defect. Therefore a virtue is necessary which restrains this inclination in the mean; and this virtue is vindication.

The motive for which vindication is taken must, however, be noted. For if someone takes vindication with the end that evil be inflicted upon the sinner, it is not a virtue but a sinful act of hatred; if someone takes vindication so that the evildoer may be amended, it is an act of charity, namely, of fraternal correction; if so that public tranquility may be preserved, it is an act of legal justice; if for the honor of God, it is an act of religion; if a judge or superior takes due vindication, it is an act of vindicative justice;[1068] finally, if a private man seeks vindication so that there may be some reparation for the injury committed and satisfaction of the injured party, it is an act of the virtue of vindication.

An act of vindication ordinarily cannot indeed be exercised by a private man, but by legitimate public authority, for no one can punish another unless he is his superior; nevertheless, if it is a question of lesser punishments, the permission of the legitimate superior can rightly be presumed, so that even a private man can take lawful vindication. Thus, for example, it does not appear unlawful to give a light slap to a boy who has inflicted some injury.

In practice it is rarely expedient that a private man take or seek vindication, because beneath the appearance of sought equity there often lies excessive self-love or, what is worse, hatred of one's neighbor. Hence vindication is customarily called a **little virtue**, and it is advised rather to forgive the offenses of one's neighbor than to punish them, unless, however, the charity of God or of one's neighbor, or the public good, demands reparation for the injury.

[1067] *De diversis quaest.* 83, q. 31 (Migne, *Patr. lat.* 40, 21). In the German language *vindicatio* can perhaps be called *Ahndung zur gerechten Selbstbehauptung* [punitive redress for just self-assertion].

[1068] Cf. *S. theol.* 2, 2, q. 80, a. un. ad 1.

611. Opposed vices. Two vices are opposed to the virtue of vindication: one by excess, namely, the vice of cruelty or savagery; the other by defect, namely, excessive leniency in punishing. Let him who desires more concerning the virtue of vindication consult St. Thomas[1069] or Billuart.[1070]

[1069] *Ib.*, q. 108.

[1070] *De virt. iust. annexis* diss. 3, a. 3.

Article III. On Affability

612. Notion. Affability,[1071] which is sometimes also called friendship, courtesy, or civility, **is the virtue by which someone, from the duty of social life, conducts himself pleasantly and becomingly toward others in common intercourse, both in deeds and in words**.[1072]

Explanation. An affable man conducts himself neither too flatteringly nor too harshly in human conversation. Affability is occupied chiefly with **serious** conversation; for it pertains to **eutrapelia** to preserve due measure in games and amusements, so that there be neither excess after the manner of a buffoon, nor the defect with which certain boors or rustics are tainted.

Affability pertains to the virtue of justice because it introduces a true due toward another. For man is by the very condition of his nature a social animal and consequently must conduct himself suitably toward other men living together with him. Hence it is evident that the virtue of affability, which rightly orders this intercourse, includes a true due, at least a moral one. This virtue of affability is most useful to every man, but chiefly to priests, who must become all things to all men so that they may gain all for Christ. This virtue is already treated in the ancient *Corpus Iuris* under the title *On the Life and Upright Conduct of Clerics*. All modern authors also, as many as have written concerning the conduct of clerics, strongly commend it.[1073]

The principal acts of affability are: 1. to hear all kindly and address them willingly and with a cheerful countenance; 2. to show signs of courtesy to all, yet according to the condition of each one and the custom of the country; 3. inwardly and outwardly to have true charity toward one's neighbor and to combat excessive love toward oneself.

Several men think that for the duty of courtesy it suffices to show themselves by external words and gestures as well-educated men are accustomed to do; but this is wholly insufficient. For such courtesy is nothing other than a fraudulent pretense suited to deceiving simple men. This at last is true courtesy which proceeds from the inward conviction that everyone ought according to his ability to contribute to the peaceful and pleasant intercourse of human society, and especially of domestic society.

Opposed vices. Two vices are opposed to the virtue of affability: one by excess, namely, flattery; the other by defect, namely, moroseness or contentiousness.

[1071] *Freundlichkeit, Leutseligkeit, Höflichkeit, politesse, civilité, affabilité* [friendliness, affability, courtesy].

[1072] Cf. *S. theol.* 2, 2, q. 114, a. 1.

[1073] Cf. Walter, *Der katholische Priester* I (Brixen, 1904), c. 2.

613. Flattery is a vice by which someone, in an inordinate and excessive manner in common conversation, endeavors by words or deeds to delight another for the sake of obtaining some advantage.[1074]

A flatterer is one who praises and approves all the deeds and words of another for the sake of his own utility. Concerning this flattery St. Jerome[1075] rightly says: "There is nothing which so easily corrupts the minds of men as flattery." And St. Augustine[1076] says: "The tongue of the flatterer persecutes more than the hand of the murderer."

Flattery of itself indeed is not a mortal sin, because it is only an excess in the endeavor to please and delight, which does not appear gravely to conflict with charity; nevertheless, it often becomes a mortal sin because of the evil end of the agent, and notably for a threefold reason:[1077] 1. **by reason of the matter**, as when someone praises another's sin; for this is contrary both to the love of God, against whose justice the flatterer speaks, and to the love of one's neighbor, whom he fosters in sin. Hence it is a mortal sin according to the saying: "Woe to you that call evil good."[1078] The flattery practiced by a sycophant was discussed above, n. 106. 2. **by reason of intention**, as when someone flatters another in order fraudulently to harm him, whether bodily or spiritually. Hence it is said: "Better are the wounds of a friend than the deceitful kisses of an enemy."[1079] Wicked men often use flatteries to corrupt girls. 3. **by reason of effect**, as when someone by flattering gives another an occasion of sinning gravely, even if he does not intend this. In this case those things which were said concerning scandal must be applied.

[1074] *S. theol.* 2, 2, q. 115, a. 1. *Niedrige Schmeichelei, Liebedienerei, flagornerie* [base flattery, fawning, flattery].

[1075] Epistle to the matron Gelantia, n. 17 (Migne, *Patr. lat.* 22, 1212).

[1076] On Psalm 69 (Migne, *l.c.* 36, 869). The same St. Augustine (*Sermo* 353; Migne, *l.c.* 39, 1561) says briefly but rightly: "Flattery is seduction by deceitful praise."

[1077] *S. theol.* 2, 2, q. 115, a. 2.

[1078] Isa. 5:20.

[1079] Prov. 27:6.

614. Contentiousness or moroseness[1080] is a vice by which someone shows himself difficult in company, rarely acquiescing and often deliberately contradicting the words of another with the intention of saddening the other or at least of not pleasing him.

If this contradiction proceeds from a defect of love uniting souls, it pertains to discord; but if it proceeds from anger, it is opposed to meekness.[1081] Moroseness is of itself a venial sin, but accidentally it can become a mortal sin when, namely, it gravely injures the charity of one's neighbor and renders human society almost intolerable.

[1080] *Streitsucht, Rechthaberei; rauhes, mürrisches, rechthaberisches Wesen, grognerie, ergoterie, grumbling* [contentiousness, insistence on being right; a rough, sullen, opinionated disposition].

[1081] *S. theol.* 2, 2, q. 116, a. 1.

Article IV. On Liberality

615. Notion. Liberality or largesse is a virtue moderating the love of money and rendering a man prompt to expend money according to the dictate of right reason.

Explanation. The material object of this virtue is money and other external goods, but its proximate and immediate object is the desire for money, which must be rightly moderated lest it be either too great or too small. Mediately and consequently, liberality is occupied with the right use and reasonable distribution of money, which a liberal man gives willingly, cheerfully, and abundantly, as right reason demands.[1082] From these things it is evident that even the poor can possess the virtue of liberality as regards its proximate and immediate object, namely, when they have a right affection toward money so that they would be prepared to distribute it if they possessed it. The exercise itself of liberality, however, is often impossible for the poor on account of their poverty.

Liberality is a virtue annexed to justice because, although it does not equal justice in rendering strict and due equality, it nevertheless in some measure renders a due to one's neighbor. Liberality differs: a) from mercy, which proceeds from the motive of compassion; b) from beneficence, which proceeds from the motive of charity; c) from magnificence, in that liberality is occupied with moderate and ordinary distributions, but magnificence uses great expenditures for accomplishing splendid works,[1083] as will be said below, n. 631.

[1082] *S. theol.* 2, 2, q. 117, a. 2.

[1083] *Ib.*, a. 3 ad 1.

616. Opposed vices. Two vices are opposed to liberality: one by excess, namely, prodigality; the other by defect, namely, avarice. Avarice was already discussed above, I, n. 416ff., among the capital sins. **Prodigality** is the superfluous and irrational expenditure of one's own things; and consequently it is a sin, because man is not the absolute master of his goods, but only, as it were, God's steward, obliged to administer the goods received according to the intention of God and not according to his own whim. Of itself, however, prodigality is only a venial sin, since so great a disorder is not found in it; but accidentally it often becomes a mortal sin, namely: 1. **by reason of the end**, as if riches are squandered for a mortally evil end, for example, to adorn a harlot; 2. **by reason of the harm following from it**, for example, if a father of a family by his prodigality thrusts his wife and children into poverty.

Article V. On Epikeia or Equity

617. Notion. Epikeia or equity[1084] is a certain suitable moderation of strict law.

Explanation. Epikeia can be taken in a twofold sense, namely, insofar as it is joined to **legal justice**, or insofar as it pertains to a certain **natural justice**. In the first sense it is a certain benign interpretation of a law, not according to its words but according to the mind of the legislator.[1085]

It is defined by Aristotle[1086] as "the correction of law where it fails on account of its universality." In ancient Roman law, equity or equitable law is distinguished from strict law.[1087] Concerning this epikeia or equity the Angelic Doctor says:[1088] "Epikeia properly corresponds to legal justice, and in a certain manner is contained under it, and in a certain manner exceeds it. For if legal justice is said to be that which obeys the law, whether as regards the words of the law or as regards the intention of the legislator, which is more important, then epikeia is the more excellent part of legal justice. But if legal justice is said to be only that which obeys the law according to the words of the law, then epikeia is not a part of legal justice, but is a part of justice commonly so called, divided against legal justice as exceeding it."

[1084] *Billigkeit* [equity].

[1085] Cf. what was said above, I, n. 231ff., in the tract on the interpretation of laws concerning this epikeia.

[1086] *Ethics* l. 5, c. 10, n. 6.

[1087] Cf. Voigt, *Die Lehre vom ius naturale, aequum und ius gentium der Römer* I, § 4.

[1088] *S. theol.* 2, 2, q. 120, a. 2 ad 1.

618. Epikeia or equity, insofar as it pertains to a certain natural justice, can be defined with St. Cyprian as **justice tempered by the sweetness of mercy**. St. Thomas reduces this virtue to affability or friendship.[1089] And in truth it has a great affinity with affability or friendship, which regards suitable intercourse among men. For equity remits something of strict law so that human intercourse may be suitable and pleasant. Concerning this equity Aristotle says:[1090] "He who does not excessively urge his highest [right], nor toward the worse part, but rather yields from his right, even though he could rely upon the aid of the law, is equitable and good; and this habit is called equity."

This equity is exercised, for example, by a master who gives workers something beyond the stipulated wage if he himself has received an extraordinary profit from the labors of the workers; likewise equity is exercised by a creditor who grants some delay in payment to a debtor who cannot pay at the fixed time without great distress. This virtue of equity stands, as it were, midway between justice and charity. It belongs indeed to charity not to urge one's highest right in some case, in favor of one's neighbor; but it pertains to some due of justice not excessively to burden one's neighbor by the strict exaction of a debt. This equity pertains more to justice than to charity; hence Aristotle says:[1091] "Equity is a certain justice, not some other habit."

Since equity has little of the character of a due, its violation of itself is only a venial sin; and the very well-known adage, "The highest law is the highest injury," can be understood only in a diminished sense concerning the violation of this equity. For it cannot happen that the omission of an imperfect due becomes the highest injury.[1092] This adage, however, is most true if it is understood of a supreme positive right which is opposed to natural justice, or also of a spurious interpretation of positive law which rejects every epikeia.

[1089] *Ib.*, q. 80, a. un.

[1090] *L.c.*

[1091] *L.c.*

[1092] Cf. Vermeersch, *Quaest. de iust.* 21, n. 478ff., where the virtue of equity is discussed well and at length.

619. The virtue of equity, taken in either sense, has its subject in the will and is scarcely anything other than the execution of the virtue of *gnome*,[1093] which is a part of prudence and resides in reason. *Gnome*, therefore, furnishes direction to equity in the matter of justice. But *gnome* itself extends also to other matters.[1094] From this intimate conjunction with *gnome* there is also apparent the excellence of equity, which is directed not by common prudence but by a higher prudence.

[1093] Cf. above, I, n. 633; Cajetan, *Comm. in* 2, 2, q. 120, a. 2; *S. theol.* 2, 2, q. 80, a. un. ad 4.

[1094] *S. theol.*, *l.c.*

Treatise XII. On the Virtue of Fortitude and the Opposed Vices

St. Thomas treats in the *Summa theologica*, after the tract on justice and the virtues annexed to it, of the third cardinal virtue, namely fortitude.[1095] This tract is indeed most useful for the spiritual life. Following the footsteps of the Angelic Doctor and at the same time striving for brevity, we divide this tract into four chapters, namely: 1. on the notion of fortitude; 2. on its acts; 3. on its parts; 4. on the opposed vices.

[1095] 2, 2, q. 123-140.

Chapter I. On the Notion of Fortitude

620. Preliminary note. "The name of fortitude can be taken in two ways: in one way, insofar as it absolutely imports a certain firmness of soul, and in this respect it is a general virtue, or rather a condition of every virtue, because for virtue it is required to act firmly and immovably. In another way fortitude can be taken insofar as it imports firmness only in enduring and repelling those things in which it is especially difficult to have firmness, namely, in certain grave dangers; whence Tully says that fortitude is the deliberate undertaking of dangers and endurance of labors."[1096] Omitting the first, general acceptation of fortitude, we speak only of fortitude in the latter sense. Fortitude so accepted can be defined in the following manner:

Definition. Fortitude[1097] is a cardinal virtue by which the irascible appetite (and the will) is so strengthened that it does not desist from pursuing an arduous good even on account of the greatest dangers to bodily life.

It is explained. Although other virtues also can impel a man to pursue the good even amid the greatest dangers, nevertheless it is one thing to exercise a work of virtue on account of these motives, and another to do this same thing on account of the nobility of fortitude, namely, because it befits a man to be broken by no bodily evils. Horace the poet already expressed this beautifully:[1098] "If the shattered world should fall upon him, the ruins will strike him unafraid."

Fortitude (like prudence and the other moral virtues) is both natural and supernatural, according as it is acquired by one's own powers or infused by God together with sanctifying grace. The natural virtue of fortitude pursues an arduous natural good; but the supernatural virtue of fortitude customarily attains a supernatural object.

The subject of each fortitude is the irascible appetite, insofar, however, as it is subject to the will. For fortitude renders the irascible appetite firm and powerful for promptly and easily moderating the passions of fear and daring when the greatest dangers press. Once this firmness has been established, the will can then expeditiously and easily choose the just mean, namely, lest there be excessive fear or excessive daring. Therefore, although properly speaking fortitude resides in the irascible appetite, nevertheless it directly exercises its overflowing influence upon the will.[1099]

The **material object of fortitude** is the extreme dangers, especially of death[1100] (the remote object), or rather the fears arising on account of those dangers, for example, in a just war or in the defense of some virtue (the

proximate object). Robbers, however, duellists, and those waging an unjust war, although they do not fear the dangers of death, do not possess the virtue of fortitude, but rather the vice of fearlessness and daring, because they do not act according to right reason.

The **formal object *quod* of fortitude** is the right expulsion of these fears and the restraint of excessive daring. But after a great evil has already arrived, fortitude also moderates the sadness that arises, although it pertains principally to patience to be occupied with moderating sadnesses.[1101] Hence St. Lawrence exercised heroic fortitude: 1. by spiritedly confronting the tyrant and vigorously repelling his iniquitous commands; 2. by joyfully enduring the most atrocious pains in martyrdom.

[1096] *S. theol.* 2, 2, q. 123, a. 2.

[1097] *Starkmut, Seelentapferkeit, bravoure de l'âme* [steadfast courage, fortitude of soul, bravery of soul].

[1098] *Carm.* 3, 3.

[1099] Tanquerey (*Synopsis theol. mor.* n. 1061) incorrectly says that fortitude resides primarily in the will and secondarily in the irascible part. Cf. *S. theol.* 1, 2, q. 61, a. 2.

[1100] *S. theol.* 2, 2, q. 123, a. 4.

[1101] *Ib.*, q. 136, a. 4 ad 2.

621. The gift of fortitude infused by the Holy Spirit[1102] is always joined with the supernatural virtue of fortitude. This gift of fortitude is an infused quality by which someone, from a special motion of the Holy Spirit and beyond the connatural mode of acting, arrives at the end of every good work begun, with confidence of escaping all dangers. The virtue of fortitude indeed perfects the soul for enduring any dangers whatsoever, but it does not sufficiently give confidence of escaping any dangers whatsoever; this is supplied by the gift of fortitude. To the point the Angelic Doctor writes: "For sometimes it is not within man's power to attain the end of his work or to escape evils or dangers, since sometimes he is overwhelmed by them unto death; but the Holy Spirit effects this in man, while He leads him to eternal life, which is the end of all good works and the escape from all dangers; and the Holy Spirit infuses into the mind a certain confidence concerning this, excluding the contrary fear; and in this respect fortitude is posited as a gift of the Holy Spirit."[1103]

The fourth beatitude, namely, "Blessed are they who thirst and hunger after justice," corresponds to the gift of fortitude; for fortitude consists in arduous things; but it is very arduous that someone should not only perform virtuous works but perform them with a certain insatiable desire, which can be signified by hunger and thirst after justice.

Two fruits of the Holy Spirit are posited which sufficiently correspond to the gift of fortitude, namely, **patience**, which regards the endurance of evils, and **longanimity**, which can regard the prolonged expectation and operation of good things.[1104]

[1102] Cf. above, I, n. 452.

[1103] Cf. *S. theol.* 2, 2, q. 139, a. 1.

[1104] *Ib.*, a. 2.

Chapter II. On the Acts of Fortitude

622. From what has been said concerning the material and formal object, it can easily be deduced what the acts of fortitude are. The office of fortitude is rightly to restrain fears and to moderate acts of daring. "Fortitude, however, concerns the repression of fears more than the moderation of acts of daring. For it is more difficult to repress fear than to moderate daring, because the danger itself, which is the object of daring and fear, of itself contributes something to the repression of daring, but, on the contrary, works toward the increase of fear. To attack pertains to fortitude insofar as it moderates daring; but to endure follows upon the repression of fear. And therefore the more principal act of fortitude is to endure, that is, to stand immovably amid dangers, rather than to attack." Thus, after Aristotle, St. Thomas,[1105] who also adds: "To endure is more difficult than to attack, for a threefold reason. First, because he who endures seems to be attacked by someone stronger, whereas he who attacks advances as the stronger. But it is more difficult to fight with the stronger than with the weaker. Secondly, because he who endures already feels the dangers threatening, whereas he who attacks has them as future. But it is more difficult not to be moved by present things than by future things. Thirdly, because to endure imports length of time, whereas someone can attack from a sudden movement. But it is more difficult to remain immovable for a long time than to be moved by a sudden movement toward something arduous. Whence the Philosopher says that some are forceful before dangers but withdraw in the dangers themselves; but the brave conduct themselves contrariwise."[1106] Since, therefore, to endure is the principal act of fortitude, it is easily understood that **the act of martyrdom is the most excellent act of fortitude**, because Christian martyrs most bravely endured a most painful death on account of the love of God.

[1105] Cf. *S. theol.* 2, 2, q. 123, a. 6.

[1106] *Ib.*, ad 1.

623. Martyrdom is a Greek word, and in Latin signifies testimony. But in the usage received from the Church, it is taken **for testimony to Christian truth through the endurance of bodily death**. Therefore, for the perfect notion of martyrdom it is required:

1. That someone truly suffer bodily death. For a martyr is called the most perfect witness of the Christian faith, according to which we ought to suffer all evils rather than incur detriment to the soul. But one who still remains in bodily life has not yet shown absolutely that he despises all earthly things altogether on account of Christ. Therefore, before death has actually been endured on account of Christ, no one can be called a martyr in the perfect sense. Hence those who have suffered torments on account of Christ, but not unto death, are not perfectly and completely martyrs, even if they received a mortal wound from which death naturally ought to have followed, but from which they were miraculously healed.[1107] Thus, at least according to the more probable opinion. Whence St. John, who was cast into a vat of boiling oil and emerged from it unharmed by divine power, is not to be called a martyr in the strict sense.[1108] Nevertheless, such saints are sometimes honored by the Church as martyrs, for example, St. John the Evangelist himself and St. Thecla.

2. That someone undergo death inflicted by an enemy in hatred of Christian truth.

Concerning this matter St. Thomas writes:[1109] "Martyrs are called, as it were, witnesses, because by their bodily sufferings even unto death they bear testimony to truth, not to any truth whatsoever, but to the truth which is according to godliness, which was made known to us through Christ; whence they are also called martyrs of Christ, as though His witnesses. Now truth of this kind is the truth of faith. And therefore the cause of every martyrdom is the truth of faith. But to the truth of faith belongs not only the very belief of the heart

but also exterior profession, which indeed is made not only through words, by which someone confesses the faith, but also through deeds, by which someone shows himself to have faith, according to this: 'I will show thee, by works, my faith.'[1110] Whence it is also said concerning certain persons: 'They profess that they know God: but in their works they deny him.'[1111] And therefore the works of all the virtues, insofar as they are referred to God, are certain professions of faith, through which it is made known to us that God requires works of this kind from us and rewards us for them; and in this respect they can be the cause of martyrdom. Whence also the martyrdom of blessed John the Baptist is celebrated in the Church, who endured death not for refusing to deny the faith, but for rebuking adultery."

It is required, however, that death be inflicted **by an enemy of divine faith or of Christian virtue**; whence martyrs in the strict sense are not: a) those who endure death on account of a disease contracted from the care of lepers or of those infected with plague,[1112] which care they undertook on account of the love of God; on the contrary, perhaps those soldiers seem to be martyrs who with a pure intention, that is, on account of God, fought from love of justice and the divine law and were slain in a just war;[1113] b) those who underwent death on account of natural truths; nor, *a fortiori*, c) those who suffered death on account of heresy; whence Huss is by no means to be called a martyr.[1114] For the same reason, neither are they martyrs, d) who killed themselves in order to preserve some Christian virtue, because such suicide is unlawful, unless it is excused by the good faith of the agent or by a special impulse of the Holy Spirit. But if the Church venerates as martyrs certain saints who took their own lives in order to preserve virtue, such as St. Apollonia and St. Pelagia, a special impulse of the Holy Spirit is presupposed.[1115]

3. That death be accepted voluntarily.

Therefore, if an adult is killed in his sleep on account of the faith, without having thought beforehand about martyrdom, he probably is not a martyr. There are nevertheless authors (among whom is Cajetan[1116]) who teach that a man who referred all his things to God is a true martyr if he is killed in his sleep by enemies on account of hatred of the Christian faith. **Infants, however**, who are killed in hatred of the faith or of Christ, are called true martyrs, because the will is supplied by a special grace.

To the point St. Thomas writes: "Some said that in the Innocents the use of free will was miraculously accelerated, so that they also suffered martyrdom voluntarily. But because this is not confirmed by the authority of Scripture, it is better to say that those little children who were slain attained, through God's grace, the glory of martyrdom which in others their own will merits. For the shedding of blood on account of Christ takes the place of baptism. Whence, just as in baptized children the merit of Christ works through baptismal grace toward obtaining glory, so also in those slain on account of Christ the merit of Christ's martyrdom works toward obtaining the palm of martyrdom."[1117]

[1107] Nevertheless St. Alphonsus (*Theol. mor.* l. 6, n. 99) says: "It is probable ... that grace is conferred when a martyr receives a lethal wound or torment, although afterward he miraculously does not die. And thus blessed John, cast into a vat of boiling oil, was truly a martyr, and so too the Queen of Martyrs, the Blessed Virgin Mary, standing beside the cross of Jesus."

[1108] Cf. St. Thomas, *Suppl.* q. 96, a. 6 ad 7, and *S. theol.* 2, 2, q. 124, a. 4.

[1109] *S. theol.* 2, 2, q. 124, a. 5.

[1110] Jas. 2:18.

[1111] Tit. 1:16.

[1112] St. Alphonsus teaches the contrary (*Theol. mor.* l. 6, n. 100), saying: "Twelve academies, thirteen cardinals, and more than three hundred authors hold that such persons are true martyrs."

[1113] Cf. *S. theol.* 2, 2, q. 124, a. 5 ad 3; Billuart, *De fortitud.* diss. 1, a. 2.

[1114] Cf. Benedict XIV, *De serv. Dei beatif.* l. 3, c. 19-20; Waffelaert, *De virt. card.* n. 15ff.

[1115] Cf. *S. theol.*, *l.c.*, a. 1 ad 2, and Benedict XIV, *l.c.*, c. 11, n. 12.

[1116] *Comm. in* 2, 2, q. 124, a. 2.

[1117] *S. theol.* 2, 2, q. 124, a. 1 ad 1.

624. On the efficacy and effects of martyrdom. 1. Martyrdom justifies a sinner, whether baptized or not baptized, whether an adult or a little child. In adults, however, it is required that martyrdom be joined at least with attrition concerning sins committed; for if even the sacrament of baptism does not remit sins unless an adult has at least attrition, *a fortiori* martyrdom requires attrition. This attrition indeed seems sufficiently present if the martyr voluntarily accepts death on account of the love of God.[1118] This efficacy of martyrdom for little children is as though *ex opere operato*; for martyrdom is, as it were, baptism, whence it is also called the baptism of blood. Therefore, according to the almost common doctrine of theologians, not only the Innocents slain by Herod, but any little children killed for the Christian faith (even those who are killed in the womb of their mother) are martyrs and will obtain eternal life.

2. Martyrdom, since it is the most perfect act of charity: a) deletes in the just every venial fault and every temporal punishment still to be discharged for past sins. Whence every martyr flies immediately into heaven, without having to pass through purgatory, and therefore Innocent III says: "He does injury to a martyr who prays for a martyr";[1119] b) merits a great increase of grace and glory.
3. Martyrdom merits a special crown in heaven, which is called an **aureola**.

Concerning this aureola Benedict XIV writes,[1120] following the doctrine of St. Thomas: "The conjunction of man with God through His perfect vision and fruition is called a golden crown, or simply *golden* by way of a substantive, just as a triumphal crown woven of laurel is called a *laurel* by way of a substantive noun. Now, since to essential beatitude, namely joy concerning conjunction with God, another accidental reward is added, that is, a certain joy concerning works performed which have the character of an excellent victory, according to the doctrine of St. Thomas,[1121] this joy is called an aureola, as though a little crown: The aureola is a certain privileged reward corresponding to a privileged victory."

Theologians commonly admit a threefold aureola, namely, the aureola of virgins, the aureola of doctors, and the aureola of martyrs. "The aureola is said to be something added to the golden crown, that is, a certain joy concerning works performed by oneself which have the character of an excellent victory; this is another joy from that by which someone rejoices concerning conjunction with God, which joy is called the golden crown."[1122] The aureola is owed to virgins on account of an excellent victory over carnal pleasure; to martyrs on account of the most difficult victory over the world and the enemies of the faith; but to doctors and strenuous preachers of Christian truth on account of victory over the devil, the prince of darkness and the father of lies. Since in infants who undergo martyrdom there is not properly a struggle, because of the defect of reason, neither is there in them an aureola properly so called, either of virginity or of martyrdom; nevertheless, they participate in some manner in the aureola, insofar as they rejoice in a special manner that they were slain in the service of Christ. Thus St. Thomas,[1123] against several theologians who admit an aureola properly so called even in infant martyrs. The same St. Thomas teaches that the aureola of martyrs is more excellent than the other two aureolae.

[1118] Cf. the diverse opinions concerning this matter in Waffelaert, *l.c.*, n. 24, and in St. Alphonsus, *l.c.*, n. 98.

[1119] c. 6, X, 3, 41.

[1120] *L.c.*, c. 15, n. 5.

[1121] *In IV Sent.* dist. 49, q. 5, a. 5.

[1122] St. Thomas, *Suppl.* q. 96, a. 1.

[1123] *S. theol.* 2, 2, q. 124, a. 6 ad 1.

Chapter III. On the Parts of Fortitude

625. There are no subjective parts. The parts of a cardinal virtue can be threefold, namely, subjective, integral, and potential. But subjective parts are not customarily assigned to fortitude, insofar as it is a special virtue, because it is not divided into virtues differing in species, since it concerns a very special matter, namely, dangers of death.[1124] Whence fortitude is called a most specific species, because it has no other species of virtues under itself. Therefore, its integral and potential parts remain to be assigned.

Integral and potential parts. The same virtues are assigned to fortitude both as integral parts and as potential parts, although considered under a diverse respect. Four parts are enumerated by St. Augustine from Cicero: confidence (*fiducia*), or magnanimity, magnificence, patience, and perseverance. Insofar as these four parts or virtues concern the same matter as fortitude, namely, dangers of death to be attacked and endured, they are **integrating parts** of fortitude, assisting toward its perfect act; but insofar as they concern less difficult matter, they are **potential parts** and, as it were, secondary virtues annexed to fortitude.

To the point the Angelic Doctor writes:[1125] "There is a twofold act of fortitude, namely, to attack and to endure. Now for the act of attacking two things are required. The first of these pertains to the preparation of the soul, namely, that someone have a soul ready to attack, and with respect to this Tully posits confidence, whence he says that 'confidence is that by which the soul itself places much trust in itself, with certain hope, in great and honorable matters.' But the second pertains to the execution of the work, namely, lest someone fail in executing those things which he confidently began; and with respect to this Tully posits magnificence; whence he says that 'magnificence is the thought and administration of great and exalted matters with a certain ample and splendid proposal of soul,' that is, execution, so that administration may not fail an ample proposal. Therefore, these two, if they are restricted to the proper matter of fortitude, namely, to dangers of death, will be as integral parts of it, without which fortitude cannot exist; but if they are referred to certain other matters in which there is less difficulty, they will be virtues distinct from fortitude according to their species; nevertheless they will be joined to it as the secondary to the principal: as magnificence is posited by the Philosopher concerning great expenditures, whereas magnanimity, which seems to be the same as confidence, concerns great honors.

"For the other act of fortitude, which is to endure, two things are required. The first of these is that the soul not be broken by sadness through the difficulty of threatening evils and fall away from its greatness; and with respect to this he posits patience, whence he says that 'patience is the voluntary and prolonged endurance of arduous or difficult things for the sake of honorableness or utility.' But the other is that through prolonged suffering of difficult things a man not become weary to the point of desisting, according to this: 'That you be not wearied, fainting in your minds,'[1126] and with respect to this he posits perseverance; whence he says that 'perseverance is a stable and perpetual continuance in a reason well considered.' These two also, if they are restricted to the proper matter of fortitude, will be, as it were, integral parts of it; but if they are referred to

any difficult matters whatsoever, they will be virtues distinct from fortitude; and nevertheless they are joined to it as secondary virtues to a principal one."

The individual virtues will now be treated one by one insofar as they are **potential parts of fortitude**.

[1124] Cf. *S. theol.* 2, 2, q. 128, a. un.

[1125] *Ib.*

[1126] Heb. 12:3.

§ 1. On Magnanimity

626. Notion. Magnanimity[1127] **is a virtue inclining one to execute great works in every genus of virtue, which are truly worthy of great honor.** Therefore, he is not truly magnanimous who seeks great things outside virtue, because these are not truly great nor do they merit true honor.

The **material object** of magnanimity is great and true honors, whence true magnanimity despises the riches, pleasures, and honors of this world, as being in reality of small moment; but it aspires to great honors before God. These great true honors cannot be obtained except through the exercise of Christian virtues, and indeed arduous ones.

The **formal object** of magnanimity is not honors of any kind whatsoever to be rightly obtained, but great and arduous honors; but another unnamed virtue is occupied with obtaining small honors.[1128] Magnanimity tends toward great honors, not precisely because they are honors, since this is not so difficult, but on account of their excellence. Therefore the office of magnanimity is rightly to direct the passion of hope, so that it may tend in an orderly manner toward great honors through excellent works of the virtues.[1129] Honor exercises a great attractive force upon man, and therefore we see many men desire honors inordinately; and the greater the honors are, the more vehemently they are accustomed to entice a man. Hence, on account of an inordinate thirst for great honors, many sins are committed in the world, concerning which there will be discussion below, n. 639.

From what has been said it is also permissible to deduce how magnanimity is related to the other virtues, especially if they are in a heroic state. For every virtue tends toward its object even when arduous, but it does not attain it precisely because it is arduous, but because it pertains to its own province; hence, for example, virginity attains a very arduous object, namely, perfect immunity from every contamination of venereal pleasure, but it does not attain that object because it is arduous, but rather notwithstanding its arduousness. On the contrary, magnanimity attains in the matter of all the other virtues precisely that which is great and arduous, and because it is arduous.

[1127] *Hochherzigkeit, Seelengröße* [high-mindedness, greatness of soul].

[1128] Cf. *S. theol.* 2, 2, q. 129, a. 2.

[1129] *Ib.*, a. 1 ad 2.

627. Magnanimity is a true virtue. It is not difficult to prove that magnanimity accepted in this sense is a true and special virtue; for it has a most noble and most special object, namely, it instigates one rightly to obtain great honors through great works of the virtues. On account of the peculiar conditions of this object and end, the virtue of magnanimity is indeed possessed by all the just and by those possessing the other

virtues in a perfect state - for with sanctifying grace all the virtues are infused, and the virtues are connected - but an act of magnanimity does not belong to all virtuous persons, but only to great men.[1130]

[1130] Cf. *S. theol.* 2, 2, q. 129, a. 3 ad 2.

628. Relation to humility. Magnanimity is not opposed even to the most perfect humility. For "in man there is found something great, which he possesses from the gift of God, and some defect, which belongs to him from the infirmity of nature. Therefore magnanimity brings it about that a man deems himself worthy of great things according to the consideration of the gifts which he possesses from God; as, if he has great virtue of soul, magnanimity brings it about that he tends toward perfect works of virtue; and the same must be said concerning the use of any other good, such as knowledge or some good of fortune. But humility brings it about that a man esteems himself little according to the consideration of his own defect. Similarly, magnanimity also contemns others insofar as they fall short of the gifts of God; for he does not esteem others so greatly that for their sake he would do something unbecoming. But humility honors others and esteems them superiors insofar as it beholds in them something of the gifts of God.... And thus it is clear that magnanimity and humility are not contrary, although they seem to tend toward contraries, because they proceed according to diverse considerations."[1131]

[1131] *Ib.*, ad 4.

629. Properties. St. Thomas,[1132] from Aristotle, enumerates several properties of magnanimity, among which the following are the more principal: 1. the magnanimous man is moderately delighted by honors offered, even great ones; 2. in prosperity and adversity he shows himself moderate; 3. he willingly offers assistance to others, but he himself asks no one, or scarcely anyone, for assistance for himself; 4. with the great he shows himself truly great, that is, he does not flatter them nor allow his liberty to be oppressed by their authority; but with those of middling rank he shows himself moderate; 5. he is not ambitious, and therefore does not thrust himself into more honorable places or functions; 6. he speaks his opinion openly if it is necessary, for he does not fear men nor desire to flatter anyone; 7. he does not remember injuries received, for this belongs to a base soul; 8. in his external bodily gestures he is slow; for he does not act precipitately, because he involves himself only in great affairs, which do not occur so often, and when they occur they must be conducted with serious deliberation; 9. according to Aristotle he often employs irony. Irony, however, is not taken here in the ordinary sense of mockery, but insofar as it is a fiction of something less.[1133] The ancients distinguished a twofold fiction: fiction which is toward more, namely, when someone pretends greater things concerning himself than are true (this is boasting), and fiction toward less, namely, when someone pretends lesser or base things concerning himself, and this fiction was called irony. Therefore the magnanimous man is not accustomed to demonstrate his entire greatness (especially not to the multitude), because this could seem to be boasting.

[1132] *Ib.*, ad 3 and 5; a. 4 ad 2.

[1133] Cf. above, n. 167.

§ 2. On Magnificence

630. Notion. The second potential part of fortitude is the virtue of **magnificence**,[1134] which is **a virtue moderating the love of money, lest the great expenditures by which great external works ought to be made be impeded**.[1135] Therefore magnificence differs from magnanimity as a species from a genus; for

magnanimity intends what is great in every matter and in all the virtues, but magnificence intends and executes it only in an external work capable of being made,[1136] for example, in building temples, churches, and monasteries, in establishing pious foundations, and in providing a public banquet, when right reason demands this. St. Thomas[1137] observes: "No end of human works is so great as the honor of God, and therefore magnificence chiefly performs a great work in order to the honor of God (by building and adorning churches and procuring other things necessary for worship). And therefore magnificence is joined to holiness, because its principal effect is ordered to religion or holiness."

The **proximate matter** of magnificence is great expenditures to be made for great external works, or the love of abundant money to be moderated.

[1134] *Prachtentfaltung, Prachtliebe* [display of splendor, love of magnificence].

[1135] Cf. *S. theol.* 2, 2, q. 134, a. 3.

[1136] Cf. *ib.*, a. 2 ad 2.

[1137] *Ib.*, ad 3.

631. Magnificence is a special virtue annexed to fortitude. For it has a special object which is in some manner similar to the object of fortitude; because its object, namely, great expenditures for constructing great works, is something special and arduous; nevertheless, it is not so arduous as the object of fortitude, which is dangers of death to be endured. The magnificent man chiefly intends great works **for the common good**. "That which pertains to the person of each individual is something small in comparison with that which belongs to divine things or common things. And therefore the magnificent man does not principally intend to make expenditures in those things which pertain to his own person, not because he does not seek his own good, but because it is not great. If, however, something among those things which pertain to him has greatness, the magnificent man also magnificently pursues this, such as things which are done once, as a wedding, or even things which are permanent, as it pertains to the magnificent man to prepare a fitting dwelling."[1138] From what has been said it follows that magnificence is a virtue whose exercise pertains to kings or to the rich, because they alone are able to dispose of great expenditures; but according to affection and preparation of soul, and consequently also according to merit, this virtue can also exist in the poor, who have a sincere will to make great expenditures for great works if they possessed sufficient money.

[1138] *Ib.*, a. 1 ad 3.

632. Relation to liberality. Magnificence has some likeness to liberality, but nevertheless really differs from it. The first difference is that liberality extends to **all** operations which concern money, namely, to expenditures, receipts, and gifts; but magnificence concerns only expenditures, that is, outlays. The second difference is that, even in expenditures or outlays, magnificence exceeds liberality in the greatness of the expenditures; for magnificence concerns only great expenditures (as the name itself demonstrates), but liberality can also concern moderate ones.

§ 3. On Patience

633. Notion. The third virtue joined to fortitude as a potential part is **patience**, which can be defined: **a virtue by which someone so endures present evils (especially those inflicted by others) that he is not inordinately saddened by them**;[1139] or, as Cicero says: "Patience is the voluntary and prolonged endurance of arduous and difficult things for the sake of honorableness or utility."[1140]

If patience concerns the moderation of sadness arising from the imminence of death, it is an integral part of fortitude; but if the sadness arises from lesser evils, then it is only a potential part of this virtue.[1141]

The **proximate matter** of patience is present sadnesses rightly to be tolerated; but its **subject** is the concupiscible part.[1142]

[1139] Cf. *S. theol.* 2, 2, q. 136, a. 4 ad 2.

[1140] *De invent. rhetor.* l. 2, c. 54.

[1141] *S. theol.* 2, 2, q. 136, a. 4 ad 3.

[1142] *Ib.*, ad 2.

634. Patience is a special and very necessary virtue, because its principal act is rightly to moderate the passion of inordinate sadness, which is a very good and necessary office. For inordinate sadness is a great evil and an impediment to many goods. Whence it is said in Sacred Scripture: "Sadness hath killed many, and there is no profit in it."[1143] "As the moth doth by a garment and the worm by the wood, so the sadness of a man hurteth the heart."[1144] "Happy is he that hath had no sadness of his mind."[1145] Sadness is indeed sometimes salutary, if it is assumed moderately and for a short time on account of the absence of spiritual goods or the presence of spiritual evils (especially sins); nevertheless, it must then be well tempered through patience. Sacred Scripture very frequently and urgently commends patience: "For patience is necessary for you."[1146] "Tribulation worketh patience; and patience trial; and trial hope; and hope confoundeth not."[1147] "In your patience you shall possess your souls."[1148] St. Thomas[1149] explains this text, saying: "Therefore a man is said through patience to possess his soul, insofar as he plucks out by the root the passions arising from adversities by which the soul is disturbed."

Some of the holy Fathers[1150] wrote entire books concerning the virtue of patience, for example, St. Cyprian, who writes in the book *On the Good of Patience*:[1151] "But patience, dearest brethren, not only guards good things but also repels adversities; favoring the Holy Spirit and cleaving to heavenly and divine things, it struggles by the bulwark of its virtues against the deeds of the flesh and body by which the soul is assailed and captured." St. Zeno, Bishop of Verona,[1152] St. Augustine,[1153] and St. Gregory the Great[1154] also wrote excellently concerning patience. The first degree of this virtue is to tolerate afflictions without murmuring; the second, without lamentation and complaints before others; the third, with joy, like the Apostles, who went rejoicing from the presence of the Council because they had been accounted worthy to suffer reproach for the name of Jesus.

[1143] Ecclus. 30:25.

[1144] Prov. 25:20.

[1145] Ecclus. 14:2.

[1146] Heb. 10:36.

[1147] Rom. 5:3ff.

[1148] Luke 21:19.

[1149] *S. theol.* 2, 2, q. 136, a. 2 ad 2.

[1150] They are enumerated by Migne, *Patr. lat.* (Indices) 220, 666.

[1151] n. 14 (Migne, *Patr. lat.* 4, 655).

[1152] With great eloquence this author treats of the virtue of patience and at the end exclaims: "O how I wish, if I could, to celebrate thee more by conduct, O patience, queen of all things! ... Thou art every day both the mother and crown of martyrs; thou the wall of faith, the fruit of hope, the friend of charity! ... Happy, and eternally happy, is he who shall always have had thee in himself" (l. 1, tr. 6, n. 8; Migne, *Patr. lat.* 11, 317).

[1153] *Liber de patientia* (Migne, *Patr. lat.* 40, 611).

[1154] *In evang.* l. 2, hom. 35 (Migne, *Patr. lat.* 76, 1261).

635. Relation between patience and longanimity. To patience pertains **longanimity**,[1155] which partly differs from it and partly agrees with it. It differs because the object of patience is an evil, whereas, on the contrary, the object of longanimity is a good; for longanimity is the virtue by which someone tolerates annoyances arising from the fact that he tends toward some good to be possessed after a long time. But since this long delay is accustomed to cause sadness and longanimity bravely tolerates this sadness, in this it agrees with patience, which is likewise the toleration of sadness.[1156]

[1155] *Langmut* [longanimity].

[1156] Cf. *S. theol.* 2, 2, q. 136, a. 5.

636. Means for obtaining patience. To obtain the patience so necessary for the Christian life, it helps to consider: 1. the patience and longanimity of God tolerating sinners; 2. the patience of Christ in His life and death; 3. the patience of the saints; 4. the fruits of patience in each life, namely, satisfaction for sins committed and eternal glory in the future life; 5. the evils which arise from impatience, by which, namely, the merit of patience is lost, the evil is not diminished but rather increased, since impatience itself is often an evil more tormenting than that evil from which the impatience took its rise; finally, 6. that many sins often proceed from impatience, especially against charity.

§ 4. On Perseverance

637. Notion. The fourth and last virtue which is joined to fortitude as a potential part is **perseverance**,[1157] which nevertheless is not taken here for that great gift by which man perseveres in the state of sanctifying grace until death; for this gift of perseverance is not a virtue, but a special assistance of divine grace which cannot be merited even by the justified. But perseverance, insofar as it is a special virtue, can be defined: **a habit inclining one to persist in the exercise of the virtues according as right reason dictates, notwithstanding the annoyance arising from the duration of the work**.[1158] Certainly every virtue persists in its work until the end, but from its own motive; whereas, on the contrary, perseverance causes this constancy precisely on account of the honorableness which is found in continuing the work until the end, despite the weariness arising from that duration. Perseverance accepted in this manner is a virtue annexed to fortitude, because fortitude preserves firmness in very difficult matter, namely, in dangers of death; but perseverance preserves firmness in less difficult matter, which, namely, arises from the duration of the work.

Relation to constancy. According to St. Thomas there is some, but a small, difference between perseverance and constancy:[1159] for "perseverance and constancy indeed agree in their end, because it pertains to each to persist firmly in some good; but they differ according to those things which introduce difficulty in persisting in the good; for the virtue of perseverance properly makes man persist firmly in the good against the difficulty which arises from the duration of the act; but constancy makes him persist firmly in the good against the difficulty which arises from any other exterior impediments whatsoever."[1160] St. Bernard says beautifully:[1161] "Perseverance is the sister of patience, the daughter of constancy ... the bulwark of holiness."

[1157] *Ausdauer* [perseverance].

[1158] Cf. Billuart, *De fortitud.* diss. 2, a. 6.

[1159] *Festigkeit, Stetigkeit* [firmness, steadfastness].

[1160] *S. theol.* 2, 2, q. 137, a. 3.

[1161] Ep. 129, n. 2 (Migne, *Patr. lat.* 182, 284).

Chapter IV. On the Vices Opposed Both to Fortitude and to the Annexed Virtues

638. 1. Three vices are opposed to fortitude, namely, timidity or cowardice, fearlessness, and daring or temerity.

a) Timidity, of which there is discussion here, is not the passion of fear, for passions in the Aristotelian sense are something indifferent; but it is **inordinate fear of temporal evils and especially of the dangers of death**. Certainly, in every sin an inordinate fear is included; thus the avaricious man fears the loss of money, the intemperate man the loss of pleasure, and so concerning the others. But the principal fear is that of the dangers of death. And therefore an inordination of such fear is opposed to fortitude, which concerns the dangers of death. Thus St. Thomas.[1162] Inordinate fear, therefore, is **excess in fearing and defect in daring**. From the first head it is called timidity; but from the second, cowardice; yet on account of their affinity each is called by the common term timidity. This timidity of itself is only a venial sin; if, however, someone from inordinate fear transgresses a grave precept, this is a mortal sin, or rather the cause of a mortal sin. How fear or dread takes away or diminishes the voluntary and consequently the notion of sin was said above, I, n. 69. The greatest cowardice is when someone, on account of the miseries of this life which he considers intolerable, commits suicide.

b) Fearlessness is the vice which does not fear dangers, and especially the dangers of death, when they ought to be feared. This vice arises either from contempt for life, which a man esteems little, or from pride by which he attributes too much strength to himself, or from stupidity of soul. Fearlessness is a sin insofar as it causes other sins, or insofar as from it a man sins against charity toward himself.

c) Daring or temerity, insofar as it is taken here, is excess in attacking dangers.[1163] Daring arises from the same causes as fearlessness, with which it is intimately connected, but chiefly from vain boasting. The same holds concerning the sinfulness of this vice as was said concerning fearlessness. In a duel, in certain contests, in acrobatic exercises, etc., the vices of temerity and fearlessness are accustomed to occur.

[1162] *S. theol.* 2, 2, q. 125, a. 2.

[1163] *Waghalsigkeit, Tollkühnheit* [foolhardiness, rash boldness].

639. 2. Four vices are opposed to magnanimity, namely, three by excess: presumption, ambition, and vainglory; one by defect, namely, pusillanimity.

a) Presumption,[1164] which is opposed to magnanimity, is not to be confused with presumption which is contrary to hope.[1165] The former is a vice inducing one to undertake works which surpass the powers of the agent; the latter is that which hopes for eternal beatitude through means not ordained by God. If it is said that presumption opposed to magnanimity undertakes those things which altogether exceed the powers of the agent, the powers to be understood are not only his own but also those of others which are nevertheless

available to the agent; for that which we can do with the assistance of friends and especially of God is not considered altogether to exceed our powers; whence we are not presumptuous when we undertake works of the virtues, even difficult ones, with confidence in the assisting aid of divine grace. An example of sinful presumption is Peter, who, led by excessive confidence, said: "Lord, I am ready to go with thee, both into prison and to death,"[1166] and nevertheless afterward denied Christ at the voice of a maidservant. Those also sin by such a sin of presumption who, without sufficient capacity, undertake the offices of judge, pastor, confessor, etc. The origin and culpability of this presumption were already discussed above, I, n. 412. Seneca describes presumption very vigorously: "If magnanimity raises itself beyond its measure, it will make a man threatening, inflated, turbulent, restless, and hasty toward whatever excellences of words and deeds, honorableness being neglected."[1167]

b) Ambition,[1168] which is opposed to magnanimity by excess, is a vice by which someone inordinately desires an honor which he does not merit or which he refers not to God but only to his own utility; or it can be defined more briefly: **an inordinate appetite for honor**.[1169] Since honor is a thing good or indifferent in itself, an inordinate appetite for it is of itself only a venial sin; nevertheless, it can become mortal on account of circumstances, for example, if someone places his last end in such human honor, or if he seeks honor from some mortal sin (boasting concerning sins committed), or if someone seeks his own honor with grave harm to others. The inordinate appetite for honor, or ambition, often has very contrary effects, since instead of true honor, mockery and contempt befall the ambitious man.

c) Vainglory,[1170] insofar as it is opposed to magnanimity by excess, is taken for an **inordinate appetite for empty glory**. The appetite for one's own glory is not of itself something vicious, whence we are admonished: "So let your light shine before men";[1171] but the appetite for empty glory is sinful; for to desire something vain is vicious, according to this: "Why do you love vanity, and seek after lying?"[1172] Glory can be called vain in three ways: in one way on the part of the **thing** concerning which someone seeks glory, as when someone seeks glory concerning that which is not worthy of glory, such as some fragile and perishable thing (for example, bodily beauty); in another way on the part of the one **from whom** someone seeks glory, such as a man whose judgment is not certain (for example, if someone wishes to be praised by an ignorant man as learned); in a third way on the part of the very **person who desires glory**, namely, when he does not refer the appetite for his glory to a due end, such as the honor of God or the salvation of his neighbor. Thus St. Thomas.[1173] Vainglory in itself is only a venial sin, because it is not simply repugnant to charity and because it is only an inordination concerning a thing indifferent in itself; nevertheless, it can easily become not only a mortal sin, but also a capital sin from which many other sins spring, as was said above, I, n. 414.[1174]

d) Pusillanimity[1175] is opposed to magnanimity by defect, and it is a disposition of soul by which someone shrinks from undertaking or doing something as though it were too great and surpassed his powers, when in reality it does not surpass them. Whence, just as the magnanimous man rightly tends toward great things, so the pusillanimous man, from culpable ignorance of his own condition, shrinks from great things which befit him. An example of such pusillanimity in the Gospel is the slothful servant who hid his talent in a napkin and on that account was gravely rebuked. Pusillanimity of itself does not signify a grave sin; nevertheless, it can become a grave sin if someone from pusillanimity omits a grave duty; for example, if parents omit correcting disobedient children because they think themselves unable to make an effective correction; if someone no longer fights against temptations, thinking himself unable to conquer them. Pusillanimity which concerns things altogether necessary for salvation can become the sin of despair. Pusillanimity is conquered by placing hope in divine assistance, which will never fail men of good will. Pusillanimity often arises from a morbid quality of the body or from fixed ideas.

[1164] *Selbstüberschätzung, Vermessenheit* [self-overestimation, presumption]; cf. above, I, n. 412.

[1165] Cf. I, n. 549.

[1166] Luke 22:33.

[1167] In St. Thomas, *S. theol.* 2, 2, q. 130, a. 2 ad 3.

[1168] Cf. above, I, n. 413.

[1169] *S. theol.* 2, 2, q. 131, a. 1.

[1170] Cf. above, I, n. 414.

[1171] Matt. 5:16.

[1172] Ps. 4:3.

[1173] *S. theol.* 2, 2, q. 132, a. 1.

[1174] Pascal says very wittily and truly concerning vainglory: "Vanity is so rooted in the heart of man that a lackey, a kitchen boy, and a porter boast and wish to have their admirers; and the philosophers themselves want them. Those who write against glory wish to have the glory of having written well; and those who read it wish to have the glory of having read it; and I who write this perhaps have this desire, and perhaps those who will read it will also have it" (*Pensées* [1907] 400).

[1175] *Kleinmütigkeit* [pusillanimity, faintheartedness].

640. 3. Two vices are opposed to magnificence, namely, one by excess: inordinate sumptuousness,[1176] the other by defect: parvificence.[1177] Each vice is an inordination concerning great expenditures to be made, and for this reason parvificence is distinguished from avarice and illiberality. Whence St. Thomas teaches: "Just as the magnificent man agrees with the liberal man in this, that he expends money promptly and delightfully, so also the parvificent man agrees with the illiberal or avaricious man in this, that he makes expenditures with sadness and slowness. But they differ in this, that illiberality is considered in regard to common expenditures, whereas parvificence concerns great expenditures, which it is more difficult to make, and therefore parvificence is a lesser vice than illiberality."[1178] The sinfulness of these vices must be measured from the other sins which are committed on account of them.

[1176] It was called by the Greeks *banausia*, by which word both a low, tradesmanlike disposition and the excessive luxury and ostentation proceeding from it are signified; moderns use the word chiefly in the former sense.

[1177] *Knauserei, Engherzigkeit* [stinginess, narrow-mindedness].

[1178] *S. theol.* 2, 2, q. 135, a. 1 ad 3.

641. 4. Two vices are opposed to patience, one by defect and the other by excess. By defect there is opposed **insensibility or hardness**, namely, when someone is touched in no way by any evils, whether his own or another's. This indeed is a defect of sadness, although it is an excess of endurance. That this insensibility is sinful is clear of itself, since it is consonant neither with human nature nor with social life, but savors of stupid brutality and unnatural hardness. By excess (of sadness, but by defect of endurance) there is opposed to patience **impatience**, by which someone is excessively saddened or withdraws from the good because of sadness or pain. The impatient man for the most part outwardly manifests his impatience by murmurings, lamentations, or irascibility. Each sin, namely, insensibility and impatience, is of itself only a venial sin; nevertheless, it becomes mortal if on account of it another virtue, for example, fraternal charity, is gravely injured.[1179]

[1179] It is remarkable that St. Thomas does not speak of the vices opposed to patience in the *Summa theologica.*

642. 5. Two vices are likewise opposed to perseverance, namely, one by defect, which is softness or **inconstancy**, when someone, on account of difficulties which occur in the continuation of a good work, easily withdraws from it contrary to the right dictate of reason. This inconstancy is called softness by St. Thomas,[1180] which nevertheless is not to be confused with softness which is a sin against chastity. Inconstancy of itself is not a grave sin; nevertheless, it is the cause of many evils and impedes very many goods; for it renders the soul of man weak and almost powerless to accomplish any great work, since difficulties arise in every great work. By way of excess there is opposed to perseverance **pertinacity**,[1181] which is an inclination to persist in a resolution contrary to the dictate of right reason, as if someone wills to persist in a false religion which he clearly knows to be false. This pertinacity is a mortal or light sin according to the quality of the obligation and virtue which is injured through it.

[1180] *S. theol.* 2, 2, q. 138, a. 1.

[1181] *Hartnäckigkeit* [obstinacy].

Treatise XIII. On the Virtue of Temperance and the Opposed Vices

We divide this tract into four chapters: 1. on the notion of temperance; 2. on the parts of temperance in general; 3. on its subjective parts in particular and on the opposed vices; 4. on its potential parts in particular and on the opposed vices.

Chapter I. On the Notion of Temperance

643. Just as the virtue of fortitude moderates the irascible appetite, so the virtue of temperance orders the concupiscible appetite as its proximate subject. Temperance, as the name itself indicates, is a certain tempering or moderation. It is taken: 1. in the widest sense, for moderation effected by reason in every passion or action; and thus temperance is nothing other than the restraint necessary in every virtue; concerning this temperance we do not treat here; 2. in the strict sense, in which temperance can be defined: **a virtue moderating the appetite concerning the pleasures of touch, that is, concerning the pleasures of foods and venereal things.**

It is explained. The office and end of temperance is to moderate carnal pleasures according to right reason (whether natural or elevated by supernatural faith). Pleasures are manifold according to their diverse specific objects. Pleasure generally can be defined: **the repose of the appetite in a good possessed**. Now the goods or objects concerning which pleasure can exist are diverse. First, there are purely spiritual goods, such as knowledge, eternal beatitude, etc. Pleasure concerning these goods is called purely spiritual pleasure, or rather spiritual joy. Whence that pleasure which is produced by the mind is not to be called purely spiritual pleasure, as certain authors teach (for otherwise even pleasure concerning obscene thoughts would be purely spiritual pleasure, which certainly would be said incongruously); rather, it is pleasure concerning purely spiritual goods.

But all pleasures which concern a material object are **material pleasures**, and it matters little whether they follow from sensitive or intellectual apprehension. Hence the pleasures of an avaricious man concerning money possessed, of a murderer concerning homicide perpetrated, of an adulterer concerning lust committed, etc., are truly material pleasures, although they are in the rational appetite. These material pleasures can be subdivided into **bodily and non-bodily pleasures**. Non-bodily pleasures are those material pleasures which indeed concern a material object but are not felt in the body. Cf. the examples given above concerning the avaricious man, the murderer, and the adulterer.[1182] But **bodily pleasures** are felt in the body, and they are called sensitive or organic when they arise from the perception of an object suitable to the senses. Thus the ear is delighted by hearing a sweet melody, the eye by seeing beautiful colors, the sense of touch by touching soft things, and the sense of smell by smelling good odors. But these pleasures are called **sensual or carnal** if they arise from the physical and more intensive conjunction of a thing with the peculiar nerves of some organ, which is thereby vehemently moved. This pleasure is found in the use of food, drink, and venereal things; it is

often most intense and subject to great disorders. When it concerns venereal things, it is properly called venereal pleasure (*geschlechtliche Lust, délectation sexuelle* [sexual pleasure]), concerning which below, n. 681.

From what has been said it is gathered that pleasures are of four kinds:

1. **purely spiritual pleasures**, namely, from an intellectual action and concerning a spiritual object;
2. **non-bodily pleasures** (spiritual in the broad sense), namely, from an intellectual action but concerning a bodily object;
3. **sensitive pleasures**, namely, from the sensitive perception of some suitable object;
4. **sensual (carnal) pleasures**, namely, those which arise from the intimate and physical conjunction of an object with the peculiar nerves of touch or taste and which take place in foods and venereal things. Venereal pleasures, however, arise not only from physical contact but often also from an obscene phantasm; for example, pollution can be produced from obscene reading.

[1182] Nevertheless, vices concerning non-bodily pleasures of this kind are sometimes called spiritual vices, because they are not properly and strictly carnal vices. Hence the Angelic Doctor calls avarice a spiritual vice (*S. theol.* 2, 2, q. 118, a. 6).

644. The object of temperance. Temperance taken in the broad sense moderates all pleasures, whether spiritual or material; but temperance in the strict sense concerns only the moderation of sensual pleasures.

The **formal object *quo***, or motive, is right reason to be observed in these pleasures. Right reason is observed when these pleasures are ordered to the end prefixed by the Creator; this end is the preservation of individual life (through foods) and of the human species (through the act of generation). But when sensual pleasure is not intended as a means for facilitating these acts, but as an end principally willed, then a sinful inordination is always present, because it is never lawful to act from pleasure or delight alone.[1183]

To the point St. Thomas writes:[1184] "Temperance concerns desires and pleasures, as fortitude concerns fears and acts of daring. Now fortitude concerns fears and acts of daring with respect to the greatest evils, by which nature itself is extinguished, which are the dangers of death. Whence similarly temperance ought to concern the desires for the greatest pleasures. And because pleasure follows a natural operation, certain pleasures are the more vehement insofar as they follow operations which are more natural. But the most natural operations in animals are those by which the nature of the individual is preserved through food and drink, and the nature of the species through the conjunction of male and female; and therefore temperance properly concerns the pleasures of foods and drinks and the pleasures of venereal things. Pleasures of this kind, however, follow the sense of touch. Whence it remains that temperance concerns the pleasures of touch."

Certainly at times other sensitive pleasures also influence carnal pleasures, as, for example, a beautiful woman seen can cause carnal movements in a lustful man, a good odor entices one to eat foods, etc.; and then temperance strictly so called must **secondarily** moderate these pleasures also.[1185] From what has been said thus far it is gathered that temperance can be taken in a threefold sense:

1. in the widest sense, for moderation to be introduced into every action and passion;
2. in the broad sense, for the moderation of spiritual and sensitive pleasures;
3. in the strict sense, for the moderation of sensual pleasures, that is, in foods and venereal things. We speak only of temperance in the strict sense.

[1183] Cf. above, concerning the end of human acts, I, n. 125.

[1184] *S. theol.* 2, 2, q. 141, a. 4.

[1185] Cf. *S. theol.* 2, 2, q. 141, a. 5.

645. Difference between natural and supernatural temperance. Temperance as a natural and acquired virtue, concerning which there has been discussion thus far, differs in species from temperance which is a supernaturally infused virtue. For supernaturally infused temperance has a higher end and a higher motive or formal object. Its end is eternal beatitude; its motive and formal object is faith, which dictates that all things are to be esteemed little in order to gain eternal life. To the point St. Thomas writes:[1186] "The object of temperance is the good of pleasurable things in the desires of touch; the formal notion of this object is from reason, which establishes a mode in these desires; but the material element is that which is on the part of the desires. Now it is manifest that the mode which is imposed upon desires of this kind according to the rule of human reason is of one notion, and that which is imposed according to the divine rule is of another: for example, in the taking of foods, human reason establishes a mode so that it may not harm the health of the body nor impede the act of reason; but according to the rule of the divine law it is required that 'a man chastise his body and bring it into subjection' through abstinence from food and drink and other things of this kind. Whence it is manifest that infused and acquired temperance differ in species; and the same reason holds concerning the other virtues. In another way habits are distinguished in species according to those things to which they are ordered, ... and in this way also the infused moral virtues differ in species, through which men are well disposed in order to this, that they are fellow citizens with the saints and domestics of God; and the other, acquired virtues, according to which man is well disposed in order to human affairs."

Therefore the rule of the natural virtue of temperance in the pleasures of foods is **the health of man**. Thus, for example, he sins against the natural virtue of temperance who so indulges the pleasures of taste that bodily health is thereby injured. The rule of natural temperance in the pleasures of the act of generation is **the good of offspring**, so that someone sins in this point when he does something which is contrary to right reason in the generation of offspring. But right reason dictates that the act of generation cannot be lawfully exercised except in legitimate marriage, because otherwise the education of the offspring would be endangered.[1187] The rule of the supernatural virtue of temperance is **the salvation of the soul**; whence this supernatural virtue can sometimes command fasting, abstinence, and virginity for the salvation of the soul, although these may not be favorable to health.

[1186] *S. theol.* 1, 2, q. 63, a. 4.

[1187] Cf. below, where the malice of fornication will be discussed.

Chapter II. On the Parts of Temperance in General

646. In temperance there are integral, subjective, and potential parts.

1. The integral parts of temperance are two, namely, shamefacedness and honorableness; for the complete office of temperance consists in two things: in flight from turpitude, toward which shamefacedness assists, and in love of comeliness, toward which honorableness assists. The following things are to be noted briefly concerning these integral parts.

a) Shamefacedness[1188] is fear of disgrace. It is not a virtue properly so called, but a laudable passion, which therefore is sometimes called a virtue in the broad sense. For shamefacedness is a certain imperfection

consisting in fear of reproach on account of those things which are held as base by men. Thus many are ashamed of poverty and of bodily defects; this shamefacedness is a sign of a weak mind. Others are ashamed of honorable acts themselves because they are mocked for them by the impious; this shamefacedness is evil. But if a man is moved to shamefacedness according to right reason, namely, because he has committed something base or because he fears lest something base occur, this shamefacedness is good and disposes toward virtue, because it instills horror of turpitude. Since sins against temperance are very base, as they render man like the brute animals, shamefacedness, which withdraws one from these base things, can rightly be called an integral part of temperance. Therefore St. Thomas[1189] says: "Shamefacedness is not a part of temperance as though entering into its essence, but as disposing one toward it; whence Ambrose says that shamefacedness lays the first foundations of temperance, insofar, namely, as it instills horror of turpitude." Since the virtue of temperance, and especially of chastity, is most necessary for virgins, the Creator therefore implanted great shamefacedness in them so that they might better preserve virginity.

b) Just as shamefacedness is flight from turpitude, so honorableness[1190] is the love and pursuit of comeliness. Honorableness accepted in this sense is likewise an integral part of temperance. Whence St. Thomas[1191] teaches: "Honorableness is a certain spiritual beauty. But the base is opposed to the beautiful. Opposites chiefly manifest one another. And therefore honorableness seems to pertain especially to temperance, which repels that which is most base for man, namely, brutal pleasures. Whence even in the very name of temperance there is understood chiefly the good of reason, whose office it is to moderate and temper depraved desires. Thus, therefore, honorableness, insofar as it is attributed to temperance by a certain special reason, is posited as its integral part, not indeed as a subjective part or as an annexed virtue, but as an integral part of it, as a certain condition of it."

Note. These two virtues of shamefacedness and honorableness must be cultivated as much as possible in the education of boys and girls; for they are, as it were, **guardians of chastity** and temperance. But if these guardians are dead, man is accustomed to rush headlong into every filthiness of lust and intemperance.

[1188] *Scham, Scheu, pudeur, honte* [shame, reserve, shamefacedness].

[1189] *S. theol.* 2, 2, q. 144, a. 4 ad 4.

[1190] *Anstandsgefühl* [sense of propriety].

[1191] *L.c.*, q. 145, a. 4.

647. 2. Four subjective parts of temperance are enumerated by St. Thomas, namely, **abstinence, sobriety, chastity, and pudicity**.

"The subjective parts of a virtue are called its species; but the species of virtues must be diversified according to the diversity of matter or object. Now temperance concerns the pleasures of touch, which are divided into two genera. For some are ordered to nourishment; and among these, as regards food there is abstinence, and as regards drink properly there is sobriety. Others, however, are ordered to the generative power; and among these, as regards the principal pleasure of coitus itself there is chastity; but as regards the surrounding pleasures, such as those which are in kisses, touches, and embraces, pudicity is considered."[1192] The individual parts will be treated more fully in the following chapter.

[1192] *S. theol.* 2, 2, q. 143, a. un.

648. 3. The potential parts of temperance are five, namely, **continence, humility, meekness, modesty, and moderation**.

As is clear from what was said above, the potential parts of a principal virtue are called those secondary virtues which have the same formal object *quo* as the principal virtue, but nevertheless concern less principal and less difficult matters. It pertains to temperance to moderate the pleasures of touch, which are most difficult to moderate; whence any virtue which imports a certain moderation in some less difficult matter and restrains the appetite tending inordinately toward something pleasurable can be posited as a potential part of temperance or a virtue annexed to it. An inordinate appetite is found in three objects, namely: 1. in interior movements of the soul; 2. in exterior movements and acts of the body; 3. in exterior things. As regards the first, besides the movement of the concupiscence of touch, which temperance moderates and restrains, three movements tending toward something are found in the soul. The first is the movement of the will stirred by the impetus of passion; and **continence**[1193] restrains this movement, from which it results that, although the lower part of man suffers immoderate movements of concupiscence, the will is not conquered. The second interior movement is the movement of hope tending inordinately toward one's own excellence; and **humility** moderates or restrains this movement. The third interior movement is the movement of anger tending toward vengeance; and **meekness or clemency** moderates or restrains this movement. **Modesty** introduces due moderation into exterior bodily movements. Finally, as regards exterior things, **moderation** is posited, which rejects both superfluous things and does not require things that are excessively exquisite. Modesty and moderation are again subdivided by certain authors.[1194]

[1193] *Selbstbeherrschung, maîtrise de soi-même* [self-mastery].

[1194] Cf. *S. theol., l.c.*

Chapter III. On the Subjective Parts of Temperance in Particular and on the Opposed Vices

Preliminary note. Enough was said above concerning the integrating parts of temperance, namely, shamefacedness and honorableness; its subjective and potential parts therefore remain to be explained more fully, together with the opposed vices. In this chapter we shall treat: 1. of the virtue of abstinence and fasting; 2. of the opposed vice, or gluttony; 3. of sobriety and the opposed vice, that is, drunkenness; 4. of chastity and virginity; 5. of the vice opposed to chastity, namely, lust.

Article I. On the Virtue of Abstinence and on Fasting

649. Notion. Abstinence taken generally signifies the withdrawal of food. In this general sense it is not a virtue, but something indifferent, which from circumstances can become good or evil. Thus he who abstains from foods from vanity commits an evil act; but he who abstains from foods on account of the right dictate of reason and virtue performs a good act.[1195] The moderate use of foods is prescribed not only by the virtue of abstinence, but also by the medical art, but in different ways. For medicine demands this moderate use principally in order to bodily health, whereas the virtue of abstinence commands the same moderation in order to man's moral good.

It is to be observed that, although abstinence is said to concern the moderate use of foods, it also moderates the use of **drink**, insofar as drink serves for nourishment; but not the use of intoxicating drink, the moderation of which pertains to the virtue of sobriety. Hence, if someone drinks milk immoderately, he does

not sin against sobriety but against abstinence; but if he drinks wine immoderately, he sins against sobriety, not against abstinence.

Definition. Abstinence is a moral virtue inclining one to the moderate use of foods, according as right reason (or faith) shall have determined for the moral good.

If natural right reason is applied as the sole rule of abstinence, there is the natural acquired virtue of abstinence; but if reason illuminated by the virtue of faith is the directing rule, there is the supernatural virtue of abstinence. That abstinence understood in this manner is a true and special virtue is evident, since it rightly orders a special object, namely, the pleasures of foods, which not rarely withdraw man from the good of reason.[1196]

The act of the virtue of abstinence is fasting and abstinence strictly so called, namely, abstinence from certain determined foods. For the sake of clarity we distribute all things which must be said concerning the virtue of abstinence into four sections: 1. on fasting in general; 2. on the extent of the ecclesiastical law of fasting; 3. on the ecclesiastical law of abstinence; 4. on causes excusing from the law of fasting and of abstinence from meat.

[1195] Cf. *S. theol.* 2, 2, q. 146, a. 1.

[1196] *Ib.*, a. 2.

§ 1. On Fasting in General

650. Notions. The word fasting is taken: 1. for total abstinence from every food and drink, or from everything which is transmitted into the stomach **by way of food**. I say: by way of food; whence such a fast is not broken if by chance something enters the stomach by way of saliva, for example, if someone swallows some blood proceeding from the teeth or nose, or if by chance a fly enters the mouth and stomach, etc. It is then called a **natural fast**, or even the fast of one who is fasting. Such a fast from midnight is required for the reception of the Eucharist, unless a special permission is present, concerning which there is treatment in the tract on the Eucharist. 2. It is taken for abstinence from food and drink according to the common rules of temperance, in order to its proper end, which is a good disposition of body and mind for performing their functions perfectly. This fast is called a **moral or philosophical fast**, and it is sometimes employed by men without any respect to religion, solely on account of some honorable good. 3. It is taken for abstinence from food and drink in a determined degree, and indeed a greater one than moral abstinence requires. Such a fast is customarily determined by either a general or a particular positive ecclesiastical law, and it is employed on days of fasting determined for the whole Catholic Church, or also at other times for certain religious orders. This fast is called **ecclesiastical or arbitrary**. 4. Finally, fasting is taken in a metaphorical sense for abstinence from vices and sins.[1197] These things having been explained, the following propositions are to be noted:

1. **A natural fast is not of itself an act of virtue**, since it consists in mere negation; nevertheless, it becomes meritorious if it is undertaken on account of an honorable motive.[1198]
2. **A moral fast is an act of the natural or acquired virtue of abstinence.** For the virtue of abstinence moderates the pleasures of food and drink according to right reason. But a moral fast is nothing other than abstinence from foods made according to right reason.
3. **An ecclesiastical fast is a good act elicited by the virtue of abstinence**, and moreover it is a good act which is commanded by diverse other virtues, for example, by religion, by penance, etc. For in an

ecclesiastical fast there is reasonable abstinence from foods, which indeed is commanded by diverse virtues insofar as it is undertaken on account of diverse good ends.

[1197] "Is not this rather the fast that I have chosen? Loose the bands of wickedness ..." (Isa. 58:6). Cf. *S. theol.* 2, 2, q. 147, a. 2 ad 1.

[1198] *S. theol.* 2, 2, q. 146, a. 2.

651. Excellence of fasting. Fasting performed in a right manner and according to right reason is commended by so many examples and admonitions in Sacred Scripture and by the holy Fathers that it is astonishing how several persons, especially Protestants, have dared to disparage so efficacious an exercise of Christian virtue. Christ Himself sanctified fasting by His example, observing it for forty days, and foretold that the disciples would fast. The Apostles and the first Christians fasted.[1199] Whence St. Paul admonishes: "Let us exhibit ourselves as the ministers of God, in much patience, ... in fastings, in chastity,"[1200] and already in the Old Testament fasting had been prescribed: "Be converted to me with all your heart, in fasting, and in weeping, and in mourning."[1201] The holy Fathers wrote entire books in praise of fasting; for example, St. Augustine commended the Lenten fast in seven sermons.[1202] St. Jerome wrote a little book against Jovinian, who disparaged fasting.[1203] Since these things are so, the Catholic Church can deservedly prescribe fasting at certain times, and indeed under grave sin.

Concerning the excellence of fasting St. Thomas writes:[1204] "Fasting is undertaken principally for three things. First, for repressing the desires of the flesh; whence the Apostle says: 'in fasting and chastity,' because through fasts chastity is preserved. For, as Jerome says: 'Without Ceres and Bacchus, Venus grows cold'; that is, through abstinence from food and drink lust grows tepid. Secondly, it is undertaken so that the mind may be raised more freely to contemplate sublime things; whence it is said that Daniel, after a fast of three weeks, received a revelation from God. Thirdly, for making satisfaction for sins; whence it is said: 'Be converted to me with all your heart, in fasting, and in weeping, and in mourning.' And this is what Augustine says in a certain sermon concerning prayer and fasting: 'Fasting purifies the soul, raises the mind, subjects one's own flesh to the spirit, makes the heart contrite and humbled, disperses the clouds of concupiscence, extinguishes the ardors of lust, and kindles the light of chastity.'"

[1199] Cf. Acts 13:3; 14:22.

[1200] 2 Cor. 6:4.

[1201] Joel 2:12.

[1202] Migne, *Patr. lat.* 38, 1039ff.

[1203] *Ib.* 23, 312.

[1204] Cf. *S. theol.*, *l.c.*, a. 1.

652. Scholion. On the development of the ecclesiastical law of fasting. Before we treat in particular of the extent of this precept and of excusing causes, it is useful to note with Cajetan:[1205] "Since the whole matter of ecclesiastical fasting is almost solely of positive law, custom and dispensation over the passage of time can change the discipline of fasting greatly. Hence it has come about that what formerly was law is no longer of the necessity of law, and what formerly was forbidden is afterward lawful." But St. Alphonsus[1206] skillfully observes: "The authority of more recent doctors, although fewer, who alone can testify concerning later modern custom, must be esteemed more and without doubt preferred to the authority, even though more common, of older authors, who could know nothing of the custom to be introduced afterward."[1207]

For confessional practice it cannot be sufficiently noted that in the matter of fasting the customs of places and the diverse circumstances of times have very great force. Hence almost everything must be taken from the so-called episcopal mandates which are customarily published at the beginning of each Lent in individual dioceses. Certain moralist authors do not attend sufficiently to the fact that in our times the same determinations concerning the law of ecclesiastical fasting can no longer be given which theologians of great name gave in the Middle Ages. Thus, for example, until the twelfth century only one meal, and that taken after sunset, was in use during the time of the Lenten fast; but in the thirteenth century, while St. Thomas was living, this one meal was taken at the third hour of the afternoon; in the fourteenth century, however, the same meal was taken about noon, a custom which is still in use, at least in most regions. In the eighteenth century St. Alphonsus taught with many other authors that the inversion or anticipation of the time of the one meal was gravely unlawful; today several theologians rightly teach[1208] that the one meal can be taken at any hour of the day for a reasonable cause. This opinion today is morally certain, since the Code of Canon Law, canon 1251, § 2, simply establishes: it is not forbidden to interchange the evening meal with dinner. Omitting, therefore, those things which were prescribed concerning fasting in ancient times, and likewise omitting those precepts which are observed by particular law in certain regions or institutes, only the presently prevailing discipline of ecclesiastical fasting is explained.

[1205] *Comm. in* 2, 2, q. 147, a. 7.

[1206] *Theol. mor.* l. 3, n. 1025.

[1207] Concerning the historical development of the law of fasting, see: Thomassin, *Traité des jeûnes de l'Église*, Paris 1680; Funk, *Kirchengesch. Abhandl.* I, 247-250. Leo XIII and Pius X enacted special laws concerning fasting for Latin America by the Constitution *Trans Oceanum* of April 18, 1897, and January 10, 1910. For Italy Pius X greatly tempered the law of fasting and abstinence by a Decree of September 5, 1907, and likewise for Dalmatia and other places. For Spain and Portugal Benedict XV greatly mitigated the rigor of fasting on December 31, 1914, and August 12, 1915 (*Act. Ap. Sed.* VII, 554ff.). Likewise, ample indults were granted for Switzerland.

[1208] Cf. Lehmkuhl, *Moraltheol.* I, n. 1468; Tanquerey, *Synopsis Theol. mor.* II, n. 1114; Noldin, *De praeceptis* n. 674.

§ 2. On the Extent of the Ecclesiastical Law of Fasting

653. Principle. The essence of ecclesiastical fasting consists in one complete meal.[1209]

The older authors quite commonly placed the essence of fasting in three things, namely, in one meal, in a determined hour for that meal, and in abstinence from certain foods, namely, from meat, eggs, and milk products.[1210] Certainly, even in our times these three things pertain to the **perfection** of fasting, so that it is not altogether perfect unless these three are observed, but they by no means pertain to its very **essence**. The reason is that the essence of ecclesiastical fasting can still be present even if the second or third condition is lacking. Hence, for example, the essence of ecclesiastical fasting is still present although meat is eaten at dinner and eggs or milk products at the evening meal. But if anyone has taken two **complete** meals in one day, the essence of ecclesiastical fasting has been destroyed. There is indeed no authentic declaration of the Church determining that the essence of ecclesiastical fasting is situated in one complete meal; but since the Church permits the faithful to eat milk products and the hour of the complete meal to be changed, and since, on the other hand, the Church cannot be accused as though she had permitted the essence of ecclesiastical fasting to be changed in the course of time, it follows that the essence of fasting consists solely in one complete meal, just as it was always prescribed from the beginning of the Church. St. Thomas already intimates the same thing not obscurely when he writes:[1211] "Fasting is instituted by the Church for restraining concupiscence, yet in such a way that nature is preserved. For this, however, one eating seems sufficient,

through which man can satisfy nature and yet detract something from concupiscence by diminishing the number of eatings. And therefore it was established by the moderation of the Church that those fasting should eat once in the day." From this excellent principle, that ecclesiastical fasting ought so to restrain concupiscence that nature is preserved, it follows that the Church can reasonably permit a milder practice on account of changed circumstances, and especially on account of the increased weakness of the human race and enervating labors, without the essence of fasting nevertheless being injured or its end perishing. Hence, in our times the Church permits that there be taken: 1. dinner; 2. an evening collation; 3. a morning morsel.

Concerning these three eatings, the following things are to be noted in relation to the quantity and quality of food and the hour of eating.

[1209] Cf. Code of Canon Law, canon 1251.

[1210] Cf. Billuart, *De ieiunio* a. 3.

[1211] *S. theol.* 2, 2, q. 147, a. 6.

654. 1. On dinner on fast days.

a) The hour of dinner, according to modern discipline, is left to the free disposition of the one fasting, as was already said above. Hence dinner can be taken at the fifth or sixth hour in the afternoon, as is customary in America and other regions. Dinner can also be taken at the eleventh hour in the morning if there is a reasonable cause.[1212]

b) Dinner must be morally continuous and not immoderately prolonged. For if dinner is notably interrupted, it is no longer one meal, but there are two meals. What interruption is notable, however, depends upon the estimation of a prudent man and upon the reason for which the interruption occurs. In general, however, an interruption of one half-hour is considered slight. Hence he who, dinner now being finished, eats again within half an hour (even meat, if the eating of meat is permitted) has still made one eating. But as regards the **prolongation** of dinner, authors after St. Alphonsus[1213] commonly permit a space of two hours. From this, however, it cannot be inferred that someone may lawfully eat again after an hour and a half if he previously dined for the space of one half-hour. For there would be a notable interruption.

c) The quantity of food at dinner is not determined by ecclesiastical law, so that one can eat unto satiety. If, however, someone eats too much at dinner on fast days, he injures the virtue of temperance, although he does not violate the precept of ecclesiastical fasting.

d) The quality of food was indeed determined in ancient times, but today, on fast days which are not at the same time days of abstinence, any foods whatsoever are permitted by ecclesiastical law; indeed, it is not even forbidden to mix meat and fish in the same meal.[1214]

Whenever meat is permitted on fast days, those who by reason of labor, age, or infirmity are unable to fast may lawfully eat meat several times during the day. The Sacred Penitentiary expressly decreed this.[1215] A bishop can, however, decree for his diocese that even those who are dispensed from fasting are not to eat meat except once in the day. Apart from an express decree of this kind, however, the general rule holds: on days of fasting alone, all those who are not bound to fast can eat meat several times.

[1212] Code of Canon Law, canon 1251, § 2. Cf. Lehmkuhl, *Theol. mor.* I, n. 1468, and Noldin, *De praeceptis* n. 685.

[1213] *Theol. mor.* l. 3, n. 1020.

[1214] Code of Canon Law, canon 1251, § 2.

[1215] Sacred Penitentiary, May 27, 1863, and March 16, 1883.

655. 2. On the evening collation on fast days.

a) The hour of this collation is free, since it is evident from what was said above that it can be taken at the eleventh hour in the morning and can freely be interchanged with dinner.

b) The quantity of food permitted at the collation is assigned differently by different authors. Some permit a fifth part, others a fourth part, of a complete meal. Better, or at least simpler and easier, is the opinion of St. Alphonsus, which modern authors most commonly follow. These are the words of St. Alphonsus:[1216] "It is better to follow the opinion of others commonly received today, as Castropalaus, Roncaglia, the Salmanticenses, Viva, Bonacina, Holzmann, Tamburinus, Elbel, Diana, Sporer, Milante, Croix, Mazotta, etc., testify, which indiscriminately permits to all (even to those who need little food, as they also commonly say) the quantity of eight ounces, and something else, namely, two other ounces, which is slight matter, to him who would need greater nourishment." Eight ounces are equivalent to 240-250 grams, or half a pound. The same theologians add that even he who would be satiated by this quantity of food can nevertheless eat such a quantity with a safe conscience, because this would be a sign that he has a weak stomach and consequently is not bound to so strict a fast.

[1216] *Homo apost.* tr. 12, n. 16.

656. Lehmkuhl teaches:[1217] "But when porridge is cooked from foods mixed with water, oil, etc., there is scarcely anyone who would concede that, apart from the liquid, eight ounces of solid food may be taken. And indeed attention ought to be given not only to the nutritive power of foods, but also to the satiety which is actually induced.... Therefore, it is rightly permitted that no more of a porridge of this sort be taken than what is cooked from four or five ounces of flour, beans, dry bread, rice, etc., without counting that small condiment of oil and vinegar." This opinion, which is also held by several other authors, ought not to be urged too much in practice. Certainly, if a notable quantity of oil, milk, or another nutritive liquid is employed in cooking foods of this sort, it would then not be lawful to take a further eight ounces of solid food; but if only water, wine, or another non-nutritive liquid is employed, or only a moderate quantity of some nutritive liquid, no reason appears why something should then be subtracted from the quantity of solid food. For a law seems sufficiently arbitrary which would permit someone, for example, to take eight ounces of bread and then drink half a liter of wine, but which would forbid under mortal sin that someone dip or cook the same quantity of bread in even a smaller quantity of wine. Nor do the reasons brought forward by those authors seem valid. For the concept of fasting according to common judgment by no means demands such a limitation. On the contrary, it would seem sufficiently curious to simple persons if eight ounces of bread and half a liter of wine were permitted, provided they were taken separately at the collation, while, on the contrary, they would be gravely forbidden when taken together. Nor is the reason valid that a man would have a greater sensation of satiety from porridge of this kind; for nowhere has the Church prohibited the **sensation of satiety**. Experience, moreover, establishes that the sensation of satiety is very deceptive and is sometimes had even after a small amount of food has been taken. Since these things are so, the opinion of many authors, both older[1218] and modern, seems preferable, who in every case permit the quantity of eight ounces of solid (but light) food at the evening collation. This opinion was already called most probable by the very illustrious Elbel.[1219]

For the vigil of the Nativity of Our Lord Jesus Christ, St. Alphonsus permits a quantity twice as great at the collation; for he says that there is then a "joyful fast."[1220] On the vigil of Easter, however, the fast ceases after

noon.[1221]

c) The quality of food permitted at the collation depends upon custom and particular statutes. Certainly, eggs, milk products, and larger fish are not of themselves excluded; nevertheless, all modern authors teach that it is not lawful to take the entire collation from such highly nutritive foods. Hence no moralist, as I think, would permit someone to eat four hens' eggs at the collation, which have a weight of about eight ounces; or that someone take two eggs and, in addition, four ounces of bread. It seems more conformable to the mind of Holy Church if lighter foods, and foods not so strongly seasoned with fat, are taken for the evening collation on fast days.

[1217] *L.c.* n. 1462.

[1218] See those authors in St. Alphonsus, *Theol. mor.* l. 3, n. 1029, and *Homo apost.* tr. 12, n. 18.

[1219] Cf. also Göpfert, *Moraltheol.* II, 203; Vermeersch, *Theol. mor.* III, 873. Capellmann (*Pastoralmed.* 120) rightly calls the contrary opinion "a peculiar opinion of the moralists," and Génicot (*Theol. mor.* I, 437) writes: "Nor does it seem equitable to permit the richer man to dip eight ounces of bread in wine while he eats them (which St. Alphonsus thinks lawful), but to prohibit the poor man from cooking the same quantity in water. Indeed, if recourse is had to common estimation and the end of the law, by which reasons Lehmkuhl n. 1211 [1462] endeavors to support the opinion of St. Alphonsus, this poor man, at least in our regions, will be judged to fast and exercise mortification better than the rich man using wine."

[1220] *Theol. mor.* l. 3, n. 1025.

[1221] Code of Canon Law, canon 1252, § 4.

657. 3. On the morning morsel on fast days.

Today, even in religious communities and among God-fearing faithful, there exists the custom on fast days of taking in the morning a morsel of bread or another lighter food. The Church knows and tolerates this custom.[1222] Moralists most commonly teach that this morsel can lawfully contain the quantity of two ounces, or about sixty grams, of solid food. Liquid, for example, coffee or tea with a small quantity of sugar or milk, ought not to be counted.

[1222] *Ib.*, canon 1251, § 1.

658. Time of fasting. The days of ecclesiastical fasting by common law are:

a) The time of Lent, that is, from Ash Wednesday until after noon on Holy Saturday. Sundays are excepted, but not even feasts of precept.

b) The Ember Days, namely, Wednesday, Friday, and Saturday within the third week of Advent, the first week of Lent, within the octave of Pentecost, and the third week of September.

c) Four vigils, namely, of the Nativity of the Lord, Pentecost, the Assumption of the Blessed Virgin Mary, and All Saints. But if these vigils fall on a Sunday or a feast of precept, fasting and abstinence neither bind nor are to be anticipated.[1223]

d) The day before the consecration of a church, both the consecrating bishop and the people who ask that the church be consecrated for them must fast. Hence, if a parish church is consecrated, besides the consecrating bishop all the faithful belonging to the parish must fast, provided that they built the church at their own expense; otherwise, the parishioners are not bound to fast. But if a religious church is consecrated, the consecrating bishop and the religious attached to that church seem to be bound to fast.[1224]

[1223] Code of Canon Law, canon 1252, §§ 2 and 4.

[1224] *Ib.*, canon 1166, § 2; cf. *Pontificale Romanum*, title *De ecclesiae dedicatione*; Sacred Congregation of the Council, July 3, 1909 (*Acta Ap. Sedis* I, 624f.), and Pontifical Commission, July 20, 1929 (*Act. Ap. Sed.* XXI, 573). In the ordination of clerics which takes place outside the Ember seasons, no obligation of fasting exists for anyone (cf. Gasparri, *De s. ordinat.* II, n. 771).

659. For Latin America, the Antilles, and the other islands of the Caribbean Sea, the law of fasting and abstinence has been almost abolished. For:

1. **fasting and abstinence from meat** are prescribed only on the following days of Lent: Ash Wednesday, Thursday of Holy Week, and all Fridays of this season. Therefore, on Holy Saturday it is lawful to eat meat;
2. **fasting without abstinence** is to be observed on the Fridays of Advent and the Wednesdays of Lent;
3. **abstinence from meat without fasting** is to be observed on the four vigils of the feasts of the Nativity of Our Lord Jesus Christ, Pentecost, the Assumption into heaven of the Blessed Virgin Mary, and the Holy Apostles Peter and Paul.

Religious of each sex also (who are not bound by a special vow), with the consent of their superiors, can use these indults as regards the abstinences and fasts prescribed in their own rule or statutes, at least if the religious are **outside the cloister**. Regular superiors, however, are to be exhorted to take care, as far as possible, to abstain from the use of an indult of this kind **within the cloister**.[1225] The law of fasting and abstinence has also been greatly mitigated for Switzerland.

[1225] Cf. *Act. Apost. Sedis* II, 215-217; cf. also Sacred Congregation for Extraordinary Ecclesiastical Affairs, December 13, 1911, and December 10, 1912 (*Act. Apost. Sedis* III, 669, and IV, 230).

660. Persons bound to fast. All the baptized, from the completion of the twenty-first year of age to the beginning of the sixtieth, are bound by the precept of ecclesiastical fasting, unless they are excused by some just cause.[1226] There will be discussion below of these excusing causes.

The reason why adolescents are exempted from fasting is assigned excellently by St. Thomas:[1227] "In children the cause for not fasting is especially evident: both because of the weakness of nature, from which it follows that they need frequent food, and not much taken at once; and also because they need much nourishment on account of the necessity of growth, which is made from the residue of nourishment. And therefore, as long as they are in a state of growth, which in most lasts until the end of the third period of seven years, they are not bound to observe ecclesiastical fasts. Nevertheless, it is fitting that even during this time they exercise themselves in fasting, more or less according to the measure of their age."

Protestants and, in general, all non-Catholics, since they are subject to ecclesiastical laws, are of themselves bound to the observance of ecclesiastical fasting; nevertheless, since they are often in good faith and almost always have excusing causes, they are not to be condemned for mortal sin when they do not fast.

[1226] Code of Canon Law, canon 1254, § 2.

[1227] *S. theol.* 2, 2, q. 147, a. 4 ad 2.

661. Quality of the obligation. 1. The precept of ecclesiastical fasting obliges of its kind under grave sin; the transgression of this precept nevertheless admits of lightness of matter.

Thus all Catholic moralists teach. That ecclesiastical fasting is prescribed under mortal sin is evident from proposition 23 condemned by Alexander VII: "He who breaks a fast of the Church to which he is bound does not sin mortally unless he does this from contempt or disobedience, for example, because he does not wish to subject himself to the precept."[1228] That this precept admits of lightness of matter is evident from the unanimous doctrine of theologians. Theologians do not agree, however, as to what is slight matter in the transgression of this precept. The matter is slight if, besides the eight ounces of the evening collation and the two ounces of the morning morsel, a further two ounces are eaten.[1229] Therefore, it would not be a mortal sin if someone bound to fast were to take, besides the one complete meal, a further twelve ounces of food in one day. Whether it would be a grave sin if someone were to take fourteen ounces is not certain. Small eatings taken on the same day coalesce and can constitute grave matter, as is evident from proposition 29 condemned by Alexander VII: "On a fast day, he who eats a little something rather often does not break the fast, even if in the end he shall have eaten a notable quantity."[1230]

2. The precept of abstinence from meat is negative, but the precept of fasting is affirmative.

Thus holds the common opinion. Consequently, he who eats meat several times on prohibited days commits as many sins as the times he unlawfully eats meat.[1231] But he who, either culpably or inculpably, has violated the fast, for example, by taking a second complete meal, probably does not commit a new sin if he eats a third or fourth time. Thus St. Alphonsus[1232] and with him almost all modern authors, although very many of the older authors, for example, Navarre, Billuart, Wigandt, etc., contradict them. It must be acknowledged that the reasons which Billuart[1233] brings forward for his opinion are not to be despised; nevertheless, since mortal sins are not to be multiplied without evident necessity, and since the Church even today has determined nothing concerning this controversy, the opinion of St. Alphonsus seems to be preferred in the confessional. But without sufficient reason it is taught by some theologians that he who culpably took two complete meals on a fast day indeed does not commit a mortal sin, but commits a venial sin by taking a third meal, because such a man acts against the end of the law, namely, by neglecting mortification. For the end of the law does not fall under the law, as the commonly admitted adage holds; nor can it be said that a man of this kind sins against prescribed mortification, for there does not exist on fast days a special positive precept of mortification besides the precept of fasting. Nor is the natural precept of mortification violated by a threefold meal; otherwise, even on other days a threefold meal would be a venial sin, as being contrary to the natural precept of mortification.

[1228] Denzinger, n. 1123.

[1229] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 1025.

[1230] Denzinger, n. 1129.

[1231] St. Alphonsus, *l.c.* n. 1030; *Homo apost., l.c.*

[1232] *L.c.*

[1233] *De ieiunio* diss. 2, a. 5.

662. Scholion. On liquid on fast days. "Liquid does not break the fast," says the common adage. Hence it is lawful to take liquid several times on days of ecclesiastical fasting. Thus, at least, according to modern practice; for in ancient times it seems that during an ecclesiastical fast even liquid drink, and especially wine, was prohibited.[1234] Those things which are commonly taken as a vehicle for food have the character of liquid and drink; but not all those things which, although liquid, nevertheless have notable nutritive power. Therefore milk, melted chocolate, and broth, at least in a notable quantity, are excluded, for a little is reckoned as nothing; but wine, light beer, coffee, tea, water (even mixed with a small quantity of sugar), lemonade, etc.,

are permitted. Electuaries[1235] are also permitted, at least if they are taken in a small quantity. St. Thomas writes to the point:[1236] "Electuaries, even if they nourish in some manner, nevertheless are not principally taken for nourishment, but for the digestion of foods. Hence they do not break the fast, just as neither does the taking of other medicines; unless perhaps someone fraudulently takes electuaries in a large quantity by way of food."

[1234] Cf. Tertullian, *De ieiunio* c. 12, 5, 9, and *Constitutiones apostolicae* 5, 18.

[1235] Commonly *Kompott, Latwerge, confiture, electuary* [compote, medicinal confection, preserve, electuary].

[1236] *S. theol.* 2, 2, q. 147, a. 6 ad 3.

§ 3. On the Law of Abstinence

663. 1. "The law of abstinence forbids eating meat and broth made from meat, but not eggs, milk products, or condiments of any kind, even those made from animal fat." Thus the Code of Canon Law, canon 1250.

a) By the name of meat are understood: α) the flesh of animals living and breathing on land and having warm blood; β) blood, bacon, meat broth,[1237] what is called "meat extract,"[1238] peptone,[1239] marrow of bones, and parts of the brain; but not the products of these animals, such as eggs, milk, and butter. In doubt whether something is to be considered as meat or fish, it is lawful to eat it. For in doubts there is liberty.

b) By the name of fish are understood not only fish strictly so called, but also all animals whose blood is cold, such as reptiles and amphibians, for example, frogs, turtles,[1240] oysters,[1241] crayfish,[1242] lobsters,[1243] caviar,[1244] etc. There are authors, such as Elbel, Holzmann, and Göpfert, who assimilate otters,[1245] beavers,[1246] and coots[1247] to fish; but it is said more correctly with Lehmkuhl,[1248] Aertnys,[1249] and others that the eating of all those animals which have **warm blood** is not lawful. If, however, a contrary common custom exists somewhere, it can certainly be observed.

c) Under the name of a condiment[1250] comes whatever (whether liquid or non-liquid) is employed in a moderate quantity so that the principal food may become savory, for example, small and few pieces of roasted bacon for seasoning vegetables.

2. The law of abstinence alone is to be observed on every Friday; but Fridays (outside Lent) on which a feast of precept is solemnly celebrated with a concourse of the people are excepted.[1251] If, however, in some region, for example, in France or Switzerland, the external solemnity of certain feasts has been suppressed, Friday abstinence is to be observed although those feasts are celebrated in choir.[1252]

3. The law of abstinence and fasting together is to be observed on Ash Wednesday, the Fridays and Saturdays of Lent, the Ember Days, and four vigils, namely, of the Nativity of the Lord, Pentecost, the Mother of God assumed into heaven, and All Saints. Fasting and abstinence, however, do not bind on these days outside Lent if a Sunday or feast of precept falls upon them.[1253] Therefore, for example, on the feast of St. Joseph, March 19, which always falls in Lent, the law both of abstinence and of fasting is to be observed.[1254] On Holy Saturday after noon, the law both of fasting and of abstinence ceases.

4. The law of abstinence binds all the faithful who possess the use of reason after their seventh year of age.[1255] Infants, therefore, and the perpetually insane are not bound by the law of abstinence; nevertheless, parents are to be exhorted to accustom children enjoying good health to the law of abstinence as soon as

possible, even before completion of the first seven-year period, so that afterward they may observe the law more easily.

5. The law of abstinence (even apart from fasting) of itself obliges under grave sin; there is nevertheless lightness of matter in the transgression of this law, as was already said above. Theologians do not agree as to what matter is grave; nevertheless, the opinion defended by Stolz,[1256] Noldin,[1257] Tanquerey,[1258] and Vermeersch,[1259] asserting that there is no mortal sin unless two ounces of meat are knowingly and without any reason eaten, seems too benign. Since in practice the weight of meat cannot so easily be estimated by simple faithful, it is better to tell them that a mortal sin is present when someone knowingly and without any reason eats meat to the quantity of a walnut or of a small hen's egg. The law of abstinence is a negative law, and therefore someone sins as often as he eats meat on a prohibited day, as was already said; but in fact many transgressors think that they have sinned once even if they ate meat several times during the day. Therefore, a confessor is often not bound to ask a penitent who accuses himself of transgression of the law of abstinence how many times he ate meat on each day; but it suffices to know on how many days he did not observe abstinence.

6. The causes excusing from the law of abstinence are the same as those which will be brought forward below as excusing from the law of fasting. Ample dispensations concerning the law of abstinence are customarily granted to soldiers and sailors, who, with a few days excepted, can always eat meat. Similarly, servants employed in the homes of non-Catholics who cannot easily find equally good employment in Catholic homes can eat meat on prohibited days. In some regions, meat is lawfully eaten by guests who take supper in inns and cannot easily obtain other foods. Persons who are under the authority of the head of a household to whom the lawful faculty of eating meat has been given are permitted the foods which are allowed to the head of the household himself. The reason for this permission, however, is not the indult granted to the head of the household, but the moral inability in which the members of the household find themselves to observe the precept.[1260]

[1237] *Fleischsuppe* [meat soup or broth].

[1238] *Fleischextrakt* [meat extract].

[1239] Vermeersch (*Theol. mor.* III, n. 873) thinks that peptone, since in common use it does not come under the name of meat and does not have the taste of meat, is not prohibited by the ecclesiastical law of abstinence. Nevertheless, peptone seems in reality to pertain to meat broth.

[1240] *Schildkröten, tortues* [turtles].

[1241] *Austern, Muscheln, huîtres, moules* [oysters, mussels].

[1242] *Krebse, écrevisses* [crayfish].

[1243] *Hummer, homard* [lobster].

[1244] *Kaviar* [caviar].

[1245] *Fischotter, loutre* [otter].

[1246] *Biber, castor* [beaver].

[1247] *Wasserhühner, poules d'eau* [waterhens, coots]. Thus, for example, Göpfert says: "Besides fish, the following are considered not forbidden: snails, turtles, oysters, shellfish, frogs, crayfish, lobsters; likewise also otters, beavers, and certain birds, customarily moorhens, black waterhens or coots, and little diving ducks" (*Moraltheol.* II, 240).

[1248] *Theol. mor.* I, n. 1458.

[1249] *Theol. mor.* l. 4, c. 2, a. 1.

[1250] In German: *Zuspeise, Würze* [accompaniment, seasoning].

[1251] Code of Canon Law, canon 1252, §§ 1 and 4.

[1252] Pontifical Commission, February 17, 1918 (*Acta Ap. Sedis* X, 173).

[1253] Code of Canon Law, canon 1252, §§ 2 and 4.

[1254] Pontifical Commission, November 24, 1920 (*l.c.* XII, 576).

[1255] *Ib.*, canon 1254, § 1.

[1256] *Trib. poenit.* I, n. 528.

[1257] *De praeceptis* n. 674.

[1258] *Synopsis Theol. mor.* n. 1130.

[1259] *Theol. mor.* III, n. 879.

[1260] Cf. Sacred Penitentiary, January 19, 1834, and May 27, 1863.

§ 4. On Causes Excusing from the Law of Fasting and Abstinence

All excusing causes can be reduced to two general causes, namely: a) dispensation, and b) inability (whether physical or moral).

664. a) Dispensation. The following can dispense from the ecclesiastical law of abstinence and fasting:

1. **The Pope for the whole Church.** Indeed, the Pope can abolish ecclesiastical fasting for some time for a reasonable cause, as he has already sometimes done for certain regions when an epidemic was raging there.
2. **Bishops and other local Ordinaries**, for the particular cause of a great concourse of the people or of public health, can dispense the whole diocese or some place, even only one parish, from fasting and abstinence for some time. Thus by common law.[1261] By special delegation still greater faculties are customarily granted to them.
3. **Pastors** (and *a fortiori* local Ordinaries), in individual cases and for a just cause, can dispense individual subjects of theirs or individual families from the law of abstinence and fasting (or even from each law).

This faculty of bishops and pastors to dispense extends also to travelers staying in their territory.[1262]

4. **Superiors in an exempt clerical religious institute** (but not other superiors), in the same manner as pastors for parishioners, can dispense not only their individual professed religious and novices, but also individual so-called familiars and continual table companions.[1263]

Note. A confessor cannot indeed by his own authority dispense from the law of fasting; nevertheless, when a case occurs, he can declare that sufficient reasons for not fasting are present. Superioresses of nuns have the same right of declaring with respect to their subjects. But when the bishop has given the faculty of dispensing to all confessors, then a confessor can also dispense **himself**; this, however, is not expedient in practice, since no one ought to be judge in his own cause. Unless it is expressly stated in the faculty of dispensing that the confessor enjoys such a faculty **in sacramental confession** or **in the tribunal of penance**, the confessor can lawfully dispense from the law of fasting even outside the confessional. If the excusing cause is evident

and certain, anyone can exempt himself from fasting, especially if otherwise some notable inconvenience would occur.

[1261] Code of Canon Law, canon 1245, § 2. Cf. Pontifical Commission, March 12, 1929 (*Act. Ap. Sed.* XXI, 170).

[1262] Code of Canon Law, canon 1245, §§ 1 and 2.

[1263] *Ib.*, § 3.

665. b) Inability. Since the ecclesiastical law of abstinence and fasting is a positive law, it does not bind with great inconvenience, but any serious inability (even moral) excuses. Hence the following are excused:

1. **All the sick and convalescent**, and all who would have notable pain of the head or stomach from fasting. Sexagenarians also are exempted from fasting, for old age is itself a disease. There are certain authors who exempt all women fifty years of age from fasting, but several others deservedly contradict them; for there is no reason why women should be treated more leniently on this point, at least if they do not labor under a special infirmity. For experience establishes that women can sustain fasting more easily than men. For both men and women, however, the sixtieth year **begun** suffices, as was said above, n. 660. Pregnant or nursing women are likewise excused, since by fasting they would harm the child.
2. **The poor**, who do not have sufficient food, or whose food is not sufficiently nutritive. Hence not only those who are compelled to beg are excused, but also very many other persons of lower condition, who are nourished by little food and nevertheless are compelled to perform sufficiently heavy labors. In our days and in our regions, for this reason a great part of Catholics is excused from the strict observance of ecclesiastical fasting.
3. **All who must perform heavy bodily labors.** In order that a labor be called heavy, absolute heaviness is not required (for the same labor can be heavy for one and light for another), but it must be joined with great weariness of the laborer. Such wearying labors are exercised, for example, by blacksmiths, carpenters, masons, diggers, shoemakers, many farmers, bakers, and very many others who work in factories where machines moved by steam or electricity greatly excite and weary the nerves. It pertains to a prudent man or confessor to determine which labors are heavy, after all the circumstances of persons and things have been considered. Travelers also are often excused from fasting; and not only those who must make a journey of four or five leagues on foot (as the older moralists hold), but also those who make a journey throughout the whole day by railroad or ship; for experience establishes that journeys of this kind also cause much weariness, and, moreover, that a sufficient complete meal is then often not available because of a lack either of sufficient time or of sufficient hunger on account of the excitation of the nerves.
4. **All who perform very wearying spiritual labors**, for example, students who study much; professors who give lectures after laborious preparation, or who must give instruction daily for several hours, such as schoolmasters; confessors who hear confessions for many hours, for example, for six to eight hours in one day; preachers who, with great bodily movement and preparation of mind, preach several times each week (for about an hour).

666. Note. 1. Let a confessor furnished with a legitimate faculty not show himself too difficult in granting a dispensation from fasting, since in our days there are not so many lay faithful who can observe ecclesiastical fasting perfectly; for they are either burdened with very wearying labors, or enjoy weak health, or live in such

circumstances that there is a sufficient cause for dispensing from ecclesiastical fasting. Nevertheless, let the confessor endeavor, as far as he can, that during the time of fasting the dispensed faithful perform other works of mortification or religion according to their capacity and good will. For it is of the greatest importance that the faithful be inwardly convinced of the necessity of practicing mortification and of the obligation of obeying the commands of the Church. Hence let the confessor counsel, or even enjoin, that the faithful who are unable to fast at least abstain from more delicate foods not necessary for health; or that they voluntarily deprive themselves of certain pleasures otherwise lawful; or that they restrain interior concupiscences more efficaciously; that they assist more frequently at Mass and the liturgical offices; in a word, that during the times of fasting they lead a fervent Christian life. Since abstinence from meat is customarily observed more easily than fasting, let the confessor dispense from this abstinence with greater difficulty than from fasting.

2. When a dispensation is granted on days of fasting or abstinence through episcopal mandates, certain prayers to be said or alms to be distributed are customarily imposed in place of fasting and abstinence. Certainly, he who uses a dispensation of this kind **is bound** either to say the prescribed prayer or to give the alms; nevertheless, this obligation **is not grave**, since the dispensation is granted absolutely and not only conditionally. Moreover, a grave obligation is never to be presumed, but it must be established with certainty; furthermore, bishops granting a dispensation of this kind do not speak of a grave obligation concerning these prayers and alms. If alms are prescribed for a determined end, then the bishop is to be obeyed also on this point, but likewise under a light and not a grave obligation.

Article II. On the Vice Opposed to the Virtue of Abstinence, Namely, Gluttony

1264

[1264] *Eßgier, Schlemmerei, gloutonnerie, gourmandise* [greediness in eating, gluttony].

667. To abstinence, which is a moral virtue inclining one to the moderate use of foods according as right reason or faith shall have determined, there is opposed the vice of gluttony, concerning which we have already treated certain things above, I, n. 425, among the capital vices, and which can be defined: **an inordinate appetite for eating and drinking**.[1265] According to St. Gregory[1266] and St. Thomas,[1267] inordination in the use of food and drink can occur in five ways, which are contained in this verse:

Too soon, too richly, too much, too eagerly, too fastidiously.

Too soon, if someone anticipates the due time for eating, especially if someone eats or drinks more often than is proper. In this manner those boys and girls sin who eat sweets throughout almost the whole day.

Too richly, if someone takes excessively costly food or drink. In this manner those sin who spend money beyond their station on preparing sumptuous banquets, for example, if a man of the lowest condition without a just cause buys and drinks "Champagne" wine.

Too much, if someone eats beyond his appetite, especially even unto vomiting. In this manner not only did the ancient Romans sin, who after an ample consumption of food excited themselves to vomiting by means of some instrument so that they could begin eating again, but also those modern gluttons who eat such rich and abundant foods that afterward they need diverse medicines to accomplish the digestion of the food and to wash away the accumulated bad humors.

Too eagerly, if someone takes food too greedily. In this manner those sin who cast themselves upon food like swine, greedily devouring it.

Too fastidiously, if someone seeks foods too delicately seasoned and prepared. In this manner those sin who excessively love foods prepared with much pepper and other strong seasonings. For from foods of this kind not only is bodily health injured, but the sensual appetite is also customarily aroused.

Five effects or daughters of gluttony are enumerated by St. Thomas,[1268] namely:

Unseemly mirth, by which a man rejoices in those things which, all the circumstances having been considered, are not of themselves fitted to cause any pleasure according to the judgment of right reason. Hence we see the gluttonous spending much time on their own recreation, but negligently performing the duties of their state.

Loquacity and scurrility. The gluttonous man, whose god is his belly, seeks carnal pleasures inordinately, but flees those things which are arduous; hence, omitting strenuous labor, he seeks distractions among men, and thereupon spends his time in vain conversations and even in scurrilous jokes.

Dullness of mind. Already an old adage says: "A full belly does not gladly study." For fumes ascend from a full stomach into the brain, so that the intellect is then unable to exercise strenuous activity.

Uncleanness, "which can be considered either according to the inordinate emission of any superfluities whatsoever, or especially as regards the emission of seed."[1269] For how will the gluttonous man, dulled in mind, weakened in will, wholly given to his belly, be able to overcome temptations of lust aroused by immoderate foods?

The malice of gluttony **of itself**, that is, abstraction being made from its evil effects just enumerated and from the scandal not rarely arising (especially if a cleric is addicted to it), **is a venial sin**.[1270] The reason is that excess in a thing otherwise lawful, such as the taking of food and drink, is of itself only a venial sin. Accidentally, gluttony can become a mortal sin,[1271] for example, if it gravely harms health, if it renders a man unfit for fulfilling the duties of his state, if it causes scandal, etc. In practice, let the confessor be solicitous not so much to judge concerning the grave culpability of gluttony as vigorously to counsel efficacious remedies.

He who takes delectable food delectably is not indeed at once to be accused of the sin of gluttony, since the Creator Himself attached pleasure to the taking of food; nevertheless, one must attend to proposition 8 condemned by Innocent XI: "To eat and drink unto satiety for pleasure alone is not a sin, provided it does not injure health, because the natural appetite can lawfully enjoy its acts."[1272]

The remedies against gluttony were already indicated above, I, n. 428, where there was discussion of the capital sins.

[1265] Cf. *S. theol.* 2, 2, q. 148, a. 1.

[1266] *Moral.* l. 30, c. 13.

[1267] *L.c.* a. 4.

[1268] *L.c.* a. 6.

[1269] *Ib.*

[1270] Cf. St. Thomas, *l.c.* aa. 2 and 3; St. Alphonsus, *Theol. mor.* l. 5, n. 73.

[1271] Cf. above, I, n. 426.

[1272] Denzinger, n. 1158.

Article III. On Sobriety and the Opposed Vice, That Is, Drunkenness

668. 1. On sobriety.

Sobriety is taken in a threefold sense: 1. **generally**, and then it signifies moderation in any matter whatsoever; in this sense St. Paul exhorts one "to be wise unto sobriety."[1273] 2. It is taken **more strictly** for the virtue of abstinence; for those are called sober not only who drink sparingly, but also who eat sparingly. 3. Taken **in its proper sense**, sobriety can be defined: **a virtue moderating the affection for and use of intoxicating drink**.

Sobriety taken in this last manner is a **special virtue**, because intoxicating drink is a special impediment to reason, insofar, namely, as by its fumes it disturbs the brain. For while immoderate pleasure in another drink disturbs only the order of reason, this immoderate pleasure in intoxicating drink disturbs the **very organ** of reason, namely, the brain, and impedes its action.[1274] Moreover, where there are customarily special temptations enticing one to act contrary to reason, there a special moral virtue must be posited for overcoming such temptations. But intoxicating drink greatly entices man to act contrary to right reason, as, alas, is evident from daily experience. Therefore, a special moral virtue must be posited for rightly moderating the affection for and use of intoxicating drink, and this virtue is sobriety.

Although sobriety is necessary for all men, nevertheless, as St. Thomas teaches,[1275] it is especially necessary for youths, women, and persons constituted in some dignity. Sobriety is indeed very necessary for **youths**, because on account of the heat of the blood there is in them a greater propensity toward concupiscences, which must be restrained through sobriety. Sobriety is most necessary for **women**, because, as sorrowful experience testifies, a woman given to drunkenness falls into every disgrace and vice. Sobriety is exceedingly necessary for **persons constituted in some dignity** (especially ecclesiastical persons), because reason ought to flourish in them for the instruction of others. But reason is disturbed by drunkenness, and persons constituted in dignity are customarily despised by inferiors if they frequently sin against the virtue of sobriety.

[1273] Rom. 12:3.

[1274] Cf. Cajetan, *Comm. in* 2, 2, q. 149, a. 4.

[1275] *S. theol.* 2, 2, q. 149, a. 4.

669. 2. On drunkenness.

Notion. Drunkenness can be taken in two ways: in one way **passively**, insofar as it signifies the very defect of reason which occurs, for example, from much wine having been drunk, from which it comes about that a man is not master of his reason; and according to this, drunkenness or intoxication is a certain morbid state and rather a punishment and defect following from a preceding fault. In another way it is taken **actively**, insofar as drunkenness names the act by which someone falls into this defect. This act can cause drunkenness in two ways: in one way, from an excessive strength of the wine beyond the expectation of the drinker; and thus drunkenness can occur even without sin (in this manner Noah is believed to have become drunk). In another way, from an inordinate concupiscence and use of wine or of another intoxicating substance; and thus drunkenness is posited as a sin and is contained under gluttony generally taken, as a species under a genus; for gluttony generally taken is divided into feasting and drunkenness.[1276] Drunkenness (insofar as it is a sin) can therefore be defined:

A voluntary excess in intoxicating drink (or substance), committed unto the violent privation of the use of reason from an inordinate concupiscence for intoxicating liquor, that is, without relation to preserving health.

It is said, 1. **a voluntary excess**; for no act is a sin if will is absent. Hence the sin of drunkenness is not present unless the excess and the privation of the use of reason could and ought to have been foreseen by the drinker. Moreover, it is required that an **excess** truly be present, that is, that the drinking be altogether contrary to right reason; hence, if there were drinking which even brought on the privation of the use of reason, but which was nevertheless undertaken according to right reason for the health of the body, the sin of drunkenness would not be constituted. This seems also to be the mind of St. Thomas when he writes: "Food and drink are to be moderated according as **befits bodily health**. And therefore, just as it sometimes happens that food or drink which is moderate for a healthy man is excessive for a sick man, so conversely it can also happen that what is excessive for a healthy man is moderate for a sick man. And in this manner, when someone eats or drinks much according to medical counsel in order to provoke vomiting, the food or drink is not to be considered excessive."[1277]

It is said, 2. **in intoxicating drink or substance**; for if the drink is not intoxicating, then the excess constitutes not the sin of drunkenness but of gluttony. Nevertheless, too much insistence is not to be placed upon the word **drink**; for those who, even by means of other substances, contrary to right reason deprive themselves of the use of reason commit the same sin, which is drunkenness.[1278] Sins of this kind are the abuse of opium, against which the Sacred Congregation for the Propagation of the Faith issued several statutes; likewise the abuse of morphine, which is so pernicious and which often grows into so-called morphinomania; and, in general, the abuse of all means which are called anesthetics or narcotics by physicians.

It is said, 3. **unto the violent privation of the use of reason**; for the use of reason is interrupted in a natural manner through sleep. If through drink there occurs a complete violent privation of the use of reason, there is also complete drunkenness; but if the use of reason is not completely lost, then there is imperfect drunkenness. He is considered, for example, to labor under complete drunkenness who, after taking intoxicating drink, does altogether unusual and irrational things; who no longer knows how to discern between good and evil; who on the following day does not remember even notable things which he said or did under the influence of intoxicating drink. Drunkenness, however, is considered imperfect if the imagination is indeed somewhat disturbed, the tongue not so ready, the senses somewhat clouded, and the feet unsteady, but the man nevertheless still remains master of himself and does nothing irrational.

It is said, 4. **from an inordinate concupiscence for intoxicating liquor, that is, without relation to preserving health.** There are indeed several theologians (Billuart, Concina, Collet) who do not admit this clause, teaching that drunkenness is present even if the intoxicating drink was taken not from inordinate concupiscence but for another reason. Nevertheless, this seems alien both to the truth and to the mind of the Angelic Doctor, who in the place cited above requires for the sin of drunkenness that the excess in intoxicating drink arise from an inordinate concupiscence and use of wine.[1279] Therefore, it does not seem unlawful that someone, in order to avoid an immediately impending typhoid fever, take (as is sometimes counseled by physicians) a large quantity of cognac, although he falls into drunkenness. For such a quantity of that intoxicating liquor is mere medicine, nor is any inordination present if someone for a brief time deprives himself of the use of reason in order to expel a disease;[1280] otherwise, it would also be unlawful to use chloroform and other narcotic medicines before a surgical operation, which certainly no one would say. Nevertheless, it is not lawful to infer from this that the sin of drunkenness is present only when someone has taken intoxicating liquor **with sensible pleasure**; for it often happens that a man exceeds in intoxicating

drink because of vain human fear, in order to drive away sadness, etc., without any pleasure; and nevertheless, even in these circumstances the sin of drunkenness is present. Therefore, it suffices for the sin of drunkenness that someone take intoxicating liquor to excess unto the privation of the use of reason, **without bodily health demanding this**. For drink was ordained by the Creator for the health of the body; consequently, man sins if he uses it otherwise, especially unto the privation of the use of reason. Therefore, it is never lawful to make oneself drunk except for preserving bodily health, because otherwise an inordination against the will of the Creator is always present. Hence those doctors (Lessius, Busembaum, Lacroix, Noldin, etc.) do not seem to teach correctly who assert that drunkenness is not evil **if it is induced from any honorable motive whatsoever**, "provided the harm of the temporary privation of the use of reason is sufficiently compensated by the good on account of which it is permitted and the disturbance of reason is not intended."[1281] St. Augustine[1282] says the contrary: "The drunken are accustomed to excuse themselves in such a way that they say: a powerful person compelled me to drink more, and at the banquet of a king I could not do otherwise. We put these things forward as excuses for excusing sins.... Even if it came to this, that it were said to you: Either you will drink, or you will die, it would be better that your sober flesh be killed than that your soul should die through drunkenness." Concina[1283] inveighs with sufficiently sharp satire against those authors: "Father Busembaum placed in the definition of drunkenness that it is unlawful without a just and grave cause. On the contrary, if a just and grave cause is present, then it becomes lawful and honorable. Is a city to be betrayed? Let the traitor be made drunk. Are you to be carried off into servitude? Let the captor be made drunk. Are you unjustly detained in prison? Make the guard drunk. Are you unable to sleep? Make yourself drunk. Does he refuse to disclose a secret which he is bound to disclose? Make him drunk. These things seem like dreams."[1284]

[1276] *S. theol.* 2, 2, q. 150, a. 1.

[1277] *Ib.*, a. 2 ad 3.

[1278] Billuart thinks that such a sin does not properly fall under drunkenness (*De temperant.* diss. 3, a. 2).

[1279] Cf. also *S. theol.* 1, 2, q. 88, a. 5 ad 1.

[1280] Thus also St. Alphonsus, *Theol. mor.* l. 5, n. 76.

[1281] Noldin, *De principiis* n. 345 (2).

[1282] Sermon 232, or more truly St. Caesarius, Sermon 245 in the appendix to the works of St. Augustine (Migne, *Patr. lat.* 39, 2307).

[1283] *De pecc. et virt.* l. 4, n. 12.

[1284] St. Alphonsus agrees, *Theol. mor.* l. 5, n. 76.

670. Malice of drunkenness. The malice of complete and imperfect drunkenness must be distinguished.

1. Complete drunkenness (as it has just been explained) is a mortal sin of its kind. Thus holds the opinion which today is most common and certain.[1285] It is proved:

a) From Sacred Scripture, which vehemently reproves drunkenness and numbers it among the sins which exclude from the kingdom of God: "Neither thieves, nor the covetous, nor drunkards ... shall possess the kingdom of God."[1286]

b) From St. Thomas, who has these words: "Concerning drunkenness it must be said that according to its nature it has the character of a mortal sin. For that a man without necessity render himself incapable of using reason, through which man is ordered to God and avoids many sins that occur, from the sole pleasure of wine, is expressly contrary to virtue."[1287] But since the Angelic Doctor so expressly teaches that drunkenness according to its nature is a mortal sin, other places in his works in which he does not speak so expressly are to

be interpreted according to the text of the *Summa theologica*, which is his principal and most perfect work. The places to be so interpreted are: II, dist. 24, q. 3, art. 6; *De malo* q. 7, art. 4 ad 1; *De malo* q. 2, art. 8 ad 3; cf. also Cajetan's Commentary on 2, 2, q. 150, art. 2. Certain theologians assert that St. Thomas when older changed the opinion he had previously proposed.

c) From reason. It is gravely repugnant to right reason: α) that a man knowingly and willingly deprives himself violently of the use of reason from the pleasure of wine, without the necessity of health requiring it; β) that he exposes himself to the danger of sinning; γ) that he furnishes the proximate occasion for several other evils, for example, of health, family, fortune, society, etc., as is customarily done through drunkenness; moreover, δ) drunkenness is a grave abuse of drink granted to us by the Creator solely for preserving the health of the body. For man is the steward of God and therefore cannot use things according to his own pleasure, but according to the will of God. Therefore, voluntary drunkenness is a mortal sin of its kind. Indeed, complete drunkenness, procured with full voluntariness and without regard for the utility of bodily health, seems always to be a mortal sin; and therefore we do not admit the opinion defended by Lacroix,[1288] Noldin,[1289] and others, who say that even complete drunkenness is not a mortal sin unless it is prolonged **beyond an hour**. For whenever complete drunkenness is present, its whole malice is also committed, which by no means consists solely in the inordinate and violent privation of the use of reason, as has been proved. Lightness of matter in drunkenness, therefore, is not to be weighed according to its **duration**, but according to the greater or lesser abuse of intoxicating drink.

2. Imperfect drunkenness is of itself only a venial sin. The reason is that such drunkenness is of itself a light inordination which does not destroy the use of reason. When a sufficient cause, even an extrinsic one, is present, for example, for driving away melancholy, at weddings and other worldly festivities, imperfect drunkenness is of itself no sin, unless scandal or another grave inconvenience nevertheless arises from it. Hence to drink unto hilarity is not indeed unlawful of itself,[1290] but a cleric, a head of a household, and other persons constituted in dignity ought to avoid hilarity of this kind, since grave scandal and other grave inconveniences can easily arise from it.

Authors ask here whether there is a grave sin of drunkenness if someone takes such a quantity of intoxicating liquor that drunkenness would naturally follow from it unless it were artificially prevented, for example, through some medicine or through vomiting deliberately procured. Those who place the essence of drunkenness in the violent privation of the use of reason through intoxicating drink must answer negatively, since the privation of the use of reason is not actually present; but in this case there certainly is an enormous excess in intoxicating drink, although the privation of the use of reason does not follow accidentally. Moreover, health is customarily gravely injured and scandal given by such a manner of acting. Hence, in practice, such gluttons are scarcely excused from mortal sin.

[1285] In the time of the Scholastics many authors, led by some apocryphal text of St. Augustine, thought that drunkenness of itself was not a mortal sin unless it was habitual or arose from an evil end; cf. Joseph Membres, *La sobriété*. Luther taught the same: "Then I would allow you a good bout of drunkenness, for drunkenness is tolerable, but habitual drunkenness by no means" (in Grisar, *Luther* II, 256).

[1286] 1 Cor. 6:10; cf. Isa. 5:11; Gal. 5:21.

[1287] *S. theol.* 1, 2, q. 88, a. 5 ad 1; cf. 2, 2, q. 150, a. 2.

[1288] In St. Alphonsus, *l.c.*

[1289] *De principiis* n. 346.

[1290] Noldin, *l.c.* n. 345.

671. Corollaries. 1. From what has been said it follows that drunkenness is never lawful, nor is it lawful directly to induce another to drunkenness. For just as it is not lawful to induce someone to fornication, as being contrary to the existing natural law, so also it is not lawful to induce someone to drunkenness. Several theologians indeed[1291] teach that it is lawful to induce someone even to formal drunkenness so that he may be prevented from committing a graver evil, for example, sacrilege or homicide. But this is rightly denied by others, because this is nothing other than positively persuading someone to sin. Certainly, it is lawful for a grave cause to cooperate **materially** in drunkenness, as was said above, I, n. 619, concerning cooperation; consequently, for a grave cause it is lawful to set intoxicating liquors before those who are foreseen to be about to make themselves drunk. In practice, the rules given concerning the indirect voluntary must then be applied, namely, when it is lawful to posit a cause from which a twofold effect follows, one good and the other evil.[1292]

2. **Sins committed in drunkenness are to be imputed in the manner in which they were foreseen.** Thus, at least, if there is question of complete drunkenness, by which the use of reason is wholly lost; for sins perpetrated in imperfect drunkenness are imputed at least partially even if they were not foreseen, because reason is then not totally clouded. Generally speaking, sins which were committed in a first complete drunkenness are not mortal sins, since they could not have been foreseen even in a confused manner. But sins which are committed during drunkenness by those drinkers who have an evil habit of making themselves drunk commonly must be imputed, because they could and ought to have been foreseen.

[1291] Busembaum, Lessius, Sanchez, Diana, Gobat, St. Alphonsus (*Theol. mor.* l. 5, n. 77), Göpfert (*Moraltheol.* II, n. 208), etc.

[1292] Cf. above, I, n. 57.

672. On the use of morphine, opium, cocaine, chloroform, ether, and other narcotic remedies.

The older authors do not speak of these things, since they were unknown at that time; but in our times these remedies are in daily use. All these remedies taken in a large quantity are deadly; indeed, sometimes even when employed moderately and according to the requirements of the art they cause sudden death. According to a modern statistical review, in every 3,000 instances in which chloroform was employed by physicians, death occurred once.[1293] Therefore, some danger to life, although not so proximate, is always joined with the use of medicines of this kind. There is added that such use, even moderate, if it endures for a longer time, gravely harms bodily health and provokes a most vehement craving for morphine, etc., which is called morphinomania and by other names by physicians, and which can be overcome with much greater difficulty than even an inveterate habit of drunkenness. From all these things it is evident that **the use of remedies of this kind is dangerous and is to be avoided unless necessity demands otherwise**. And this is all the more so because all these narcotic remedies interrupt the use of reason for a time. Hence it is a grave sin to use these remedies without a grave cause. Their use, however, seems lawful in the following cases, **provided nevertheless that they are always employed according to the rules of the medical art**:

1. In greater surgical operations, so that, namely, the sick person may yield himself without resistance to the hands of the surgeon and may not feel the bitter pains.
2. For alleviating pains even if they are not so atrocious, at least if there is question of a very brief narcosis, such as that which is caused by means of weaker narcotics, for example, *Lachgas* [laughing

gas], laughing gas, *gaz hilarant* [laughing gas]; or if there is question of an imperfect narcosis in which the use of reason is not wholly taken away. Such imperfect narcoses seem lawful in the extraction of a tooth and even in ordinary childbirth.[1294] Moralists do not agree whether in the article of death it is lawful to administer narcotic remedies to a dying person so that he may not feel pain so vehemently, or for procuring so-called euthanasia (εὖ, θάνατος [well, death]). It is certainly better if this is not done, since by patiently tolerating those pains the dying person may alleviate the punishments of sins and of purgatory; but if the pains are excessively atrocious, and especially if there is a founded fear that after receiving the sacraments the dying person may sin by sins of impatience and murmuring against God, there is no reason why the physician cannot administer soporific remedies, provided they do not shorten life.[1295]

[1293] Cf. Capellmann-Bergmann, *Pastoralmedizin*, 19th ed., 84.

[1294] Cf. *ib.*, 47.

[1295] Cf. Lehmkuhl, *Theol. mor.* I, 893; Marc, *Inst. mor.* I, 761.

673. Scholion. On remedies against alcoholism. In our days alcoholism, that is, the vice of indulging too much in intoxicating liquors, spreads widely in almost all regions, and most grave evils arise from it. It is scarcely possible to enumerate all the evils which are customarily produced by alcoholism. Excellent men have written entire books concerning the close relation between alcoholism and criminality.[1296] Every priest is bound, according to his ability, to commend and spread remedies against the pernicious evil of alcoholism. The first and best remedy is **good instruction** concerning these evils, and indeed instruction to be given not only frequently from the pulpit in church, but especially also to youths in schools and colleges. The second and efficacious remedy is the **good example** both of parents and especially of priests. A pastor would speak altogether in vain against alcoholism if he himself were a drinker or indulged too much in wine. The third remedy consists in those Catholic **associations of temperance or abstinence** which in our times have happily been established in all regions. Let priests not only refrain from holding these associations in little account, but also prudently foster them. Already innumerable men and women addicted to drunkenness have been cured of their vices by the aid of these societies. Finally, the **diligent exercise of the Christian religion**, which inculcates temperance and mortification, furnishes an efficacious remedy. But if all these remedies are either despised by the drunken or have produced no effect, then care must be taken that such persons be received into some hospital designated for curing alcoholics. This last remedy is almost always necessary for those who are addicted to morphinism. For experience establishes that morphine addicts of this kind have lost all resistance of the will.

[1296] Cf. Hugo Hoppe, *Alkohol und Kriminalität*, Wiesbaden, 1906; C. Wright, *Influence of Intemperance upon Crime*, Boston, 1889.

Article IV. On Chastity and Virginity

This article is divided into two sections: 1. on chastity; 2. on virginity.

§ 1. On Chastity

674. Notion. Chastity is the virtue moderating pleasures in venereal matters according to the dictate of right reason.

There is no reason for us to prove that chastity taken in this manner is a special virtue; for it has 1. a special matter, namely, venereal pleasures to be moderated; and 2. a special and grave difficulty to be overcome, namely, grave temptations against chastity. Moreover, where there is a special matter and a special difficulty to be overcome, there a special virtue is always required. Sometimes, however, chastity is taken in an improper and metaphorical sense, and then it is the moderation of the pleasure which arises from the conjunction of the mind with a beloved object. St. Thomas says concerning this matter: "For just as the pleasure of venereal things consists in bodily commingling (concerning which chastity properly exists, and the opposite vice, namely, lust), so also in a certain spiritual conjunction of the mind with certain things there consists a certain pleasure, concerning which there is a certain spiritual chastity metaphorically so called, or even spiritual fornication likewise metaphorically so called. For if the mind of man delights in spiritual conjunction with that to which it ought to be joined, namely, with God, and refrains from being delightfully joined to other things contrary to the due order of God, it will be called spiritual chastity, according to this: *For I have espoused you to one husband, that I may present you as a chaste virgin to Christ.*[1297] But if the mind is delightfully joined, contrary to the due order of God, to any other things whatsoever, it will be called spiritual fornication according to this: *But thou hast prostituted thyself to many lovers.*[1298] Chastity taken in this last sense is a general virtue, because through every virtue the human mind is withdrawn from being delightfully joined to illicit things. Principally, however, the nature of this chastity consists in charity and in the other theological virtues, through which the mind of man is joined with God,"[1299] just as apostasy from the faith is specially called spiritual fornication. - Here we speak only of chastity insofar as it is taken in its proper sense and insofar as it is a special virtue distinct from abstinence.

[1297] 2 Cor. 11:2.

[1298] Jer. 3:1.

[1299] *S. theol.* 2, 2, q. 151, a. 2.

675. Distinction. Chastity was distinguished by the ancient theologians as threefold, namely, conjugal, widowly, and virginal. **Conjugal chastity** abstains from illicit carnal pleasures in marriage and uses licit pleasures moderately. **Widowly chastity**, after the licit use of venereal pleasure in a past marriage, abstains from it thereafter. This widowly chastity indeed is wont to carry great difficulties with it, because most vehement temptations arise on account of the memory of pleasures previously had. **Virginal chastity** has never experienced venereal pleasures, from which it also wills to abstain altogether thereafter.[1300]

Note. Although chastity and pudicity are often not distinguished, nevertheless, strictly speaking, pudicity is not chastity itself, but a special **circumstance** of it. For pudicity[1301] regards rather the external signs of chastity and concerns immodest looks, touches, kisses, speech, etc. Pudicity, therefore, is as it were the guardian and herald of chastity. "Pudicity is ordered to chastity, not as a virtue distinct from it, but as expressing a certain circumstance of chastity. Sometimes, however, the one is used for the other."[1302]

[1300] *S. theol.* 2, 2, q. 152, a. 3, ad 5.

[1301] In German: *Schamhaftigkeit* [modesty, pudicity].

[1302] *S. theol.* 2, 2, q. 151, a. 4.

676. There is no reason for us to speak in many words about the excellence and usefulness of chastity. For the matter is manifest. "O how beautiful is the chaste generation with glory: for the memory thereof is immortal; because it is known both with God and with men."[1303] The usefulness of chastity is perceived immediately if

the innumerable evils which are wont to arise from its violation, that is, from lust, are considered. For all history, both sacred and profane, is full of examples demonstrating the ruinous effects of lust, for example, Sodom and Gomorrah, the adultery of David, the lust of Herod and of several Roman emperors. Do not suicides, homicides, the ruin of fortune, syphilitic disease, and six hundred other evils customarily proceed from lust even in our times? - Therefore, while lust prepares ruin of every kind, on the contrary the virtue of chastity ennobles body and soul, promotes the good of the family and of society, and exercises very many good works. Hence the virtue of chastity is greatly to be cultivated by all; but adolescents especially are prudently to be instructed concerning the very many dangers to chastity and concerning the manner of efficaciously avoiding these dangers. Human generation is also to be explained summarily and chastely to them when they have attained puberty (not before), lest they learn it with moral harm from depraved school companions.[1304]

[1303] Wis. 4:1.

[1304] Cf. Sacred Congregation of the Holy Office, March 21, 1931 (*Act. Ap. Sed.* XXIII, 118).

§ 2. On Virginity

677. Notion. Virginity is taken in a threefold sense:

1. **For integrity of the flesh**, which is lost in males through sinful pollution, and in females through the voluptuous rupture of the hymen or through so-called female pollution. Therefore, this virginity is not violated by internal sins of lust, indeed not even by external non-consummated sins; for it is not something moral or meritorious, but something merely physical.
2. **For the state of celibacy.** Thus all who have never been joined in marriage are in the state of virginity. If this state is assumed for the love of God or another supernatural motive, then it is more perfect than the state of marriage, as the Council of Trent defined: "If anyone says that the married 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."[1305] But if someone chooses the state of celibacy on account of another, purely natural motive, for example, because he does not wish to undertake the burdens of marriage, it is not better than the state of marriage, but on the contrary is more imperfect, since marriage is a sacrament with which many graces are connected.
3. **For the moral virtue**, which is the firm will of abstaining perpetually from all venereal pleasures in a subject never corrupted. Therefore, the virtue of virginity differs from the virtue of chastity principally in this, that virginity cannot exist except in a man never corrupted by voluntary lust; but chastity can exist in any man whatsoever, even one previously corrupted. Integrity of the flesh is related accidentally to virginity considered in this manner; and therefore the virtue of virginity is not lost through violent violation or through a surgical operation by which the integrity of the flesh is violated. Hence virginity is no more lost by such physical violation than by the cutting off of a hand or foot. But this virtue of virginity is irreparably lost through a consummated act of lust, or gravely sinful pollution. The reason is that the integrity of the flesh is then voluntarily and illicitly violated. Even if pollution is excluded, virginity is lost (but reparably) through any grave sin whatsoever against chastity, because then the man falls away from the resolution of abstaining perpetually from every venereal pleasure; but authors commonly teach that virginity lost through such non-consummated sins of lust, that is, without pollution, can be repaired through penance. Billuart teaches the contrary.[1306]

For the virtue of virginity insofar as it is a special virtue, voluntary incorruption of the flesh does not suffice; otherwise all young people who live chastely but wish to enter marriage at the opportune time would have the special virtue of virginity distinct from the virtue of chastity, which does not seem to be true. Therefore, theologians teach that for the virtue of virginity there is required a firm resolution of preserving chastity perpetually, and indeed in service of God; for the virginity of Vestals or of other women who preserve virginity on account of profane motives is not a special virtue.

St. Thomas seems to require still further a vow of virginity, writing: "Virginity, insofar as it is a virtue, implies a resolution confirmed by vow of preserving integrity perpetually. For Augustine says in the book *On Virginity*, c. 8, that through virginity integrity of the flesh is vowed, consecrated, and preserved for the Creator Himself of soul and flesh. Hence virginity, insofar as it is a virtue, is never lost except through sin."[1307] This opinion of St. Thomas, although it is opposed by many ancient and by almost all modern authors, is better, because the reason adduced seems inescapable, namely: no virtue (according to its formal element) is lost without sin. But a simple resolution of virginity can be violated or changed without sin, when, namely, because of changed circumstances, someone who previously resolved upon virginity now wishes to be joined in marriage. On the contrary, when someone has bound himself by a vow to virginity, he can never by his own authority change this resolution without sin. - Moreover, this question is not of such great importance for practice.

From what has been said it follows that for the essence of virginity, insofar as it is a special virtue, two things are required: 1. a subject never corrupted through voluntary pollution or violation of the hymen; 2. a firm and perpetual resolution (confirmed by vow), for the sake of God, never voluntarily to admit venereal pleasure. If either is lacking, virginity is no longer a special virtue, but is reduced to the virtue of chastity.

[1305] Session 24, canon 10 (Denzinger, n. 981).

[1306] *De virg.* a. 5. This author nevertheless admits that virginity lost through morose delectation alone can be repaired.

[1307] *S. theol.* 2, 2, q. 152, a. 3, ad 4. Cajetan explains and defends this doctrine excellently in his commentary on this passage.

678. Morality and excellence of virginity. Virginity, insofar as it is a state chosen for the service of God, is not only licit, but also very meritorious before God. This is clear from Sacred Scripture, which often commends this virginity. St. Paul says: "Now concerning virgins I have no commandment of the Lord, but I give counsel.... Art thou loosed from a wife? Seek not a wife."[1308] In the Apocalypse a special heavenly reward is promised to virgins,[1309] and therefore theologians admit a special aureola of virgins in heaven. - The holy Fathers extolled the virtue and state of virginity with great praises. Thus, for example, John Chrysostom,[1310] St. Ambrose,[1311] St. Augustine, St. Jerome, St. Anselm, St. Bernard, and many others commended virginity.[1312] - The lawfulness and excellence of virginity can also be proved clearly by natural reason. For pious virginity abstains from every venereal pleasure for this purpose, that it may be free to devote itself more readily to divine contemplation; for St. Paul says: "The unmarried woman and the virgin thinketh on the things of the Lord, that she may be holy both in body and in spirit. But she that is married thinketh on the things of the world, how she may please her husband."[1313] - Moreover, this motive is assuredly excellent, and the means employed is licit.

[1308] 1 Cor. 7:25, 27.

[1309] Apoc. 14:4.

[1310] *Book on Virginity.*

[1311] *Three Books on Virgins to Marcellina* (his sister), in which work, as St. Jerome says (Ep. 22 to Eustochium, n. 22), "he poured himself out with such eloquence that he sought out, expressed, and arranged whatever pertains to the praises of virgins." The same St. Ambrose treats virginity in several other works, for example, *Book on Virginity*, *Book on the Institution of a Virgin*, *Exhortation to Virginity*, etc.

[1312] Cf. Migne, *Indices Patr. lat.*, series 17.

[1313] 1 Cor. 7:34.

679. Objections against virginity. 1. Protestants object to the admonition of the Creator: "Increase and multiply, and fill the earth."[1314] St. Thomas already replied: "The precept given concerning generation regards the whole multitude of men, for which it is necessary not only that it be multiplied corporeally, but also that it advance spiritually. And therefore sufficient provision is made for the human multitude if some devote themselves to carnal generation, while others, abstaining from this, devote themselves to the contemplation of divine things for the beauty and salvation of the whole human race; just as also in an army some guard the camp, some carry the standards, and some contend with swords: all of which things nevertheless are due to the multitude, but cannot be fulfilled by one person."[1315] - And in truth no one can say that in any kingdom the number of the people has ever been diminished because of virginity freely chosen in service of God.

2. It is further objected that virginity is something contrary to nature and to bodily health, and that therefore so many physical and moral evils arise from enforced celibacy. - It is answered: Virginity is by no means something unnatural, because otherwise so many men (even Protestants and Rationalists) who remain celibate on account of other motives would be in an unnatural state. Moreover, celibacy renders a man more apt for accomplishing spiritual and scientific labors; and therefore not a few men, because of love of science and art, remained free from marriage, for example, Kant, Beethoven, Michel-Angelo, etc. That virginity does not harm bodily health is conceded today by physicians and is manifestly proved from the common longevity of those who lead a celibate life. Grave moral evils can indeed arise from enforced celibacy, but the Catholic Church compels no one to celibacy and does not admit to the vow of virginity except those who, after serious probation, have undertaken it voluntarily.

Note. When penitents ask a confessor whether by some act, for example, pollution, they have lost virginity, for the most part it is better to give an evasive response by saying that every sin is effaced by true penance than to answer affirmatively; because otherwise penitents easily lose heart and afterward loosen the reins of lust.

In some monasteries of nuns there existed a custom of consecrating virgins. Authors then asked whether a nun to be consecrated ought to confess the fault if she had been secretly corrupted. The negative opinion is sufficiently probable, because no one is bound to defame herself. Moreover, all agree that the bishop can dispense with a nun who secretly lost virginity, so that she can be consecrated and veiled like the other virgins, especially if this cannot be omitted without infamy.[1316]

[1314] Gen. 1:28.

[1315] *S. theol.* 2, 2, q. 152, a. 2, ad 1.

[1316] Cf. Salmanticenses, *Curs. theol. mor.* tr. 26, c. 1, n. 75.

Article V. On the Vice Opposed to Chastity, Namely, Lust

680. Preliminary note. There are two kinds of crimes which draw many men into hell: the concupiscence of the flesh and the covetousness of riches. Each of these crimes is forbidden by a **twofold** precept: the

concupiscence of the flesh by the sixth and ninth; but the covetousness of things by the seventh and tenth precepts; while a vice of every other kind is prohibited by only **one** precept. Yet it is not lawful to deduce from this that the sins of lust and avarice are graver than all the others; for it is certain that some sins, for example, blasphemy, perjury, hatred, etc., are graver than they. Nevertheless, because men are more vehemently carried away by passion into these two vices, God therefore willed to deter men from this ruin by a twofold express precept. - The matter of the sixth and ninth precepts is extensive, filthy, and pestilential, raging to the destruction of bodies no less than of souls; it is more difficult to explain, not because it is difficult to show its repugnance to reason and the divine law, but because it is so sticky, so unspeakable, that discourse about it can scarcely be had without the tongue, mind, and ears being defiled. Therefore the Catechism of the Council of Trent wisely admonishes:[1317] "In explaining this very matter, let the pastor be exceedingly cautious and prudent, and let him recall in veiled words the matter which demands moderation rather than copiousness of speech. For it is to be feared lest, while he endeavors to explain at length and too copiously the ways in which men depart from the prescription of this law, he may perhaps fall into discussion of those things from which matter for exciting lust rather than a means of restraining it is wont to issue." Would that several casuists, who rolled this pitch with their pen more than was just, had taken this most salutary admonition more to heart. The modesty implanted by nature condemns, execrates, and shudders at a great part of those questions which in certain authors are discussed broadly to the nausea of readers. A minute knowledge of all these things is not necessary for a confessor, because several foul circumstances added to lewd acts do not notably change the morality of the act. Some clear principles and certain practical rules plainly suffice for resolving all cases. Hence we endeavor to set forth briefly and clearly those things which are necessary to know concerning this filthy matter, inviting the reader to pray with us: Burn with the fire of the Holy Spirit our reins and our heart, O Lord, that we may serve Thee with a chaste body and please Thee with a clean heart, through Christ and the Blessed Virgin. Amen. - We divide the whole tract on lust into five sections: 1. on lust in general; 2. on internal sins; 3. on external non-consummated sins; 4. on external sins consummated according to nature; 5. on external sins consummated contrary to nature.

[1317] Part III, c. 7, q. 1.

§ 1. On Lust in General

681. 1. Notions. In a broad or even metaphorical sense, lust signifies every excess or abundance. Thus, for example, we speak of luxury or excess in food, clothing, buildings, and gardens; thus lambs and kids frisking, trees putting forth more abundant branches, and fields excessively fertile are said to luxuriate.

But in the strict and proper sense lust is customarily defined: **an inordinate appetite for venereal pleasure**. What venereal pleasure is[1318] was already said above. For it is that carnal pleasure which arises from an agreeable commotion and alteration of the members serving generation and reaches its highest degree in carnal intercourse or in pollution. It is called venereal pleasure because the ancient Gentiles imagined Venus to be the goddess of this pleasure. It must be recalled that this venereal pleasure is altogether distinguished from sensitive or organic pleasure, and *a fortiori* from spiritual pleasure.[1319] - Venereal pleasure can be licit if the right order of reason is preserved. But it has been established by the Creator that this pleasure is never had licitly and according to right reason except in the use of legitimate marriage.

2. Distinctions. a) Lust is distinguished into **consummated and non-consummated**. The former produces complete venereal pleasure, which, namely, satisfies nature, since it brings pleasure to its ultimate terminus; or, in other words, it is the same pleasure which is also wont to occur in the act of generation. The latter

causes incomplete venereal pleasure, which, namely, arises from thoughts, speech, looks, touches, etc., and is joined with some commotion of the genital parts, but does not proceed to the emission of human seed in the male or of another fluid serving generation in the female. But when there is altogether no commotion of the genital parts, venereal pleasure is not wont to be present either.

b) Consummated lust is subdivided into that **according to nature** and that **contrary to nature**. Consummated lust which is according to nature comprises six sins, concerning which there will be discussion below in § 4. It is that from which generation is of itself possible. - Consummated lust contrary to nature renders generation impossible and includes three sins, which will be treated below in § 5.

c) Non-consummated lust is subdivided into **internal** sins, for example, lustful joy or desire, which will be treated below in § 2; and **external** sins, for example, lustful touches, which will be discussed below in § 3.

Note. Although boys and girls before puberty, eunuchs, those who have undergone vasectomy, etc., cannot emit true seed, they are nevertheless capable of complete venereal pleasure.

3. Moral malice. In order to judge rightly concerning the malice of lust, it is necessary to distinguish between lust directly and indirectly willed.

[1318] In German: *geschlechtliche Lust*; in French: *délectation sexuelle* [sexual pleasure].

[1319] Cf. above, n. 643.

682. Principle 1. Venereal pleasure directly willed outside legitimate marriage is a mortal sin from its whole genus, so that it admits no smallness of matter.

Thus holds the most common opinion against Caramuel[1320] and a few other older authors, who admit smallness of matter even in lust directly willed. Venereal pleasure directly willed is present not only when it is directly intended, but also when someone perceives himself to be shamefully aroused and takes complacency in this.

The principle stated is proved by the following reasons:

1. Venereal pleasure is ordered to the act of generation, which the Creator for most just causes gravely prohibited outside legitimate marriage.[1321] Therefore, fittingly, the Creator gravely prohibited not only the highest venereal pleasure which is found in the act of generation, but also every other such pleasure directly willed. For, as experience testifies, man is exceedingly prone to venereal pleasure, which, once arisen, is wont to be so vehement a passion that reason is quickly clouded and the will is violently carried away. Hence, just as a man placed at the edge of a precipice ought not to take even a few steps downward without evident danger of death, so neither can he procure a small venereal pleasure without proximate danger of proceeding further even to the completed act of lust. Therefore, just as a man is bound under grave obligation to avoid not only grave sin itself but also its proximate danger, so he ought under grave obligation to avoid not only a perfect act of inordinate lust but also any light act whatsoever directly willed. The words of St. Paul seem to be understood of this directly willed venereal pleasure:[1322] "Now the works of the flesh are manifest, which are fornication, uncleanness, immodesty, lust ... since they who do such things shall not obtain the kingdom of God."
2. From proposition 40 condemned by Alexander VII: "The opinion which says that a kiss had for the sake of the carnal and sensible pleasure which arises from the kiss, with the danger of further consent and pollution excluded, is only venial, is probable."[1323] Theologians indeed dispute in what sense this

proposition was condemned; nevertheless, this seems certain: its falsity consists in this, that it supposes that a kiss had for the sake of carnal, that is, venereal, pleasure does not by that very fact induce danger of consent to graver acts.

It cannot be objected against the stated principle that smallness of matter is granted in the inordinate lust or venereal pleasure of **spouses** directly willed, as theologians commonly teach, and therefore also in any other lust whatsoever. For the disparity is that between spouses there is no danger of consent to a completed act gravely sinful. For since the highest pleasure in the act of generation itself is licit for spouses, other venereal pleasures also are not so gravely prohibited to them, provided, however, that they are not directly opposed to the end of marriage.

Note. The older theologians distinguished excellently in venereal pleasure between *placentia* and *complacentia*. *Placentia* is the physical venereal pleasure itself, which can arise from many physiological and psychical causes and of itself has no morality; but *complacentia* is illicit consent to pleasure of this kind; if this consent is perfect, it is gravely sinful, but when it is semi-deliberate, it is only a venial sin. Hence it is rightly said: "Sensation does no harm where there is no consent."[1324]

[1320] *Theol. fund.* n. 1708. The author, however, speaks rather theoretically; for he himself asserts: "In lust, on account of the annexed danger, smallness of matter is not granted in practice." Amadaeus Guimenius (Matthaeus de Moya), *De peccatis*, prop. XI, wrote about this matter quite tastelessly and calumniously.

[1321] Cf. below, where the malice of fornication is treated.

[1322] Gal. 5:19 ff.

[1323] Denzinger, n. 1140.

[1324] Among the works of St. Bernard, *De conscientia aedificanda*, c. 8 (Migne, *Patr. lat.* 184, 515).

683. Principle 2. Venereal pleasure only indirectly willed is not a mortal sin from its whole genus, but admits smallness of matter.

Thus theologians most commonly teach, at least as to the sense, although some diversity exists among them as to the words.[1325] Venereal pleasure indirectly willed is that which is in no way desired in itself, but which is joined with an action which someone posits; for example, a young man reads a book foreseeing that carnal pleasure will follow from this reading.

Proof. As is clear from the first principle, directly willed venereal pleasure therefore admits no smallness of matter because the proximate danger of consent to a completed act is always present. But such danger often does not exist when an action honest or indifferent in itself is posited, from which venereal pleasure is indeed foreseen but is not intended; and therefore sometimes no sin, and sometimes only a light sin, is present, according as a sufficient or not sufficiently weighty cause exists for positing the action from which it is foreseen that venereal pleasure will follow. But when not only venereal pleasure is foreseen, but also consent to that pleasure, then it is not lawful to posit the action; otherwise a mortal sin is committed.

Practical rules. In order to judge in practice concerning the sinfulness of venereal pleasure indirectly willed, the rules given concerning the indirect voluntary are to be applied. It is therefore required: a) that the action posited be honest in itself, or at least indifferent. Actions which are outside the genus of lust and produce carnal movements only accidentally, such as eating abundantly, riding horseback, using a hot bath, sitting or lying in a certain position, are actions honest or indifferent in themselves. But actions which of themselves indeed offend pudicity, such as looks, embraces, kisses, touches, etc., are not themselves intrinsically evil, even

if they are exercised outside legitimate marriage; for otherwise they could never be performed licitly, for example, by a physician, by parents, etc., which assuredly no one would say. The Angelic Doctor writes to the point:[1326] "Something is said to be a mortal sin in two ways: in one way, **according to its species**; and in this way a kiss, embrace, or touch according to its nature does not denote a mortal sin; for these things can be done without lust, either on account of the custom of the country, or on account of some necessity or reasonable cause. In another way something is said to be a mortal sin **from its cause** [from its motive].... Therefore, when kisses and embraces and things of this kind are done for the sake of pleasure of this kind, it follows that they are mortal sins. **And thus alone are they called lustful.**" - Hence in the genus of lust, only pollution (perfect or begun) or intercourse had outside legitimate marriage seems to be an action **intrinsically evil**. For this action voluntarily posited can never be licit. - It is then required b) that venereal pleasure not be intended; otherwise it is always a mortal sin, as is clear from the first principle. - Finally, it is required c) that a proportionately grave cause be present for positing the action; which cause ought indeed to be the graver, the more the action influences venereal pleasure (especially in view of the circumstances of the person). For in this matter of venereal pleasure much depends upon the circumstances of persons, and what for one man constitutes a grave sin on account of grave danger of consent to venereal pleasure is no sin for another, because no danger of consent is present. Hence in practice it is exceedingly difficult, not to say impossible, always to determine with certainty whether in some venereal pleasure **indirectly willed** there was a mortal sin or not. But the confessor ought to turn penitents away even from the danger of any lust whatsoever, and ought not so easily to believe those who claim that in matters sufficiently lewd they felt no shameful carnal movement or pleasure.

[1325] Cf. Billuart, *De luxuria* diss. 5, a. 2.

[1326] *S. theol.* 2, 2, q. 154, a. 4.

684. Scholion. On the effects of lust. Lust is a capital sin,[1327] because very many other sins arise from it. After St. Gregory, St. Thomas assigns eight vices which are wont to be born as daughters from lust, namely: blindness of mind, precipitation, inconsideration, inconstancy, inordinate love of self, hatred of God, attachment to the present world, and horror of the future.[1328] From blindness of mind, which arises from lust, the worst evils are wont to spring forth. For the lustful man, given over to carnal pleasures, is wont to do the most foolish things. Hence Solomon, the wisest man, fell into idolatry because of love of women; King David had to sustain the severest punishments because of the adultery committed. How many calamities are wont to be produced from lust for bodily health, for the peace of the family, for honor, for reputation, for goods of fortune, etc.! Therefore natural reason itself dictates that lust is diligently to be avoided.

[1327] Cf. above, I, n. 420.

[1328] Cf. *S. theol.* 2, 2, q. 153, a. 5.

§ 2. On the Internal Sins of Lust

There are three internal sins of lust: 1. morose delectation; 2. joy; 3. desire.

685. 1. Morose delectation in general can concern diverse sins, but it occurs principally in the matter of lust, and then it is **complacency concerning a lustful thing represented through the imagination**. We treated morose delectation in general more fully above, I, n. 395 ff., when there was discussion of internal sins in general; and therefore here we note only a few things. Morose delectation in lust is not concerned with the **speculative knowledge** of a lustful thing, nor with the **ingenious manner** in which an evil work was done;

for such delectations are licit, at least if danger of consent to the venereal thing itself is absent. Morose delectation in the matter of lust is customarily called by the faithful in confession: impure thoughts (*unkeusche Gedanken, pensées impures*).

Malice. Venereal morose delectation is a grave sin, because such complacency is nothing other than a voluntary affection toward the lustful thing itself, even if it is not to be completed in deed. For no one would take delight in the thing represented unless he loved the thing itself. Moreover, this morose delectation is wont to cause carnal movements and to introduce serious danger of an evil desire or of the external sinful act itself. In practice it is often most difficult to judge whether someone gave full consent to morose delectation or not, and therefore whether he sinned gravely or lightly. This can be held as a rule: If morose delectation quickly passed, or if a man has not sinned externally against chastity for a notable time, there is at least a presumption that consent was not perfect.

686. Specification. Theologians dispute whether venereal morose delectation is specified from the object with its circumstances, or from the object alone; for example, whether someone is bound to confess not only that he took delight in obscene things, but also, for example, in represented fornication or adultery. Each opinion, namely, the affirmative and the negative, is theoretically probable. In practice one must proceed in this manner: The faithful who accuse themselves of voluntary impure thoughts are to be asked whether they also desired something shameful. For not rarely there is joined with impure thoughts an at least inefficacious desire for an evil work. If they deny this, it is not necessary for confessors to inquire further concerning the precise object of the thought. But if they affirm that impure desires were joined, the confessor of himself would indeed be bound to investigate the circumstances of the desired object, for according to all theologians impure desires are specified from the object and circumstances, as will be said below; but because this investigation is frequently too arduous and renders confession burdensome, because moreover the faithful are not wont sufficiently to distinguish between thoughts and desires, and finally because a more extensive investigation would often be without any fruit, therefore sometimes there will be cause for omitting further questions concerning the circumstances of the desire also.

The remedies against evil thoughts are flight from the occasion, ejaculatory prayer, and the conversion of the mind to another licit object which is apt to capture the attention.

687. 2. Evil joy in the matter of lust is **free complacency concerning a past illicit venereal act**. Therefore, if the venereal act was licit, as if a widow took delight in a past conjugal act, the joy would not be illicit of itself. Accidentally, however, because of the carnal movements which are wont to arise even from joys of this kind, it is better and safer for such joys licit in themselves to be avoided.[1329] But if there is proximate danger of consent to venereal pleasure, then joy concerning any past venereal act whatsoever is to be avoided.

Joy concerning a lustful act perpetrated is specified from the object and circumstances; hence joy concerning fornication committed is distinguished in species from joy concerning adultery perpetrated. Nevertheless, penitents rejoicing concerning sins perpetrated are not wont to represent them to themselves with all their circumstances, but rather in a confused manner; therefore, and also because of the moral impossibility of obtaining a more precise accusation, the confessor can sometimes abstain from investigating the circumstances, provided that an illicit desire was not joined to the evil joy.

[1329] Cf. above, I, n. 401.

688. 3. Impure desire is **complacency concerning an illicit venereal act to be done**. It is twofold: **efficacious**, when someone truly intends to complete the shameful thing thought of; **inefficacious**, when

someone would indeed wish to perpetrate the shameful thing if he could, but cannot do so because of an impediment.

Malice. Every impure desire (even an inefficacious one) is gravely illicit (if it is fully voluntary) and is of the same gravity as the external work itself which is desired. This is clear from the words of Christ: "Whosoever shall look on a woman to lust after her, hath already committed adultery with her in his heart."[1330] But what is said here concerning adultery is valid also concerning all other shameful acts desired either efficaciously or inefficaciously. Therefore penitents ought to accuse not only the object in general, but also its circumstances changing the species; for, for example, the desire of fornication is one thing and the desire of committing adultery another. In practice, however, not rarely penitents are so uninstructed, the number of desires is so great, and the time since the last confession is so long, that there is a moral impossibility both for the penitent and for the confessor of investigating all the circumstances of the individual desires. Then it is better to abstain from otherwise fruitless questions.

Theologians ask here whether betrothed persons can desire future intercourse, and whether it is lawful to desire merely natural pollution for relieving nature. Theoretically speaking, these desires are not illicit, since they concern an object licit in itself, but because of the dangers joined with them they are seriously to be avoided.[1331]

[1330] Matt. 5:28.

[1331] Cf. above, I, n. 401.

§ 3. On the External Non-Consummated Sins of Lust

Those sins of lust are called non-consummated in which pollution is not had, as was already said above. They are of two kinds: carnal movements and acts of immodesty.

689. Carnal or venereal movements are the commotions of the genital parts and of the humors existing in those organs;[1332] they arise either from physiological causes, for example, excitation of the nerves or a flow of blood, or from moral causes, for example, thought, impure conversation, etc. These movements directly willed are always a mortal sin, as is clear from the first principle stated above; for they are venereal pleasure. But if they are involuntary, they are no sin at all, for there is no sin without consent of the will. Finally, if they are voluntary in their cause, judgment concerning their morality must be made according to the rules concerning the indirect voluntary already indicated several times. A cause which accidentally produces movements of this kind is not morally evil, provided that it is honest in itself; but the more it influences those movements, the greater is the excusing reason required, as will presently be said concerning acts of immodesty. Carnal movements of this kind are customarily suppressed easily and efficaciously: a) if their cause is removed, insofar as this is possible; b) if the mind is distracted to other things.

[1332] They are wont to be joined with erection of the male member or of the female clitoris; likewise with some slight outward distillation. The morality of this distillation is to be judged in altogether the same manner as the morality of carnal movements.

690. Necessary resistance. Theologians dispute whether it is a mortal sin if someone, after full advertence of reason, does not repress the lustful movements of concupiscence, but conducts himself negatively, neither consenting nor dissenting.[1333] Whatever may be true concerning the speculative solution of this controversy, in practice an act of displeasure of the will must be posited; if this is seriously posited, it is not necessary in addition to resist positively these movements, which of themselves are natural and are wont to cease more quickly if a) a man does not concern himself much with them, b) he turns his mind to other things, or c) he

changes his occupation or the position of his body. Moreover, if movements of this kind arise from a voluntary and less licit cause, for example, from reading a lustful book, from looking, or from illicit kisses, then such causes must be removed; but if they arise from a licit and necessary cause, internal complacency must indeed be seriously restrained, but externally it is lawful to conduct oneself passively. Otherwise an intolerable burden would be imposed, and external resistance would harm rather than benefit. Hence, for example, if a confessor suffers such carnal movements, even vehement ones, from hearing a confession, he must indeed seriously withhold internal consent from them, but externally he can conduct himself passively. There are pious persons, but weakened in their nerves, who suffer carnal movements from actions not only indifferent but even holy, for example, by looking at a crucifix. Let the confessor console such persons and prudently induce them to despise carnal movements of this kind.

[1333] Billuart treats this question excellently (*De luxuria* diss. 6, a. 15, § 2); he is also rightly and deservedly reckoned among the best authors in all other questions touching upon the matter of lust, and far surpasses very many casuists.

691. Acts of immodesty are called those which are wont to have a proper relation to or influence upon venereal pleasure, such as shameful looks, touches, kisses, etc. Noldin deservedly writes concerning them:[1334] "The true doctrine must be held, that shameful looks and touches are opposed to the sixth precept, not of themselves and by their nature, but solely because they introduce the danger of venereal pleasure (pollution) and the danger of consent to it. Therefore, if there were persons (which assuredly will rarely occur) who from these actions suffered no danger either of a shameful movement or of consent to shameful pleasures, those actions would contain for them only the sin of an idle act of sensuality, but by no means a sin against chastity." - Therefore, the whole malice of these acts consists in the danger of venereal pleasure undertaken without a sufficient reason.

Two things are certain in this matter, namely: 1. not only immodest acts, but also any acts whatsoever honest in themselves, posited **for the sake of venereal pleasure**, are mortal sins, because an evil end vitiates every act; 2. these acts, since they are not sinful in themselves, can be had licitly for a reasonable cause, for example, for curing an infirmity. The sole difficulty, therefore, is how great and what kind of sin these acts are when exercised, not indeed from a lustful end, but **without a reasonable and sufficient cause**. The danger of consent to venereal pleasure arising from acts of this kind must be weighed a) from the nature of the act itself, and b) from the condition of the person.

In order to judge concerning the nature of the act, authors are accustomed to distinguish the honorable, less honorable, and dishonorable parts of the body. **Honorable parts** are those which are exposed to the sight of all, such as the hands, face, etc.; the breast and legs are held to be **less honorable parts**; the genitals and the parts altogether proximate to them are considered **dishonorable parts**. These things, however, hold only in our regions and with respect to adult persons; for with respect to infants scarcely any part can be called truly dishonorable. But in other regions, for example, in Turkey and in Chinese regions, judgment is made differently concerning the honorableness of members.

[1334] *De sexto praecepto* n. 51.

692. Specific malice. According to the common opinion of modern authors, shameful looks differ in species from shameful touches; indeed, a shameful look at a woman differs in species from a shameful look at a man. Billuart teaches otherwise:[1335] "I think ... that touches, kisses, and looks are not distinguished in species among themselves in the genus of lust; for since they are not evil of themselves, as has been said, but only by reason of the carnal commotion or pollution or intercourse which they excite and toward which they tend, they have

among themselves the same species of malice, namely, of carnal commotion, or pollution, or intercourse, etc. Hence, in my judgment, a penitent would satisfy who said: So many times I excited in myself or in another a carnal commotion or pollution, while remaining silent as to whether it was through touches, looks, or kisses, provided that he explain his own condition and that of his accomplice; *a fortiori* he would satisfy by saying: So many times I took carnal pleasure concerning such or such a person, without explaining whether it concerned touches, kisses, or looks; but he should indeed explain if the pleasure concerned intercourse or pollution, because, since these differ in species from immodesty and must be accused distinctly, so also must pleasures concerning them."

This opinion indeed seems theoretically true, because it is not necessary to declare in particular the means indifferent in themselves employed for a sinful act; for just as it is not necessary to confess whether an unjust beating of one's neighbor was done with a stick or with clubs, provided that it is declared whether it was grave or light, so theoretically speaking it is not necessary to confess whether someone procured carnal pleasure for himself by a touch or a look, or whether he frivolously placed himself in grave danger of consent to carnal pleasure by a touch or a look, provided, however, that desire for intercourse was absent. **In practice**, however, one must prudently and discreetly insist that simple faithful confess touches, looks, and kisses in species, both because desire is often present and because they themselves cannot judge the gravity of the danger arising from acts of this kind.

[1335] *De luxuria* diss. 6, a. 15, § 3. A. Vermeersch teaches the same, *Theol. mor.* IV, n. 104.

693. Decent kisses, which are customarily given (even in the presence of others) according to the custom of the country for manifesting honorable affection, are licit,[1336] although carnal movements sometimes arise from them, provided, however, that complacency in venereal pleasure is restrained. Hence the kisses which, for example, are customarily given between betrothed persons, blood relatives, relatives by affinity, etc., are licit. In practice, kisses are recognized as more or less illicit **if they would not be given while another honorable person was watching**; but if they are given from levity or in jest, they are venial sins,[1337] provided that proximate danger of consent to venereal pleasure is absent.

But **indecent kisses**, which, namely, are given upon less honorable or dishonorable parts, or with insertion of the tongue into the mouth of another (the dove's kiss), are ordinarily gravely illicit because of the danger of illicit venereal pleasure.[1338] Between spouses, however, no kiss as such is a mortal sin unless proximate danger of pollution arises from it.

[1336] Cf. *S. theol.* 2, 2, q. 154, a. 4.

[1337] Cf. Billuart, *l.c.* a. 16, dico 5.

[1338] Cf. *ib.*

694. A touch lingeringly made upon the dishonorable parts of another adult person without necessity is wont to introduce grave danger of venereal pleasure and consequently is gravely illicit. If there is question of infants or those before puberty, the danger is indeed less, but nevertheless even these useless touches must be altogether avoided.

A touch made in passing either a) upon the dishonorable parts of one's own body or b) upon the less honorable parts of another person (indeed without an evil intention, but also without a cause of necessity or utility) seems to be a light sin, because the danger of illicit venereal pleasure ordinarily is not so grave. But if these touches are lingering, they are also lustful and consequently gravely sinful, for example, if someone

lingeringly touches a woman upon the breasts.[1339] - Concerning a dishonorable touch of beasts, judgment must be made according to the intention and condition of the person touching. Since today the vice of bestiality rages sufficiently widely, touches of this kind made without necessity must be seriously prohibited, as being gravely dangerous and inducing to lust.[1340]

[1339] Cf. St. Alphonsus, *Theol. mor.* l. 3, n. 419.

[1340] Cf. *ib.* n. 420.

695. Looks are wont to introduce less danger of venereal pleasure, and consequently authors judge more mildly concerning them than concerning touches. Nevertheless, a lingering look at the dishonorable parts of another adult person of the opposite sex, made without necessity or true utility, seems to be a mortal sin, because it is wont to cause grave danger of venereal pleasure.[1341] But he who **without any evil desire** looks at the dishonorable parts of some person is not bound to confess what sort of person this was, for example, whether she was a blood relative or a stranger.

a) To look at naked infants is not of itself so much an incentive to lust.

b) To look at truly artistic statues or pictures representing naked persons ordinarily is not a grave danger for an adult and serious person. The reason is that representations of this kind are, alas, so frequent in our times that they no longer move serious adult persons. I have said **ordinarily**; for these representations often are not so artistic, and then they incite more to lust.

c) To look in passing, from curiosity or levity, at the less honorable parts of one's own body or even of a person of the opposite sex is not yet of itself a grave danger of pleasure; nevertheless, this depends greatly upon the condition of the persons and places.[1342]

d) A look at one's entire body is not of itself gravely dangerous or sinful; it is otherwise if such looks are joined with evil thoughts or desires. Likewise, authors commonly teach that it is not a mortal sin if persons of the same sex swimming look at one another in passing. Nevertheless, this custom of swimming is to be eliminated.

In modern times the custom has prevailed throughout the world that painters and sculptors employ naked persons of both sexes who stand as models.[1343] These artists contend that this is altogether necessary for the perfection of art. If this is truly so, then this manner of acting is licit, since the action is not illicit in itself and there is a sufficient reason and an honorable end. In practice, however, abuse is wont not rarely to creep in, so that sins are truly committed between the artists and these living models. The confessor must then act as with those who remain in a proximate occasion of sinning.

e) To look from curiosity, without a lustful affection, at the intercourse of animals is a venial sin; but such a look can easily produce grave carnal movements unless it is done for a sufficient cause or very briefly.

[1341] Cf. *ib.*

[1342] Cf. *ib.* n. 423.

[1343] *Modell stehen* [to stand as a model]. We wrote more fully concerning this matter in the *Linzer Theol.-prakt. Quartalschrift* 1916, 342-347.

696. Conversations concerning obscene things made from a lustful affection or with grave scandal are grave sins. Sometimes, however, it will be difficult to judge whether a shameful conversation was a mortal sin, because the danger arising from speech of this kind depends greatly upon the various circumstances of the

persons both hearing and speaking. Hence, for example, if married men or men of mature age alone among themselves mingle shameful speech for the sake of jest, they rarely commit a mortal sin; likewise, if married women or women of mature age alone among themselves speak shameful things. But if men with women, or young men and boys among themselves, or girls among themselves, or - what is worse - young men with girls, converse about truly obscene things, they almost always sin mortally, because they cause proximate danger both of grave scandal and of venereal pleasure. They would, however, be venial sins if the conversations were indeed freer but not obscene. - To hear shameful speech, or even to smile at the things heard, is a grave sin only when the hearer takes delight in them from an evil affection, or provoked them, or does not impede them although he ought to do so from his office.

697. The reading of evil books and attendance at the theater and dances often cause grave dangers of venereal pleasure; hence a proportionately grave cause is always required for doing these things.[1344] A confessor judging concerning these matters must attend both to their more or less grave objective shamefulness and to the subjective conditions of the penitent. Hence let the confessor greatly dissuade young persons of both sexes from reading novels which treat of love; indeed, let him strictly prohibit the reading if venereal pleasure is wont to arise in them from it. If the penitent is wont to sin in these matters, he must be treated as one who remains in an occasion of sin.[1345] - Several modern dances, such as the "Tango," "Jazz," "Shimmy," etc., are wont greatly to incite to lust and therefore are illicit.

[1344] Cf. above concerning scandal, I, n. 614 ff.

[1345] Cf. below, III, the tract on penance.

§ 4. On the External Sins of Lust Consummated According to Nature

698. Those sins of consummated lust are called according to nature from which generation can follow, as was already said above. Six such sins are customarily enumerated: simple fornication, *stuprum*, abduction, incest, adultery, and sacrilege.[1346]

1. Simple fornication, taken in the strict sense, is **intercourse performed by mutual consent between an unmarried man and an unmarried woman already corrupted**.

It is said: **intercourse**, that is, an act apt for generation. But if intercourse is had in an onanistic manner, the sin is of itself graver, because the malice of a sin against nature is added; nevertheless, many penitents erroneously think that this is a diminishing circumstance, because in this way provision is made for the honor of the woman.

It is said: **by mutual consent**, so that fornication may be distinguished from violent *stuprum*, concerning which below, n. 699.

Finally, it is said: **of an unmarried man with an unmarried woman already corrupted**, that is, between persons who are free not only from the bond of marriage, but also from mutual blood relationship, affinity, and a vow of continence, since otherwise the malice either of adultery, incest, or sacrilege is added. Moreover, it is required that the woman not be a virgin; for otherwise there is *stuprum*.

The malice of fornication was denied by the Nicolaitans, certain Gnostics, Anabaptists, Mormons, and several modern Liberalists. Durandus, Caramuel, Martinus de Magistris, and a few others taught that **by the law of nature** fornication is not evil or is only venially evil.[1347] Against all these the thesis is stated:

Fornication is not only gravely prohibited by divine law, but is also intrinsically evil, and therefore contrary to the natural law.

The **divine law** is clearly manifested in several places of Sacred Scripture: "For this is the will of God, your sanctification; that you should abstain from fornication."[1348] "Now the works of the flesh are manifest, which are fornication, uncleanness, immodesty, lust ... since they who do such things shall not obtain the kingdom of God."[1349]

St. Thomas proves that fornication is contrary to the **natural law**: 1. because it implies a disorder which tends to the harm of the offspring to be born; 2. because it deprives the offspring of the care of a father; 3. because it removes certainty concerning the offspring.[1350] Hence Innocent XI deservedly condemned proposition 48: "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."[1351]

It is asked: Is a man inducing a woman to fornication bound to express in confession this circumstance of **inducement** or scandal? If he did not employ force or fraud, he is bound to express nothing except the fornication committed, because from what commonly happens it is presumed (and the confessor easily understands) that the man first solicited it.

Concubinage and prostitution are reduced to fornication as aggravating circumstances. **Concubinage**[1352] is illicit carnal commerce which is habitually carried on between two persons from a certain agreement. Therefore, intercourse frequently repeated between two persons does not suffice for concubinage properly so called; for otherwise betrothed persons frequently having intercourse would already be concubinaries. In addition, at least some agreement concerning intercourse habitually to be performed is required. Hence a concubine is nothing other than an illegitimate wife who lives with the male concubinary either in the same house or in a different house. Not rarely the sin of adultery is added to the malice of concubinage. Notorious concubinage induces the matrimonial impediment of public propriety and other ecclesiastical penalties.

Prostitution is habitual carnal commerce carried on indiscriminately with diverse men, principally for the sake of gain. Prostitution is very rarely practiced principally for the sake of lust, as is related of the Empress Messalina, wife of the Emperor Claudius. After St. Augustine and St. Thomas,[1353] all theologians commonly teach that prostitution can be tolerated by the magistrate in order to avoid greater evils. But whether and when greater evils are truly avoided through prostitution is a very difficult question of fact. For prostitution in the places where it is permitted not only does not avoid greater evils, but rather causes greater evils of scandal, seduction, syphilitic diseases, etc.

[1346] Cf. *S. theol.* 2, 2, q. 154, aa. 1 and 10.

[1347] Cf. Concina, *Diss. de luxuria* c. 6.

[1348] 1 Thess. 4:3.

[1349] Gal. 5:19-21.

[1350] *S. theol. l.c.* a. 2. Cf. Cajetan on this article.

[1351] Denzinger, n. 1198.

[1352] Cf. Code of Canon Law, canons 1078 and 2357, § 2.

[1353] *S. theol.* 2, 2, q. 10, a. 11.

699. 2. Stuprum is taken in a threefold sense: 1. for the illicit defloration of a virgin (**with her consenting**);[1354] this is the common acceptation among the older authors; 2. for the defloration of a virgin **against her will**; thus several older and modern authors, for example, Dominic Soto, Sanchez, Lessius, Noldin, etc.; 3. for intercourse with any woman whatsoever **against her will**; in this sense civil laws are wont to take *stuprum*.[1355]

Stuprum taken in the first sense, when, namely, a virgin voluntarily consents to her own violation, is indeed an aggravating circumstance of fornication, to which, however, it does not add a mortal malice necessarily to be declared in confession. Thus holds the common opinion of modern authors.[1356] The reason is that the physical integrity of virginity is indeed a great good, but nevertheless no special injury is committed against a virgin freely consenting. *Stuprum* taken in the second and third senses includes, besides the sin of fornication, a grave sin of injustice, because it implies unjust violence. By violence, however, is understood not only physical but also moral violence, such as fraud or fear; likewise altogether importunate entreaties and blandishments which are equivalent to moral violence, such as, for example, those which are accompanied by great gifts or lustful kisses or touches. In one word: **This moral violence is everything which a respectable woman can scarcely resist**.[1357] He also commits *stuprum* who violates a woman altogether drunk, sleeping, or hypnotized. - Special ecclesiastical penalties are inflicted upon laity and clerics perpetrating *stuprum* taken in the second and third senses.[1358]

In order that a woman oppressed by force may be immune from every sin, she is bound not only inwardly to resist venereal pleasure, but also outwardly to repel the violator with all her strength; but she is not bound to cry out if grave inconvenience thereby threatens her.

[1354] *Entjungferung* [defloration].

[1355] *Notsucht, viol* [rape].

[1356] Cf. Billuart, *De temperantia* diss. 6, a. 3, dico 3; St. Alphonsus, *Theol. mor.* l. 3, n. 443. St. Thomas (*S. theol.* 2, 2, q. 154, a. 6) teaches: "It is manifest that *stuprum*, which implies the illicit defloration of virgins **existing under the care of their parents**, is a determinate [Leonine edition: determinately] species of lust." But it is not so certain whether the Angelic Doctor taught that this determinate species of *stuprum* contains a mortal malice added to simple fornication, so that it must necessarily be declared in confession. And in truth the sin of lust committed, for example, by a virgin fifty years of age now altogether free and incapable of bearing children, or that committed by a virgin eighteen years of age still existing under paternal care, does not seem to be diverse in species. The older authors thought that in the defloration of a virgin there was always a bodily violation, namely, destruction of the hymen, and that such bodily violation was always evil outside legitimate marriage, just as any other bodily mutilation made without a sufficient cause was also illicit. Modern physiologists, however, rightly deny that such violation is always present, since in some virgins the hymen is absent or is not ruptured even by carnal intercourse; but if it is present, they assert that the violation is minimal.

[1357] Cf. Billuart, *l.c.*

[1358] Code of Canon Law, canon 2357 ff.

700. 3. Abduction is taken in a twofold sense: 1. for an impediment of marriage, and then it is the abduction of a woman from a safe place to an unsafe place **for the sake of entering marriage**; discussion of this abduction will return in the tract on marriage; 2. insofar as it is a species of lust, and then it is **force inflicted upon a woman (or her parents) for the sake of satisfying lust**. Therefore, the distinction between the two acceptations is taken from the end on account of which the woman was violently carried away. Abduction insofar as it is a species of lust is judged also to be present if a consenting minor woman is abducted for the sake of lust, but without the knowledge or against the will of her parents or guardians. There are authors who

take abduction in a broader sense, so that even the violent abduction and corruption of a person of the male sex is contained under abduction.[1359]

Abduction, insofar as it is a species of lust, is a special sin, because besides the malice of fornication it includes a grave injury inflicted either upon the woman or upon her parents.[1360] Abductors of women are punished with special ecclesiastical penalties.[1361]

[1359] Cf. Billuart, *De luxuria* diss. 6, a. 4.

[1360] Cf. *S. theol. l.c.* a. 7.

[1361] Code of Canon Law, canon 2353.

701. 4. Incest is **carnal intercourse between blood relatives or relatives by affinity who according to natural or ecclesiastical law cannot enter marriage**. Under the name of relationship comes also spiritual and legal relationship. Grave external acts of immodesty committed between these persons, or even venereal desires, are referred to incest.

Incest contains a twofold grave malice: one against chastity, the other against the virtue of piety. If, however, the relationship is only remote, that is, in the third collateral degree, the violation of piety does not seem so great that it constitutes a grave sin, and consequently it is not absolutely necessary that the circumstance of incest be declared in confession. But in the first degree of consanguinity or affinity, not only the incest but also the degree seems to have to be declared.[1362] Incest committed between blood relatives or relatives by affinity does not differ in species,[1363] but it differs in species from incest committed between legal or spiritual relatives. Moreover, this latter incest is rare today on account of the great limitation of these impediments of marriage. - Incest is prohibited by the natural law itself, not only because it is repugnant to the virtue of piety, but also because otherwise a) the greatest dangers to chastity would exist, b) the good of human society would be injured, and c) the offspring to be born would often be impaired as to body and soul.

The Code of Canon Law, canon 2357 ff., treats the ecclesiastical penalties against the incestuous.

[1362] Cf. St. Alphonsus, *Theol. mor.* l. 6, n. 469.

[1363] *S. theol. l.c.* a. 9, ad 2.

702. 5. Carnal sacrilege is sacrilegious lust and is committed by the violation of a sacred person, place, or thing through a venereal act. It contains a twofold malice: one against chastity, the other against religion.

Personal sacrilege is committed when a person dedicated to God either through a public vow (solemn or simple) of chastity or through sacred order is contaminated by lust, whether internally through morose delectations, or externally through immodest acts committed either upon himself or upon another person. But if this other person is also sacred, then there is a twofold sacrilege, because two sacred persons are contaminated. Likewise sacrilege is committed if a non-sacred person has venereal desires toward a sacred person. Whether violation of a private vow of chastity is sacrilege properly so called is controverted; cf. above, n. 544.

Sufficient was already said above, n. 546, concerning **local sacrilege**.

Real sacrilege of lust is committed when sacred things are employed for a lustful act. A very grave example of this real sacrilege is solicitation to shameful things in the confessional. Whether pollution or fornicatory intercourse performed within a half-hour after Communion takes on the grave species of real sacrilege seems

doubtful and not solidly proved, unless, however, such sins are committed with a willed relation to Communion.[1364]

The ecclesiastical penalties against the diverse species of sacrilege are treated in their proper places.

[1364] See the diverse opinions concerning this matter in St. Alphonsus, *Theol. mor.* l. 3, n. 463.

703. 6. Adultery is **carnal intercourse between persons of whom at least one is bound by marriage**, or the violation of another's bed. It is simple if a spouse sins with an unmarried person; it is double if each accomplice is joined in marriage.

Besides the sin against chastity, adultery includes a grave sin against justice. How justice injured by adultery must be repaired, see above, n. 151 ff., in the tract on justice. - Even if a husband consents to the fornication of his wife, nevertheless true adultery is present, because the husband cannot cede his right.[1365] Proposition 50 was condemned by Innocent XI: "Intercourse with a married woman, with the husband consenting, is not adultery."[1366]

The character of imperfect adultery is also assumed by a) other gravely immodest acts which a married person exercises or admits with another person; b) pollution which a married person perpetrates upon himself. Hence a married person committing something of this kind must declare his marital state in confession.

[1365] Cf. Billuart, *l.c.* a. 5.

[1366] Denzinger, n. 1200.

§ 5. On the External Sins of Lust Consummated Contrary to Nature

704. Three species of lust consummated contrary to nature are customarily enumerated: pollution (*mollities*), sodomy, and bestiality. These sins are called contrary to nature because they are opposed to the natural end of the highest venereal pleasure, which is the generation of offspring. Therefore, in the genus of lust they are graver than the other sins. I say, however, **in the genus of lust**, because although simple pollution is a graver injury to chastity than adultery, nevertheless, by reason of the added injury to justice, adultery is simply a graver sin than pollution. These three sins differ in species among themselves; therefore proposition 24 was condemned by Alexander VII: "*Mollities*, sodomy, and bestiality are sins of the same lowest species, and therefore it suffices to say in confession that one procured pollution."[1367]

[1367] Denzinger, n. 1124.

705. 1. Venereal pollution (*mollities*; by physicians it is also called onanism,[1368] masturbation, that is, defilement by the hand) is **the emission of seed or quasi-seed outside carnal intercourse**. It is said: the emission of seed or quasi-seed. For pollution strictly so called has place only in males who can emit true seed. But in a broader sense the emission of quasi-seed, that is, of some fluid, occurring with great venereal pleasure in boys, eunuchs, and women, is also called pollution. The moral malice of each pollution is almost the same. For the malice of pollution consists formally in venereal pleasure inordinately desired, and only materially in the real emission of seed. The same holds concerning so-called distillation, at least if it is joined with venereal pleasure and with proximate danger of pollution. Pollution is either voluntary directly or indirectly, or involuntary.

a) Voluntary pollution is a mortal sin from its whole genus. This is clear from the first principle brought forward above, n. 682. For such pollution is not only venereal pleasure directly willed outside legitimate

marriage, but also a grave abuse of the genital members. Therefore St. Paul, speaking of pollution, says: "Nor the effeminate ... shall possess the kingdom of God."[1369] With respect to its morality, it matters little how it was procured, provided, however, that an affection of sodomy, bestiality, or complicity, or another means illicit in itself, is absent. Hence the confessor as judge (it is otherwise as physician) is not bound to know what moderns say concerning sadism,[1370] masochism,[1371] lustful fetishism,[1372] and what is related concerning tribadism, sapphism, and Lesbian love.[1373]

b) Involuntary pollution is no sin, as is clear of itself.

c) Concerning indirectly voluntary pollution, judgment must be made according to the general rules of the indirect voluntary. But concerning **nocturnal pollution**, judgment must be made according as it is voluntary (directly or indirectly) or involuntary.

Hence nocturnal pollution which is caused by evil thoughts or desires freely admitted, or by obscene readings or conversations had before sleep, is to be imputed as a grave sin if it could and ought to have been foreseen. On the contrary, nocturnal pollution which sometimes happens to those half asleep, or which proceeds from a licit cause, for example, from a more comfortable position in bed, from hot liquids taken, etc., is not imputed as sin although it was foreseen; for no one is bound to avoid such licit causes.

Scholion. On remedies to be employed against venereal pollutions. It is established by experience that the vice of pollution rages widely among young persons of both sexes and can be eradicated only with difficulty. In the care of a penitent habituated to this vice, let the confessor strive above all that the penitent not lose heart, but, relying upon firm hope of obtaining victory, vigorously employ the necessary means indicated by the confessor. Such remedies are a) moral and supernatural, and b) natural and hygienic.

a) The moral and supernatural remedies are: frequent reception of the sacraments, contrition,[1374] special exercises of piety to be performed daily, flight from occasion and idleness, and horror and detestation of the vice itself.

b) The natural and hygienic remedies are: bodily exercises even unto moderate bodily weariness; cold baths and washings of the whole body; the use of a hard and not excessively warm bed; sleeping in bed upon the right side and with the hands composed upon the breast; rising immediately in the morning at the due time; guarding against excessively abundant or stimulating food and drink; using medicines which calm the nerves; finally, if frequent pollutions proceed from a morbid state of the body, consulting a conscientious physician. But those physicians are altogether to be avoided and censured who, for curing the habit of polluting oneself, most wickedly counsel carnal commerce with prostitutes.

[1368] Conjugal onanism will be treated below, III, n. 710 ff.

[1369] 1 Cor. 6:10.

[1370] Sadism (named from the perverse man Marquis de Sade) is excitation to venereal pleasure by means of cruelty exercised upon another.

[1371] Masochism (named from the lewd writer Sacher Masoch) is excitation to venereal pleasure by means of cruelty, or at least pain, inflicted by another. Thus, while the masochist suffers cruelty from lust, the sadist causes it in another.

[1372] Fetishism (named from the Portuguese word *feitiço*) is the worship of some idol, either religious or lustful. Lustful fetishism excites venereal pleasure in many ways, for example, by handling women's clothing, shoes, hair, etc.

[1373] These three modes are nothing other than pollutions performed between women.

[1374] Cf. Lanserath, O. Min., *Die Liebesreue*, Dülmen.

706. 2. Sodomy is the insertion of the penis into the posterior vessel of another person. If this person is of the male sex, there is **perfect** sodomy;[1375] but if the person is of the female sex, there is **imperfect** sodomy. Other most foul acts by which the highest venereal pleasure is sought precisely from a lustful affection toward another person are also reduced to sodomy; but if this pleasure is sought rather for its own sake, then there seems to be only pollution procured by another person. Hence ordinarily the confessor is not bound to ask in what manner pollution or pleasure was produced by another person, unless sodomitical intercourse is established. In our times the unspeakable crime of sodomy (which is customarily called contrary sexuality or homosexuality) rages widely in large cities.

[1375] *Päderastie, paedicatio, Urning, petits jésus* [pederasty, paedication, Uranian, little Jesuses].

707. 3. Bestiality (called sodomy or erotic zoophilia by modern jurists) is **carnal intercourse with a beast**; it is the gravest among all sins of lust.[1376] Immodest touches alone had with a beast are not the sin of bestiality when, namely, the sinner intends nothing other than to excite venereal pleasure in himself. Therefore, this circumstance need not necessarily be declared in confession if someone, for example, by means of the tongue of a dog or another beast, excited pleasure or pollution in himself.

Scholion. On sexual perversion. There are still several other ways of satisfying venereal lust which there is no leisure to bring forward here. Moreover, the confessor can resolve occurring cases rightly if he attends to the principles brought forward above. The older authors discoursed at length and breadth concerning lustful sins perpetrated with a demon (concerning succubi and incubi). Today this matter is no longer so practical. But in our days unnatural lust, which is customarily called **sexual perversion**,[1377] rages widely, and its diverse modes were indicated most briefly above. Modern psychiatric physicians not rarely think and say that such perverse inclinations are so vehement that a man can no longer resist them. Let the confessor not believe such statements unless there is question of a man truly insane. For the liberty of man always remains intact, notwithstanding the most vehement inclinations. A man troubled by perverse inclinations of this kind must be treated by the confessor as a habitual sinner. Not only supernatural remedies, but also natural ones, are to be employed; among these the assistance of a good physician possesses great value.

[1376] Cf. *S. theol.* 2, 2, q. 154, a. 12, ad 4.

[1377] Cf. R. de Krafft-Ebing, *Psychopathia sexualis.*

Chapter IV. On the Potential Parts of Temperance

708. The following potential parts of temperance are fittingly enumerated: continence, meekness, clemency, and modesty. Under modesty, however, several other virtues are contained, and especially humility. Each is to be treated briefly.

§ 1. On Continence

Continence, leaving aside its various acceptations, is taken here insofar as it implies firmness of will, lest it decline toward illicit things.[1378] It can be defined: **a disposition of the will by which evil and vehement concupiscences concerning touch are resisted**, that is, concerning food and venereal things.[1379] Therefore, he who resists passions in the matter of temperance is called simply continent; but he who resists other passions is called continent in a qualified respect, for example, continent as to anger, continent as to avarice,

etc. Continence differs from temperance as the imperfect from the perfect.[1380] For temperance is subjectively seated in the concupiscible appetite, which it holds as though tamed under the right will; but continence resides **in the will**, which strongly resists the rebellious motions of the appetite and restrains concupiscences of touch not yet tamed.[1381] Hence the continent man is not badly compared by some to one who receives wild beasts to be tamed, but the temperate man to one who has already tamed them. These things, however, are not to be understood as though the temperate man no longer felt any rebellious motions of concupiscence within himself - St. Paul himself experienced the contrary in himself - but a man endowed with the virtue of temperance more easily represses all rising motions.

Continence is not a perfect virtue; wherefore the Angelic Doctor notes:[1382] "Continence has something of the nature of virtue, insofar, namely, as reason is made firm against the passions, lest it be led away by them; nevertheless it does not attain to the perfect nature of moral virtue, according to which even the sensitive appetite is subjected to reason, so that vehement passions contrary to reason do not rise up in it."

[1378] *Selbstbeherrschung in sinnlichen Genüssen, maîtrise de soi-même, self-control* [self-mastery in sensual enjoyments, mastery of oneself, self-control].

[1379] Cf. *S. theol.* 2, 2, q. 155, a. 2.

[1380] *Ibid.*, a. 4.

[1381] *Ibid.*, a. 3.

[1382] *S. theol.* 2, 2, q. 155, a. 1.

§ 2. On Meekness

709. Meekness is **a moral virtue which moderates anger according to right reason**.[1383]

Anger is not an affection evil of itself, but is a passion indifferent of itself and can be defined: **the appetite for vengeance**. Anger **through vice**, which precedes the use of reason and disturbs it, is distinguished from anger **through zeal**, which follows deliberation and greatly assists the execution of an arduous work. Sinful anger or irascibility occurs in two ways: a) by reason of the **object**, when someone wills to take vengeance contrary to the order of right, or from hatred or another evil end; b) by reason of the **mode**, if, namely, anger boils up excessively, whether inwardly or outwardly. Inordinate anger on the part of the object is a mortal sin from its genus; but that which is inordinate on the part of the mode is only venial from its genus. The reason is that anger inordinate by reason of its object injures justice; but if the disorder is confined to the mode, it is an excess in a thing otherwise lawful; and this excess of itself is only a venial sin. In order to judge in practice concerning the sinfulness of anger, the degrees of anger and the scandal thence given must also be considered.

Anger is a capital vice, because many other vices are wont to arise from it, as was said above, I, n. 429.[1384] Meekness, which rightly moderates anger, is a very precious virtue; for it truly renders a man lovable to God and to his neighbors. Christ came to us as a "meek king"[1385] and was "as a meek lamb that is carried to be a victim."[1386] Wherefore St. Paul beseeches the Corinthians, writing: "I beseech you by the meekness and modesty of Christ."[1387] Meekness also renders us pleasing to men; whence it is said: "My son, perform thy works in meekness, and thou shalt be beloved above the glory of men,"[1388] and: "The meek ... shall inherit the land, and shall delight in abundance of peace."[1389] But meekness is especially necessary for priests; and therefore Christ said to his disciples: "Behold I send you as sheep in the midst of wolves."[1390] For acquiring meekness, humility, which makes us conscious of our own defects, and fortitude, which strengthens the will against sudden motions of anger, are very conducive.

Opposed to meekness by defect is sluggishness or failure to become angry in correcting and restraining vices; but by excess, anger, as has already been said. Among others, St. Thomas[1391] and St. Francis de Sales[1392] have written excellently concerning meekness.

[1383] *Sanftmut, mansuétude* [meekness].

[1384] Cf. *S. theol.* 2, 2, q. 158, a. 7.

[1385] Matt. 21:5.

[1386] Jer. 11:19.

[1387] 2 Cor. 10:1.

[1388] Ecclus. 3:19.

[1389] Ps. 36:11.

[1390] Matt. 10:16.

[1391] *S. theol.* 2, 2, q. 157.

[1392] *Philothea*, Part 3, chs. 8 and 9.

§ 3. On Clemency

710. Clemency is **a moral virtue inclining a superior to mitigate or remit a due punishment, insofar as right reason permits**.[1393]

Although total remission of punishment is rather pardon, nevertheless it is not undeservedly reduced to clemency. But mitigation of due punishment ought not to proceed from illicit motives (for example, from gifts received), but from an affection of mildness, yet without injury to justice. Clemency is indeed very closely related to meekness, but it is not altogether the same.[1394] For meekness moderates punishment insofar as it is to be inflicted from anger, because it diminishes the passion of anger; but clemency moderates it insofar as it is to be inflicted from legitimate power, because it is moderative of external punishment. Hence clemency and meekness agree in this, that each abhors the misery of another; but they differ in this, that meekness comes to the aid of another by the conferral of a benefit, while clemency does so by the subtraction of punishment.

Opposed to clemency by defect is **cruelty**, which is atrociousness of mind in exacting punishments and exceeds the measure in punishing.[1395] Cruelty is related to savagery or ferocity, which, however, rather delights in the torment of men.[1396] Savagery or ferocity is deservedly called a bestial and not a human vice. Cruelty and ferocity are exercised principally against men, but secondarily also against animals. Cf. what was said above, n. 14, concerning the cruel tormenting of animals. Opposed to clemency by excess is **excessive mildness**, by which someone, contrary to the right dictate of reason, mitigates or remits due punishments. This vice is very harmful to the commonwealth, since it enervates discipline, leaves vices unpunished, and disturbs the peace of good citizens.

[1393] *Milde, clémence, clemency* [mildness, clemency].

[1394] Cf. *S. theol.* 2, 2, q. 157, a. 1.

[1395] *Ibid.*, q. 159, a. 1.

[1396] *Ibid.*, a. 2.

§ 4. On Modesty

711. Modesty is taken in a twofold sense: 1. broadly, insofar as it moderates diverse passions in which some difficulty is found; and then it contains four species, namely, humility, studiousness, modesty of external movements, and modesty of attire. Modesty in this general sense is defined: "the virtue by which someone contains himself within the measure and limits of his state, talent, and fortune as regards both internal and external motions and the whole apparatus of his affairs."[1397] 2. In the strict sense modesty is a virtue inclining a man to preserve decorum in external things. We shall treat briefly the several species of modesty broadly taken.

[1397] Billuart, *De temperantia* diss. 7, a. 4.

1. On Humility

712. Humility, insofar as it is a moral virtue, can be defined: **the virtue which restrains the inordinate appetite for one's own excellence and inclines a man rightly to acknowledge his own mean condition on account of his subjection toward God**; or more briefly: "the virtue by which someone, considering his own defect, holds himself among the lowliest according to his own mode."[1398]

Duties. Humility principally has two duties: 1. **to repress the inordinate appetite for one's own excellence**. It by no means prevents us from gladly acknowledging, notwithstanding humility, the goods, whether natural or supernatural, which God has bestowed upon us. Nor does humility prohibit every appetite for glory; whence the Blessed Virgin, who certainly was most humble, exclaimed: "For behold from henceforth all generations shall call me blessed, because he that is mighty hath done great things to me."[1399] 2. **To subject oneself to God by acknowledging that all goods proceed from God.** Whence St. Thomas teaches:[1400] "Humility, according as it is a special virtue, principally regards the subjection of man to God, for whose sake he also subjects himself to others by humbling himself." Humility presupposes a vivid knowledge of one's own defects; and this knowledge is called by St. Bernard **humility of cognition**.[1401] For man of himself is nothing and is laden with sins of every kind; but all goods whatsoever proceed from God. Therefore St. Paul says: "For if any man think himself to be something, whereas he is nothing, he deceiveth himself."[1402] Essentially, however, humility consists in the appetite, which it moderates lest it be borne inordinately toward high things.

St. Thomas comprehends the whole doctrine concerning the essence of humility in the following few words: "Humility consists essentially in the appetite, insofar as someone restrains the impulse of his soul lest it tend inordinately toward great things; but it has its rule in cognition, namely, that someone not esteem himself to be above that which he is; and the **principle and root** of each is the reverence which someone has toward God."[1403]

Certain saints, from humility, thought themselves worse than all other men. But in order that this may be immune from falsity, two things must be considered in every man, namely, that which is God's and that which is man's. Whatever is defective and sinful is man's; but every perfection is God's. Therefore a man, comparing in himself those things which are his own with the goods which others have from God, ought to judge himself worse than they. Likewise he can and ought to think that another man would have cooperated better with the graces received than he himself has. Finally, he can suppose that in another man there are many unknown goods. On account of these considerations a man can subject himself inwardly to any other person; but outwardly prelates and persons constituted in dignity ought not to subject themselves to inferiors.[1404]

[1398] *S. theol.* 2, 2, q. 161, a. 1, ad 1.

[1399] Luke 1:48 ff.

[1400] *S. theol.* 2, 2, q. 161, a. 1, ad 5.

[1401] *De adventu Domini*, sermon 4, n. 4: "Humility is twofold: one of cognition, the other of affection" (Migne, *Patr. lat.* 183, 48).

[1402] Gal. 6:3.

[1403] *S. theol.*, *l.c.*, a. 6.

[1404] *Ibid.*, a. 3.

713. Necessity. Humility is a very necessary virtue; indeed, it is the foundation of the moral life, not indeed in the sense that it excels all the other virtues - for this is false, since the theological virtues are more excellent and more necessary - but insofar as it removes pestiferous pride, which impedes the efficacy of divine grace. Whence St. Augustine beautifully writes:[1405] "Provide for thyself no other way for attaining and obtaining truth than that which was provided by him who, as God, saw the infirmity of our steps. That way is, first, humility; second, humility; third, humility; and as often as thou shouldst ask, I would say this, not because there are no other precepts which may be named, but because, unless humility precede, accompany, and follow all things whatsoever that we do well, and be set before us, that we may look upon it, and set beside us, that we may cleave to it, and set over us, that we may be restrained by it, pride, when we now rejoice over some good deed, wrests the whole from our hand. For the other vices are to be feared in sins, but pride is to be feared even in things rightly done, lest those things which were laudably done be lost through the desire of praise itself."

The Angelic Doctor clearly explains how humility and faith are the foundation of the spiritual life:[1406] "The first [foundation] in the acquisition of virtues can be taken in two ways: in one way, by way of **removing that which prohibits**; and thus humility holds the first place, insofar, namely, as it expels pride, which God resists, and renders man subject and open to receiving the influx of divine grace. Whence it is said that 'God resisteth the proud, but giveth grace to the humble.'[1407] And according to this humility is called the foundation of the spiritual edifice. In another way, something is first in the virtues directly, through which, namely, approach to God is now made. But the first approach to God is through faith, according to this: 'For he that cometh to God must believe.'[1408] And according to this, faith is posited as the foundation in a nobler manner than humility."

[1405] Epistle 118 (otherwise 56) to Dioscorus, n. 22 (Migne, *Patr. lat.* 33, 442).

[1406] *S. theol.* 2, 2, q. 161, a. 5, ad 2.

[1407] Jas. 4:6.

[1408] Heb. 11:6.

714. Degrees. There are three degrees of humility, which St. Bernard elegantly expresses thus: "One humility is sufficient, another abundant, another superabundant. **Sufficient**: to be subject to a greater and not to prefer oneself to an equal. **Abundant**: to be subject to an equal and not to prefer oneself to a lesser. **Superabundant**: to be subject to a lesser."[1409]

The following acts of humility are enumerated: contempt of oneself; to account oneself unworthy of the gifts of God; not to desire to be esteemed great; to desire to be held as lowly; to subject oneself to God and to men on account of God; in external things and functions to embrace that which is more abject, unless the contrary is necessary.

[1409] *Sententiae S. Bernardi*, n. 37 (Migne, *Patr. lat.* 183, 755).

715. Opposed vices. Opposed to humility by excess is **inordinate self-abjection**, which is the inordinate renunciation of one's own honor and reputation and is therefore done with neglect of one's duty;[1410] but by defect, **pride**, which is the inordinate appetite for one's own excellence. Pride is called an appetite because, although it presupposes an act of the intellect, namely, an excessive estimation of one's own merits, nevertheless it formally consists in the appetite for one's own personal excellence. For pride seeks the exaltation of one's own person, and by this it is distinguished from ambition, presumption, and vainglory. For ambition concerns honors and dignities; presumption seeks excellence in works; and vainglory, finally, seeks excellence in reputation and external glory. St. Gregory[1411] enumerates four species of pride, namely: 1. when someone thinks that he has goods from himself; 2. when someone thinks that he has goods indeed from God, but from his own merits; 3. when someone arrogates to himself goods which he does not possess; 4. when someone, despising others, wills to be preferred to them more than is fitting.

How pride manifests itself outwardly is beautifully explained by St. Thomas.[1412] Just as the essence of humility consists in due subjection to God, so the essence of pride is situated in the refusal of that subjection. Hence also the malice of pride is manifest, which is the graver, the greater that rebellion against God is. From these things there also shines forth the gravity of the first sin of our first parents and of the devil. Pride, as just explained, is called by St. Thomas and St. Gregory the Great **the queen of all vices**, because it truly commands all the vices and can induce to all vices. Wherefore it is also easily understood that God must resist the proud and withdraw his grace from them.[1413] We treated pride more broadly above in the tract on the capital vices, I, n. 409.

[1410] *Selbstwegwerfung* [self-abjection].

[1411] *Moral.* l. 23, c. 7.

[1412] *S. theol.*, *l.c.*, q. 162, a. 4, ad 4.

[1413] *S. theol.* 2, 2, q. 162, a. 6, ad 3.

2. On Studiousness

716. Studiousness is **a virtue moderating the appetite and study for knowing truth according to the rules of right reason**.[1414]

Man indeed naturally desires to know truth; but since after original sin knowledge of truths cannot be had without laborious study, some men from laziness neglect to learn even necessary truths. Fortitude impels one to conquer laziness in learning necessary truths. But the virtue of studiousness moderates the inordinate desire of knowing. Studiousness indeed principally concerns the moderation of sensitive cognition in sight and hearing, because disorder more easily arises there; nevertheless, it must not rarely be exercised also in intellectual cognition.

The vice opposed to studiousness **by excess** is **curiosity**, which is the inordinate appetite for knowing.[1415] Curiosity concerns both intellectual and sensitive cognition. Concerning intellectual cognition, disorder can occur: 1. on the part of the **end**, if, namely, knowledge is sought for an evil end, for example, in order to harm others; 2. from an inordinate **mode** of desiring knowledge, and this in four ways: a) if someone, on account of the study of useless things, neglects sciences which must necessarily be learned; b) if someone attempts to learn knowledge from the devil, as happens in divination, vain observance, spiritism, etc.; c) if someone does

not order knowledge of creatures to knowledge of God; d) if someone studies to know truths exceeding his capacity.

On the part of sensitive cognition, however, disorder can be present either because it is not ordered to something useful and rather turns one away from necessary knowledge, or because it concerns dangerous things, for example, if someone curiously looks upon a woman and thence suffers temptations against chastity. Inordinate curiosity of itself is only a venial sin, since its disorder is not so great; nevertheless, it can become a mortal sin by reason of the matter, the end, and the means employed. Inordinate curiosity is sometimes called **the concupiscence of the eyes**.[1416] He who opens and reads another's letters sins not only by the vice of curiosity, but also against justice.[1417]

Opposed **by defect** to the virtue of studiousness is **negligence**, that is, the voluntary omission of knowing those things which are necessary according to the state and condition of each person. The gravity of this sin depends upon the evils thence following, or at least upon the probable danger of evils.

[1414] *S. theol.* 2, 2, q. 166, a. 3. In German: *Wißbegierde* [desire for knowledge].

[1415] *Neugierde* [curiosity].

[1416] *S. theol.* 2, 2, q. 167, a. 2.

[1417] Cf. above, n. 181, where violation of secrecy was treated.

3. On Modesty in External Things

717. Modesty in external things is **a moral virtue inclining a man to preserve decorum in external things according to right reason**. These external things are: a) movements of the body; b) games; c) clothing and ornaments of the body.

a) Modesty in the external **movements of the body** is very necessary for pleasant social intercourse. Whence St. Augustine admonishes: "In all your movements let nothing be done which offends the sight of anyone."[1418] And it is deservedly said in Ecclesiasticus: "A man is known by his appearance, and a sensible man is known by the meeting of his countenance; the clothing of the body, and the laughter of the teeth, and the gait of a man declare concerning him."[1419] Therefore writers, both sacred and profane, give many rules concerning the right ordering of the movements of the body. But especially to be avoided are affectation on the one hand and rusticity on the other.

b) Right modesty **in games** is equally necessary, lest someone be excessively addicted to games with scandal to others and damage to himself. The virtue moderating the right use of play is called **eutrapely**.[1420]

c) Modesty **in clothing and the adornment of the body** avoids not only all indecency, but also every superfluity or deficiency. Against this modesty one sins:

1. **By excess**, when adornment, all the conditions of person, place, and time being considered, is either sought with excessive care or acquired at excessive expense. Not a few persons of each sex sin by such excess, who prodigally expend time, labor, and money in procuring excessive adornment. The quantity of sin in such excessive adornment must be weighed from many things: from the scandal arising, from the duties of state injured, and from the evil end intended. Let the confessor and preacher be cautious in admonishing the faithful concerning this matter, because he often exhorts altogether uselessly and causes laughter and indignation rather than a good effect. This indeed holds especially concerning the adornment of women. But if this adornment incites to lasciviousness, then assuredly it is to be sharply

censured. Women can lawfully adorn themselves in order to increase their beauty, provided, however, that an honorable end is present and every scandal is absent. Ancient authors spoke more severely concerning cosmetics applied to the face. But apart from scandal and every evil end, there is no reason why cosmetics should be morally evil. A graver difficulty exists concerning the more or less extensive baring of the breast which women are accustomed to employ especially on certain occasions, for example, at great banquets and dances.[1421]

2. **By defect**, when someone does not employ due diligence in adornment and clothing.

Let these things said concerning the cardinal virtues suffice. He who desires to learn more should approach St. Thomas,[1422] who, discoursing concerning their dignity, writes: "Among the other [moral] virtues prudence is the greatest, because it is the moderator of the others; and after this, justice, through which man bears himself well not only toward himself, but toward another; and after this, fortitude, through which man on account of the good despises the dangers of death; and after this, temperance, through which man on account of the good despises the greatest bodily pleasures."[1423]

[1418] *Regula ad servos Dei* (Migne, *Patr. lat.* 32, 1380).

[1419] Ecclus. 19:26 ff.

[1420] Cf. above, n. 317, and *S. theol.* 2, 2, q. 168, a. 2.

[1421] Cf. what was said above, I, n. 613, concerning the adornment of women.

[1422] *S. theol.* 2, 2, qq. 47-170.

[1423] *Quaest. disp. unic. de virtut. card.*, a. 3.

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